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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Richland County Court of Common Pleas
George James, Jr., Circuit Court Judge
James F. Barber, Supervising Circuit Court Judge
(Formerly Pending before the South Carolina Court of Appeals)

Howard Hammer Appellant

v.

Shirley Hammer Respondent

Case No. 2009-CP-40-05911
Appellate No. 2013-001652

1634 Main, L.P. Plaintiff/ Appellant

v.

Shirley Hammer a/k/a Shirley Grace Hightower Defendant and Third Party
Plaintiff/Respondent

v.

Howard Hammer Appellant/Additional
Defendant on Counterclaim/Appellant

Case No. 2010-CP-40-2889
Appellate No. 2013-001634

**RECORD ON APPEAL
VOLUME II**

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1 whatever the date on the letter says, Mr. Degenhart
2 and I had a conversation. He called me to tell me ---

3 MS. BALLARD: Your Honor, this is not responsive
4 to my question.

5 THE COURT: Just go ahead. Go ahead.

6 MS. BALLARD: Me or him?

7 THE COURT: No, him.

8 MS. BALLARD: Okay.

9 THE WITNESS: Mr. Degenhart called me, if it
10 recall correctly. I'd like to refer --- subject to
11 what I put in the letter.

12 THE COURT: Give him the letter. Let him look at
13 it.

14 MS. BALLARD: Your Honor, I haven't asked him
15 about it, but I'll be happy to let him look at it.

16 THE WITNESS: Thank you, Your Honor.

17 Mr. Degenhart and I had a conversation on August 19th
18 somewhere around --- before twelve o'clock.

19 Mr. Degenhart had called me, not Mrs. Degenhart.

20 THE COURT: All right. Now, you may rephrase
21 your question.

22 MS. BALLARD: Thank you.

23 BY MS. BALLARD:

24 Q So you did become aware, did you not, that Mary
25 Nell Degenhart and Paul Degenhart were representing

1 the purchasers of the property at 320 St. James,
2 correct?

3 A He did not tell me she was. He have told me he
4 was representing the purchaser and he asked me about a
5 lis pendens. He asked me whether I would withdraw ---

6 THE WITNESS: May I explain my answer, Your
7 Honor?

8 THE COURT: Mr. Aiken, I don't want him asking me
9 anything.

10 MR. AIKEN: Yes, sir, I understand.

11 Don't ask the judge any questions, Howard.

12 THE WITNESS: Okay.

13 BY MS. BALLARD:

14 Q So you did become aware that Paul Degenhart was
15 going to represent the purchaser in the closing of the
16 property located at 320 St. James; is that correct?

17 A I understood that Mr. Degenhart ---

18 Q It's a yes or no question, Mr. Hammer. Is that a
19 yes or no?

20 THE COURT: No, just let him answer.

21 MS. BALLARD: All right, sir.

22 THE WITNESS: I understood that Mr. Degenhart was
23 representing --- he really didn't say who he was
24 representing to be truthful with you, but he called me
25 about a lis pendens and said that there was a problem

1 with the lis pendens at 320 St. James.

2 I told --- he and I had a discussion. We spoke
3 about the lis pendens, and he said Shirley's request
4 to me was that the thing be lifted, and I wrote a
5 letter to him confirming that, and the information I
6 received was that you had a twelve o'clock deadline to
7 list it. I called it.

8 THE COURT: Lift it or list it?

9 THE WITNESS: To lift it. I called him back
10 before twelve o'clock to discuss it and he told me
11 that the deadline ---

12 THE COURT: All right. That is not responsive.
13 The question was: did you know that Mr. Degenhart or
14 Mrs. Degenhart was representing the purchaser?

15 MS. BALLARD: Yes, sir, that was question.

16 THE COURT: He said he did not know ---

17 THE WITNESS: I ---

18 THE COURT: He did not know who they were
19 representing. You can go from there.

20 MS. BALLARD: Thank you, Your Honor.

21 BY MS. BALLARD:

22 Q When you received a call from Mr. Degenhart, you
23 knew, did you not, that he was calling on behalf of a
24 purchaser of property located at 320 St. James, did
25 you not?

1 A I didn't know whether he was calling on behalf of
2 the purchaser or on behalf of Mrs. Hammer. I knew he
3 was calling in connection with the lis pendens.

4 Q All right. And, in fact, you had a conversation
5 with Mr. Degenhart in which you said that you wanted
6 to purchase the property at 320 St. James, did you
7 not?

8 A No, that is incorrect. What I said was --- and I
9 memorialized it. I confirmed with him that we
10 discussed several potential solutions to the
11 situation.

12 Q Mr. Hammer, are you reading a letter into the
13 record? I just want to understand what you're doing.

14 A I'm reading what --- I'm refreshing my memory
15 from it, yes, ma'am.

16 Q All right.

17 A I confirmed with him that there were several
18 potential solutions. I related to him what the
19 solutions were, and I specifically told him in
20 connection with that one of the possibilities that was
21 brought up was this exchange, and I told him that it
22 would be detrimental to my financial interest and
23 interfere with other plans I was in the process of
24 trying to make trying to look into regarding housing
25 for me, but notwithstanding that hardship that such a

1 solution might be something that I would consider if
2 it would help the situation and Shirley, and we
3 discussed some other vague solutions, and I reiterated
4 to him that while none of the solutions, I believe,
5 really were in my best interest, I would do everything
6 I reasonably could to discuss with Shirley and/or him
7 some satisfactory arrangement that might resolve the
8 situation.

9 Q And you, in fact, suggested that the purchasers
10 of 320 St. James or the potential purchasers of 320
11 St. James buy the house you were living in, did you
12 not?

13 A It was one of the options that we discussed I. I
14 don't recall whether he suggested it or whether I
15 suggested it. We had a conversation about various
16 options and that was one of the options we discussed,
17 and I was living a block away, and yes, that was an
18 option that we discussed. Whether he suggested it or
19 I suggested it, I don't know, but I do know that I
20 told him --- that that he was not something that I
21 favored, but I would consider it if it would help with
22 the --- if it would help solve the solution to the
23 problem that was existing.

24 Q And you, in fact, also told Mr. Degenhart that
25 there was a leak in the pool at 320 St. James, did you

1 not?

2 A I don't recall whether I did or I didn't, but if
3 I did, there was a leak. If I did, I told him
4 something that I had knowledge of that Mrs. Hammer
5 didn't have knowledge of.

6 Q And, in fact, you also told him that there was a
7 dispute about an easement across the back of the
8 property located at 320 St. James, did you not?

9 A What I told him --- no, I did not. What I told
10 him was that the brick wall on back of the property
11 was encroached on the property behind the ---
12 encroached on the neighboring property. I told him
13 that there was --- in connection with the neighboring
14 property, there was some potential for --- to get that
15 resolved, and I explained to him the nature in which
16 it would be resolved, and there was no easement.
17 There was a potential for an easement in order to
18 resolve it.

19 Q And you, in fact, showed up at the Degenhart Law
20 firm on August 20th, 2009, for the purpose of stopping
21 the closing of 320 St. James, did you not?

22 A That is incorrect. I showed up at the Degenhart
23 law firm. I did know --- I did not know there was a
24 closing. I had spoken to him on the 19th. He did not
25 tell me anything about a closing. I wrote the letter

1 and brought it over to him on the 20th. I handed it
2 to someone in the office. I believe he came out.
3 There was a secretary. I believe he came out. I know
4 Paul Degenhart. He have and I --- I said here is the
5 letter confirming our conversation yesterday. He and
6 I had a short conversation.

7 I don't recall Mrs. Degenhart coming out. Maybe
8 he said he would go and try to get her, and he looked
9 at the letter and get her to see what the status was.

10 I have stayed there maybe five minutes. I left.
11 I gave him the letter and left.

12 Q So the filing of the lis pendens was to stop the
13 sale on 320, correct?

14 A No.

15 Q The information about the leak in the pool at 320
16 was for the purpose of stopping or delaying the
17 closing, correct?

18 A No.

19 Q And the offer that you would purchase 320 and
20 allow the purchaser to buy your property instead was
21 for the purpose of stopping or delaying the transfer
22 of the property from Shirley Hammer to the purchaser,
23 correct?

24 A No.

25 Q And the reason you showed up in the middle of the

1 closing on August 20th, 2009, was to stop the closing,
2 was it's not?

3 A I didn't even know there was a closing going on.
4 I handed Mr. Degenhart the letter. No one told me. I
5 believe someone --- I don't recall whether anyone told
6 me there was a closing or not, but I left within five
7 or ten minutes.

8 Q But you delivered what has been marked as
9 defendant's Exhibit No. 4 when you arrived at
10 four o'clock p.m. at the Degenhart law firm; is that
11 correct?

12 A I did deliver that letter to Mr. Degenhart. That
13 was the purpose of my going over there ---

14 Q The purpose of the letter was to try to ---

15 A Yes.

16 Q --- try to stop the closing, correct?

17 A No, ma'am. The purpose of the letter --- the
18 purpose was to deliver the letter to Mr. Degenhart to
19 confirm what we had had talked about the day before.
20 I did not know that there was any closing going on. I
21 was hopeful that some solution might be able to be
22 worked out, as I said in the letter.

23 Q And, in fact, the contents of the letter spell
24 out a lot of different circumstances that would, if
25 done, would have prevented Mrs. Hammer from selling

1 320 St. James to the purchaser, correct?

2 A No. That is not correct. It spells out the
3 options that Mr. Degenhart and I had discussed, some
4 of which he had proposed, some of which I had
5 responded to and specifically I told him that it would
6 be a hardship to me to sell my houses and to make the
7 trade as you see in the letter, but I would be glad to
8 discuss that if that would help Shirley get the matter
9 resolved.

10 Q What matter?

11 A The matter of the lis pendens that he called me
12 about on the morning of the 19th.

13 Q That would be the lis pendens that your filed,
14 correct?

15 A Yes, ma'am, that's the lis pendens we're talking
16 about.

17 Q And that he was the lis pendens that was
18 interfering with the sale of the property, correct?

19 A I had no idea whether it was interfering with the
20 sale of the property until Mr. Degenhart called me on
21 the 19th in the morning and we discussed trying to
22 resolve that so it wouldn't interfere with that.

23 Q So on the morning of the 19th when you and
24 Mr. Degenhart spoke and you became aware that it was
25 interfering with the closing, you didn't do anything

1 to withdraw the lis pendens, did you?

2 A What I did was what Mr. Degenhart asked, and that
3 was to discuss a possible solution to take care of the
4 lis pendens and he and I discussed several possible
5 solutions, so yes, he I did what he asked me to do. I
6 called him back as he asked me to call him back before
7 twelve o'clock. At that time he told me we were going
8 to discuss other possibilities. At that time he told
9 me it was too late, so I delivered the letter the next
10 day confirming what our telephone conversation was.

11 Q I appreciate that, Mr. Hammer, but my question
12 was, after you spoke with Mr. Degenhart on August 19,
13 2009, you did not withdraw the lis pendens, did you?

14 A I think I have answered that. I think it's of
15 record that it was not withdrawn, and it wasn't --- I
16 don't recall that he specifically asked me to withdraw
17 the lis pendens. We talked about a potential
18 solution.

19 Q In fact, Mr. Hammer, when you filed the lis
20 pendens you had not filed a lawsuit; is that correct?

21 A That's correct. Let me add one other thing. I
22 think when he called me back finally after
23 twelve o'clock when I --- to tell me that the problem
24 that the --- that it was too late, but I think he also
25 informed me that the problem had been resolved at that

1 time, and I have merely confirmed the next day what we
2 had discussed.

3 Q All right. Did I understand your testimony
4 earlier, Mr. Hammer, that the reason you filed the lis
5 pendens was for the 1634 lawsuit?

6 A I explained to you that in contemplation of
7 filing the 1634 lawsuit, which had to do with a ---
8 which had to do with the 320 St. James property, I
9 understood that I needed to file a lis pendens, so I
10 filed the lis pendens first and then I filed the
11 lawsuit shortly affidavits.

12 Q The 1634 lawsuit shortly thereafter?

13 A Within the time. I looked at the time that you
14 had to file a lawsuit after you filed a lis pendens
15 and I filed it within that period of time.

16 Q All right. So you're telling this court that
17 you're the one that was responsibility for filing the
18 1634 lawsuit; is that correct?

19 A What I'm telling you is that I initially filed it
20 pro se, that within maybe a week or ten days I had
21 been speaking with Ms. Lipscomb about it, and Ms.
22 Lipscomb took it over.

23 Q So, in fact, the lis pendens that you filed had
24 nothing do with the 2009 lawsuits of Hammer vs. Hammer
25 in which you were attempting to invalidate the family

1 court settlement from 2008; is that correct?

2 A I'm not sure I understand your question.

3 Q Mr. Hammer, in the 2009 lawsuit entitled Hammer
4 vs. Hammer, your claim was to set aside the family
5 court settlement in 2008; is that correct?

6 A That was the declaratory judgment action. I'm
7 sorry, I --- when you refer to the 1634, I had gotten
8 confused on the lawsuits.

9 The declaratory judgment action --- I apologize.
10 The declaratory judgment action was the one that ---
11 not the 1634 case, because I wasn't involved in the
12 1634 case, that was an L.P., and I apologize for
13 making that error. I'm sorry, Your Honor.

14 The declaratory judgment action is the case that
15 was filed that had to do with the 320 St. James Street
16 action, and this lis pendens was filed in
17 contemplation of the filing of the declaratory
18 judgment action.

19 Q And the declaratory judgment action you simply
20 brought a declaratory judgment action to try to
21 invalidate the family court settlement from 2008,
22 correct?

23 A That is partially correct. What the --- to
24 invalidate it and to --- and I have brought up the
25 issue of the 320 St. James in that lawsuit, I believe.

1 Q You did not allege in that lawsuit, did you, that
2 you had any interest in 320 St. James?

3 A I'd have to look at --- may I look at the
4 pleading, please?

5 Q I don't have it, Mr. Hammer. I'm asking you
6 because you're the one that filed the lawsuit. I'm
7 asking what you recall.

8 A My recollection was that the partial settlement
9 had to do with a --- with the 320 St. James, that
10 whether I directly or indirectly --- I may have
11 directly mentioned it or brought up 320 St. James, but
12 I certainly indirectly mentioned it by referring to
13 the partial --- referring to a contract between
14 Ms. Hammer and myself dated May of 2008 and was the
15 only contract that we had was the one in May of 2008
16 and that contract dealt with 320 St. James, so yes,
17 ma'am, it was incorporated into it by --- it was
18 either specifically --- it was either with specific
19 language or it was incorporated by reason of the
20 declaratory judgment and the fact that the declaratory
21 judgment had to do with that contract. I hope I'm
22 making myself clear. If I'm not and you need for me
23 to explain, I'm glad to do that.

24 Q Mr. Hammer, you, in fact, did not have any
25 interest in 320 St. James when you filed this lis

1 pendens, did you?

2 A I believe that I did. I believe the contract that
3 we had was invalid. If it was invalid then I would
4 have an interest in 320 St. James.

5 Q And you, in fact, lost that case, did you not?

6 A Uh.

7 Q You lost that claim?

8 A That claim --- the only part of that claim that
9 was litigated was the issue of jurisdiction. That's
10 the only --- that was the only issue that was brought
11 up. You filed a motion asking for it to be dismissed
12 on jurisdictional grounds.

13 Your motion asking for it to be dismissed on
14 jurisdictional grounds was granted. The appellate
15 court upheld the granting of the motion on
16 jurisdictional grounds. Subsequently, there was an
17 action brought by my attorneys in the family court
18 because you had claimed that this action should be in
19 the family court. Subsequently there was an action
20 brought in the family court raising this same issue on
21 the declaratory judgment based on your contention that
22 it should be a matter for the family court.

23 Q So lost the action, correct?

24 A No, I did not lose the action. The question of
25 --- that question is still pending. I did have the

1 action dismissed. The action --- the judge --- the
2 court did dismiss the action on jurisdictional
3 grounds.

4 Q And you appealed that to the court of appeals and
5 Judge Manning's order was affirmed, correct?

6 A Judge Manning's order --- the issue was not the
7 issue of the contract. The issue was based on your
8 motion to dismiss on jurisdictional grounds.

9 Q Let me show you Exhibit No. 18 and ask if you
10 agree with me that these are the pleadings with the
11 Court of Appeals opinion on top as it relates to my
12 motion to dismiss, Judge Manning granting my motion to
13 dismiss, your appeal to the Court of Appeals, and the
14 Court of Appeals both affirming Judge Manning's
15 dismissal of your lawsuit and discussing the merits of
16 whether or not your Mosley vs. Mosier argument had any
17 teeth?

18 A And that would be dicta. The only thing that was
19 before the court was your motion for subject matter
20 jurisdiction and that was dismissed.

21 Q All right. So the answer is yes, what I handed
22 you is the Court of Appeals opinion?

23 A Well, I'm certainly not going to argue whether or
24 not this is the Court of Appeals' opinion. You asked
25 me a question of what happened, and I am explaining to

1 you that, as you know, you brought them a motion to
2 dismiss on subject matter jurisdiction.

3 Q I'm asking ---

4 A After it was dismissed on subject matter
5 jurisdiction, there wasn't anything else for the lower
6 court to decide, nor was there anything else for the
7 appellate court to decide except for the issue of
8 subject matter jurisdiction, which was decided.

9 Q And, in fact, Exhibit No. 18, my question was,
10 Exhibit No. 18 is a packet of legal pleadings
11 including Judge Manning's order and the Court of
12 Appeals' decision on the claim that you brought in
13 Hammer vs Hammer supposedly tied to the lis pendens,
14 correct?

15 A If you're asking me whether or not the Court of
16 Appeals upheld Judge ---

17 Q That's not what I each asking. I'm asking what
18 is Exhibit 18?

19 A Exhibit 18 is the State of South Carolina ---
20 it's a Court of Appeals --- it's a Court of Appeals
21 decision affirming Judge Manning's decision to dismiss
22 it will complaint for lack of subject matter
23 jurisdiction.

24 MS. BALLARD: Your Honor, I move for the
25 introduction of Exhibit No. 18. I understand there is

1 no objection.

2 THE COURT: All of these are already in. Is that
3 right?

4 MR. AIKEN: Yes, sir.

5 MS. BALLARD: Thank you. I have nothing further
6 of this witness.

7 THE COURT: Mr. Aiken?

8 MR. AIKEN: Your Honor, I choose not to cross-
9 examine Mr. Hammer at this point, but I reserve the
10 right to call him in my case.

11 MS. BALLARD: Your Honor, I call Katherine
12 Stokes.

13 THE COURT: It's one o'clock. What do you plan
14 on doing?

15 MS. BALLARD: I have a very brief witness.

16 THE COURT: How brief is very brief?

17 MS. BALLARD: Ten, 15 minutes.

18 THE COURT: All right.

19 MS. BALLARD: Let me bring her in, Your Honor.

20 THE COURT: Okay.

21 KATHERINE STOKES,
22 after being duly sworn, testified as follows:

23 THE CLERK: Please have a seat in the witness
24 stand. State your full name for the record.

25 THE BAILIFF: Watch your step for me please and

1 speak into the microphone.

2 THE WITNESS: Katherine Stokes.

3 THE COURT: Ms. Stokes, is it K. or C.?

4 THE WITNESS: K.

5 DIRECT EXAMINATION:

6 BY MS. BALLARD:

7 Q Ms. Stokes, you go by Katie, is that right?

8 A Yes, ma'am.

9 Q May I call you Katie?

10 A Yes, ma'am.

11 Q What is your profession, Katie?

12 A I am a certified financial planner.

13 Q With whom are you employed?

14 A J.E. Wilson Advisors.

15 Q What does a certified financial planner do?

16 A A certified financial planner works with clients
17 in all aspects of their financial lives, including
18 investments, insurance, estate tax, et cetera.

19 Q What kind of an educational background do you
20 have in order to be a certified financial planner?

21 A I have a bachelor's degree in finance and
22 economics and continuing education to become certified
23 as a financial planner, which includes an eighteen
24 month course in passing a comprehensive exam plus
25 three years additional experience.

1 Q How long have you been a certified financial
2 planner?

3 A Since 2006.

4 Q You've been at J.E. Wilson that entire time?

5 A Yes, I've been with them since 2004.

6 MS. BALLARD: Your Honor, I would offer
7 Ms. Stokes as an expert witness on the issue of
8 financial planning.

9 THE COURT: Any questions, Mr. Aiken?

10 MR. AIKEN: No voir dire from the defendant, Your
11 Honor.

12 THE COURT: Any objection?

13 MR. AIKEN: No objection, Your Honor.

14 THE COURT: All right. She is qualified as an
15 expert in the field of financial planning.

16 MS. BALLARD: Thank you, Your Honor.

17 BY MS. BALLARD:

18 Q Katie, did I ask you to look at some numbers from
19 a real estate closing that occurred in 2009?

20 A Yes.

21 Q And what I showed you was both a HUD and a voided
22 HUD. The HUD I showed you indicated that Mrs. Hammer
23 would have received \$618,922.95 and instead she
24 received \$277,272.79; is that correct?

25 A That's correct.

1 Q And I asked you to look into the matter and offer
2 an opinion as to what kind of return Mrs. Hammer could
3 have gotten on that difference, which was \$341,000 and
4 how much?

5 A \$341,650.16.

6 Q If Mrs. Hammer had invested that money shortly
7 after the closing, the \$341,000 difference ---

8 A Yes.

9 Q --- between what she was going to get and what
10 she did get, if she had invested that shortly after
11 the closing in 2009, how would you have recommended
12 that she invest that?

13 A Obviously every client is different, but we
14 recommend a balanced portfolio as in stocks, bonds,
15 international, domestic, et cetera.

16 Now every client is different, but that's how we
17 would have recommended, generally some sort of
18 balanced portfolio between bonds and stocks.

19 Q Did you, at my request, run the investment
20 numbers for that \$341,000 on the low side and again on
21 the high side depending on which avenue of investment
22 Mrs. Hammer had chosen?

23 A Yes.

24 Q And taking the most conservative number, if Mrs.
25 Hammer had that \$341,000 available to invest at the

1 time of the closing in September --- excuse me, August
2 of 2009, if she had invested that \$341,000 using the
3 most conservative numbers that you, in your
4 experience, have determined would be available, how
5 much money would she have made on that \$341,000
6 investment from the most conservative standpoint?

7 A Given the client's relative age and what we
8 generally do with clients, we would have recommended
9 probably about a 60 percent stock, 40 percent bond
10 portfolio, which is relatively on the conservative
11 side and a balanced index, which includes stocks,
12 bonds, foreign, et cetera. On the low side, she would
13 have received approximately \$86,355 on the difference
14 of the \$341,650.

15 Q And, in fact, if she had elected to invest more
16 aggressively, what type of investment program would
17 you'll have suggested she go into?

18 A Now, there's --- aggressive is kind of a relative
19 term. Assuming she stayed completely diversified and
20 balanced and was in a 100 percent stock portfolio, she
21 would have received approximately \$128,795.

22 THE COURT: Received that in what?

23 THE WITNESS: As in, that would have been the
24 return on that \$341,000 that was invested.

25 THE COURT: For how long?

1 THE WITNESS: I'm sorry?

2 THE COURT: For how long a period of time?

3 THE WITNESS: The time period --- the time range
4 here is September 1st, 2009 through August 2012.

5 BY MS. BALLARD:

6 Q So just to be sure the record is clear, Katie,
7 you are not Mrs. Hammer's financial advisor, are you?

8 A No, I'm not.

9 Q And you have actually not handled any investments
10 for her, correct?

11 A No.

12 Q So your testimony is, if you had received that
13 money and been asked by her to invest it, the return
14 that she would have gotten on the low side and the
15 high side --- if you would please just repeat those
16 numbers again?

17 A There are two --- from the low side to the high
18 side again, assuming a completely balanced portfolio,
19 would collect between \$86,355 in return to \$128,795 in
20 return.

21 Now, had she chosen just to use a domestic
22 portfolio, which we wouldn't recommend but a lot of
23 people do, that would have actually been to her
24 benefit, she would have received \$159,543.

25 Q And what is a domestic portfolio?

1 A Essentially the S&P 500.

2 Q All right. That's all I have. Answer any
3 questions Mr. Aiken has. Thank you.

4 A Sure.

5 THE COURT: Mr. Aiken.

6 MR. AIKEN: I'm not using my cell phone, Judge.
7 I'm using my calculator.

8 THE COURT: All right.

9 CROSS-EXAMINATION:

10 BY MR. AIKEN:

11 Q All right. Ms. Stokes, how are you? I'm Art
12 Aiken. I represent Howard Hammer.

13 A Nice to meet you.

14 Q Nice to meet you, as well. Now, in the first HUD
15 statement, Mrs. Hammer was going to get \$618,000
16 outright, correct?

17 A That was the number I was given, yes.

18 Q Okay. And then on the second HUD statement, she
19 was to get \$227,000; is that right?

20 A I was told \$277,000.

21 Q \$277,000, I'm sorry. That's my problem with my
22 math. All right. Now, are you aware of the fact that
23 Mrs. Hammer --- this loan was paid off in February
24 of 2012?

25 A That was outside of my area.

1 Q But you ran the numbers through August of 2012;
2 is that right?

3 A Yes. If you'd like, I have numbers run also
4 through March and April of 2012.

5 Q Okay. What's the March number?

6 A Let's see. The March number was --- a lot of
7 different timeframes. These were actually run --- the
8 March numbers were represented to me from a colleague
9 at Merrill Lynch. These were not run by me. This
10 goes through March 2012. This is only on the S&P 500,
11 so this would a 100 percent stock portfolio. As of
12 March 2012, the gain would have been \$153,034.

13 Q And that's pure stock?

14 A That's pure stock.

15 Q That's not something you would recommend for Mrs.
16 Hammer given her age, is it?

17 A Generally, no.

18 Q And what would be the balanced portfolio for
19 somebody Mrs. Hammer's age in your opinion?

20 A Over that timeframe, I don't know. I didn't run
21 those numbers.

22 Q You didn't figure what the balanced portfolio
23 would have been for Mrs. Hammer, what would have been
24 the most prudent investment strategy?

25 A No, again, I didn't run --- these numbers through

1 March, I didn't run those. Those were prepared for
2 me, so I only ran numbers through August.

3 (Pause.)

4 Okay. Look. He also ran through March.
5 March 30th, 2012, a balanced portfolio index with a
6 gain of \$101,345, so that's September 1st, 2009,
7 through March 30th, 2012, with a balanced index.

8 MS. BALLARD: Can you repeat that number,
9 please, Ms. Stokes?

10 THE WITNESS: \$101,345.74.

11 MS. BALLARD: Thank you.

12 BY MR. AIKEN:

13 Q What you're saying, as I understand it, is that
14 with that \$600,000 --- \$618,000, Mrs. Hammer through
15 August on a balanced portfolio, would get what?

16 A Not on the \$618,000, only on the difference,
17 which is \$341,000.

18 Q Oh, the difference?

19 A Yeah.

20 Q Okay, \$341 ---

21 A 650 and 16 cents.

22 Q 650 okay.

23 A On the difference through August, a balanced
24 portfolio would have ranged somewhere between \$86,355
25 and \$128,795.

1 Q So at ---

2 A Through August.

3 Q Through August.

4 A Yes.

5 Q So what we're talking about here, as I understand
6 it, is about a 25 percent gain?

7 A Yes.

8 Q Between ---

9 A 25.27 percent ---

10 Q Okay.

11 A --- on the conservative side and actually
12 37.70 percent on the aggressive side.

13 Q So we're talking about a, approximately, a 25
14 percent gain over the course of three years, right?

15 A A 25 percent total gain on the conservative side,
16 correct.

17 Q So we're talking about an 8 percent return over a
18 year?

19 A Yes, 7.8 percent annualized, yes.

20 Q 7.8 percent?

21 A On the conservative side. On the other side,
22 11.25 percent annualized.

23 Q And that's in the years 2009, 2010?

24 A Yes, and again don't confuse annualized with
25 average, those don't mean the same thing. I just want

1 to clarify that.

2 Q So if we figure the amount of money that Mrs.
3 Hammer, that you say Mrs. Hammer didn't get, that she
4 should have gotten?

5 A Uh-huh.

6 Q The \$341,000 and we add to that the \$86,000 gain,
7 we're coming up with approximately \$420,000, right?

8 A In that range, yes.

9 Q Now, did you assume that Mrs. Hammer --- well,
10 let's --- let me get this straight real quick. All
11 right. Now, Mrs. Hammer got at the payoff --- let's
12 assume that Mrs. Hammer got at the pay off of this
13 loan \$327,000, okay.

14 A Okay.

15 Q Assume that and assume that in this amortization
16 table the loan was ---

17 MS. BALLARD: What exhibits, please?

18 MR. AIKEN: I'm sorry. I apologize. Exhibit 10.
19 Let me get the actual one. Exhibit 10.

20 Let's assume that Mrs. Hammer was paid off in ---

21 THE COURT: Is ---

22 MR. AIKEN: Exhibit 10.

23 THE COURT: Mr. Medlin is here?

24 MS. BALLARD: He is not testifying, Your Honor.

25 THE COURT: He's not?

1 MS. BALLARD: No, sir.

2 THE COURT: All right.

3 BY MR. AIKEN:

4 Q If we assume on Exhibit 10 that Mrs. Hammer was
5 paid off in February of 2012, it looks like she would
6 have been paid \$327,526.89; is that, correct? That's
7 for the loan that Mrs. Hammer made?

8 A I'm not familiar at all with the terms of the
9 loan. Assuming the loan was made to her, and it was
10 paid off in February, the number here does say
11 \$327,526. Now, I'm completely unfamiliar with the
12 terms of this.

13 Q I see. I see. So you don't know the terms of
14 the loan?

15 A No.

16 Q You don't know what was paid off and when?

17 A No.

18 Q You don't know?

19 A I was not provided any of that information.

20 Q You don't know what the interest rate that was on
21 that loan?

22 A No.

23 Q You don't know what payments were made and
24 whether they were made correctly and on time?

25 A No, sir.

1 Q So we have don't know anything about what Mrs.
2 Hammer may have made off this loan?

3 MR. HAMMER: May I stand?

4 THE COURT: No, sir. Wait just a second. Excuse
5 me.

6 MR. HAMMER: Your Honor, in the case that I am
7 pro se counsel, I don't know who the required
8 witnesses are going to be.

9 THE COURT: Wait just a second. Okay. Is he a
10 witness in any way in this case?

11 MS. BALLARD: No, sir.

12 MR. HAMMER: But he may be a witness in the other
13 case.

14 THE COURT: We're not going to talk about 1634
15 right now. We're not talking about 1634 right now,
16 but Mr. Medlin doesn't know there's an order
17 sequestering witnesses. There's not going to be any
18 questions asked of this witness about 1634.

19 MR. HAMMER: May I speak with my attorney for
20 just one moment?

21 THE COURT: You may. Go talk to him, Mr. Aiken.

22 (Pause.)

23 MR. HAMMER: I'm sorry, Your Honor. Thank you
24 very much.

25 THE COURT: Go ahead, Mr. Aiken.

1 BY MR. AIKEN:

2 Q So you do not know what kind of return that Mrs.
3 Hammer may have gotten on the loan amount for the loan
4 she made as part of the real estate transaction, do
5 you?

6 A I imagine the return would have been the interest
7 rate, but I don't know what that was.

8 Q You don't know when the interest rate was?

9 A No, if it was 25 percent, I would be shocked by
10 that, or 8 percent annualized, I would be shocked.

11 Q But the way you've got this \$86,000 gain figured,
12 you're figuring that she actually made no money on the
13 money she loaned; isn't that right?

14 A Yes.

15 Q You're assuming nothing?

16 A This gain is. This is purely run on the
17 difference between \$618,000 and \$277,000. That's it.

18 Q I have the doesn't take into account any interest
19 that may have been on that loan, does it?

20 A No, I know nothing about that loan.

21 MR. AIKEN: May I have just a minute, Your Honor?

22 THE COURT: Yes, sir.

23 (Pause.)

24 MR. AIKEN: Thank you.

25 BY MR. AIKEN:

1 Q You don't really know what Mrs. Hammer would have
2 invested in, do you?

3 A No.

4 Q Did you have any conversations with her about her
5 investment objectives, access to money, anything like
6 that?

7 A No, sir.

8 Q And the return on an investment portfolio varies
9 based upon decisions you make about your investments,
10 doesn't it?

11 A Absolutely. These are balanced index portfolios.

12 MR. AIKEN: One moment please, Your Honor.

13 (Pause.)

14 MR. AIKEN: Thank you very much, ma'am.

15 THE WITNESS: Thank you.

16 MS. BALLARD: I have no redirect, Your Honor.

17 THE COURT: All right. Any objection to me
18 asking a question, Ms. Ballard?

19 MS. BALLARD: Not at all.

20 THE COURT: Mr. Aiken?

21 MR. AIKEN: No objection, Your Honor.

22 THE COURT: Ms. Stokes, the difference between
23 the \$101,000 is a balanced portfolio with Merrill
24 Lynch, came to \$101,345.86 and \$1,355 of that is
25 reflective of a downturn in the market between

1 February and August of this year. In other words,
2 your balanced portfolio for a longer period of time
3 shows an \$86,000 gain or return and the balance
4 portfolio for six months shorter shows \$15,000 more.
5 How do you account for that?

6 THE WITNESS: No. Let me clarify, the balanced
7 portfolio run by Merrill Lynch, the \$101,000, that
8 index is a 100 percent stock balanced index.

9 THE COURT: Oh, I wrote down balanced.

10 THE WITNESS: Yes, I'm sorry. The --- it's
11 balanced in stocks, as in stocks, foreign stocks,
12 domestic stocks.

13 THE COURT: I thought that was \$153,000 to the
14 S&P 500 only.

15 THE WITNESS: That is --- no. That's a different
16 number. The S&P was \$153,000. If you add in the
17 foreign stocks, foreign stocks didn't do as well in
18 that time period, so it draws it back to \$101,000.

19 THE COURT: All right. But all stock for the
20 \$101,000.

21 THE WITNESS: Yes, all stock, foreign and
22 domestic.

23 THE COURT: So you don't have a 60/40 split for
24 the shorter timeframe.

25 THE WITNESS: No, I do not.

1 THE COURT: Any follow up questions on that
2 Ms. Ballard?

3 MS. BALLARD: No, sir.

4 THE COURT: Mr. Aiken?

5 MR. AIKEN: Yes. Thank you.

6 BY MR. AIKEN:

7 Q Since you don't know what Mrs. Hammer would have
8 invested in, it's really speculation for you to come
9 in and say how much she would have enjoyed as a gain,
10 isn't that right?

11 A All I can say is what the numbers provide me.

12 MS. BALLARD: I have no follow up. May she be
13 excused, Your Honor?

14 THE COURT: Yes, ma'am.

15 THE WITNESS: Thank you.

16 THE COURT: Any objection, Mr. Aiken?

17 MR. AIKEN: No objection, Your Honor.

18 THE COURT: All right. Ms. Ballard, how many
19 witnesses do we have this afternoon?

20 Thank you, Ms. Stokes. You're excused unless
21 you'd like to stay.

22 MS. BALLARD: Thank you very much.

23 Your Honor, I no other witnesses on the Hammer
24 vs. Hammer case, so I assume we'll begin after lunch
25 with their defense of that case.

1 THE COURT: How many witnesses do you --- not to
2 hold you to it, but how many do you think you'll have
3 in Hammer vs. Hammer?

4 MR. AIKEN: One, Your Honor.

5 THE COURT: Okay. All right. We'll start back
6 at --- let's just make it 2:30.

7 MS. BALLARD: Thank you, Your Honor.

8 MR. AIKEN: Thank you, Judge.

9 THE COURT: Mr. and Mrs. Hammer, you are to have
10 no conversations with each other.

11 MS. BALLARD: Not a problem.

12 THE COURT: All right.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: All right. Mr. Aiken, would the
15 defendant have any motions at the close of the
16 plaintiff's case or are you calling the plaintiff now?

17 MR. AIKEN: Yes, Your Honor. We have a motion to
18 dismiss under Rule 41-B with reference to the case
19 being tried by the court. Basically what I'd like to
20 do is go through the causes of action.

21 The first cause of action that I have still
22 remaining in the case is slander title. Our argument
23 is that a lis pendens is absolutely privileged and
24 that it can't form the basis of slander of title. We
25 have a duly filed lis pendens in this case. Action

1 was subsequently filed on it, which is actually this
2 action, so our position on that is that in as much as
3 the filing of the lis pendens is absolutely
4 privileged, we're entitled to judgment as a matter of
5 law on that cause of action.

6 Also, Your Honor, the cause of action for
7 invasion of privacy, there is a case, Rycroft vs.
8 Gaddy, and basically it says that a party must show a
9 blatant and shocking disregard of his rights and
10 serious mental or physical injury or humiliation to
11 himself resulting from a wrongful intrusion into the
12 private matter. First of all, Your Honor, there is a
13 significant question as to whether this is --- for
14 purposes of an invasion of privacy claim, actually a
15 private matter.

16 You know, it was a transaction among parties. It
17 was not personal information or personal activities of
18 Mrs. Hammer.

19 Also ---

20 THE COURT: You're saying the sale of her own
21 real estate is not a private matter?

22 MR. AIKEN: Well, privacy for purposes of
23 invasion of privacy means intensely private
24 information.

25 THE COURT: Intensely private.

1 MR. AIKEN: Intensely private. It means like
2 personal information about your health, about your
3 Social Security number or something like that that you
4 maintained private from the world. That's what
5 invasion of privacy is about.

6 That's one of the reasons why you have to have
7 this blatant and shocking disregard of rights and
8 serious mental or physical humiliation. It's got to
9 be some type of information, the disclosure of which
10 would cause that kind of response from somebody, and
11 this is just not, Your Honor, an invasion of privacy
12 case.

13 And then we have tortious interference with
14 existing contract. One of the elements of tortious
15 interference with existing contract is that the
16 defendant has knowledge of the contract.

17 Now, I listened carefully to what Ms. Degenhart
18 said, what Mrs. Hammer said, and what Mr. Hammer said
19 on his examination by Ms. Ballard, and the only
20 testimony I heard on that point was the testimony from
21 Mr. Hammer who said he didn't know that there was a
22 closing before he filed the lis pendens and they're
23 saying that the tortious interference is the filing of
24 the lis pendens. Well, for purposes of that cause of
25 action, he had to have known of the existence of that

1 purchase and sale of the contract at the time he filed
2 the lis pendens.

3 Also, under tortious interference, there has to
4 be an absence of justification for what the person did
5 that allegedly interfered with somebody's existing
6 contract.

7 THE COURT: Have I heard any evidence as to why
8 he did it?

9 MR. AIKEN: Sir?

10 THE COURT: Have I heard any evidence as to why
11 he filed the lis pendens? He talked around it, but he
12 never really answered the question. Why did he file
13 the lis pendens?

14 MR. AIKEN: He filed the lis pendens because he
15 anticipated the filing of this action. That's what he
16 testified to.

17 THE COURT: And this property had been deeded
18 over to Mrs. Hammer, as far as the domestic
19 litigation.

20 MR. AIKEN: That's correct, but Mr. Hammer's
21 testimony was that this action had to do with part of
22 a contract that was entered into in the domestic
23 action, and his position ---

24 THE COURT: The contract with the separation
25 agreement, was that the contract?

1 MR. AIKEN: Not the separation agreement.

2 THE COURT: What was the contract that was
3 entered into?

4 MR. AIKEN: The contract that was entered into,
5 it's called a partial settlement of all outstanding
6 issues.

7 THE COURT: Which is not in evidence.

8 MR. AIKEN: Which is not in evidence at this
9 point, that's correct, Your Honor. The point is the
10 purpose of this lawsuit was to essentially unwind that
11 agreement and if that agreement were unwinded, then
12 Mr. Hammer would have an interest in 320 St. James.

13 THE COURT: When he filed this lawsuit, this
14 common pleas lawsuit, did he pursue an unwinding or an
15 unraveling of those agreements?

16 MR. AIKEN: He did. He did.

17 THE COURT: In the wrong court?

18 MR. AIKEN: Well ---

19 THE COURT: In the wrong court.

20 MR. AIKEN: As far as the Court of Appeals has to
21 say, yes, sir, in the wrong court.

22 THE COURT: Who else is going to say?

23 MR. AIKEN: Well, I mean, that's a final decision
24 of the Court of Appeals that I'm not going to quarrel
25 with.

1 THE COURT: That's the law of the case.

2 MR. AIKEN: Yes, sir.

3 THE COURT: He was in the wrong court.

4 MR. AIKEN: Yes, sir, that's correct.

5 THE COURT: Did he ever file a comparable action
6 in the family court to unwind it?

7 MR. AIKEN: There were other actions filed in the
8 family court.

9 THE COURT: What came of those?

10 MR. AIKEN: Those are on appeal, as I understand
11 it, to the Supreme Court.

12 THE COURT: Who won?

13 MR. AIKEN: Your Honor, as I understand it, Mrs.
14 Hammer, but I wasn't involved in this.

15 THE COURT: Okay. Well, they both stood up, so I
16 don't ---

17 MR. AIKEN: Maybe I'm wrong.

18 MS. LIPSCOMB: They haven't been decided.

19 MR. AIKEN: They haven't been decided by the
20 Supreme Court.

21 THE COURT: That's what I'm talking about, the
22 family court judge found against Mr. Hammer?

23 MR. AIKEN: Let me check to make sure, Your
24 Honor. I'm sorry.

25 (Pause.)

1 THE COURT: Okay, well, that's not really the
2 point right now.

3 MR. AIKEN: Yes, sir.

4 THE COURT: You're saying that there is no
5 evidence that he knew of the existence of the
6 contract, and you say that they also have to prove
7 absence of justification.

8 MR. AIKEN: Correct.

9 THE COURT: What's the evidence of justification?

10 MR. AIKEN: That he had this action pending in
11 the circuit court or that he filed the lis pendens in
12 anticipation of filing the action in circuit court.

13 THE COURT: All right. And when ---

14 MR. AIKEN: And the action --- I'm sorry.

15 THE COURT: --- that action was dismissed, why
16 has he never undertaken to dissolve the lis pendens or
17 is it just dissolved by operation of the law?

18 MR. AIKEN: It's my position is that it was
19 dissolved by operation of law when the lawsuit is
20 ended.

21 THE COURT: All right. Well, sometimes there's a
22 cancellation that's filed, a cancellation of the lis
23 pendens, and some --- usually people do that as a
24 courtesy to let the world know that hey, even though
25 this thing has probably expired on its own terms, we

1 do hereby cancel the lis pendens, but that didn't
2 happen here.

3 Okay. Anything else on your tortious
4 interference of the contract?

5 MR. AIKEN: No, sir, that's it for the tortious
6 interference of the contract.

7 THE COURT: Are those are the only three causes
8 of action?

9 MR. AIKEN: Actually, there's one more, which is
10 abuse of process. As to abuse of process, they have
11 to show an ulterior purpose or willful action, using
12 the process, not proper or in the regular conduct of
13 the proceeding and some definite act or threat not
14 authorized by the process or aimed at an objective not
15 legitimate in the use of the process.

16 Basically what they have to show is that in some
17 way Mr. Hammer perverted or misused the actual
18 process.

19 THE COURT: That's kind of a cousin to slander of
20 title in this particular case?

21 MR. AIKEN: Somewhat similar, yes, sir, somewhat
22 similar, but in this case there is no --- since there
23 is no evidence that Mr. Hammer knew about a pending
24 sale, there is no evidence that he filed the lis
25 pendens for purposes of stopping a sale because he

1 didn't even know one was ---

2 THE COURT: How about allowing it to continue
3 once he did know?

4 MR. AIKEN: Well, I --- you know, that's not what
5 they have alleged. They have alleged that he filed it
6 with knowledge of the existence of a contract of sale.

7 You know, they --- once he files it and once he
8 has his lawsuit filed, then, you know, he has taken a
9 legitimate position in court, all right, using process
10 the way it's supposed to be used.

11 Lis pendens is supposed to be used to protect a
12 potential interest that he might have in a piece of
13 property.

14 According to the statute, you file a suit within
15 20 days. So we have a legitimate use of the lis
16 pendens because of the potential --- the expected
17 filing of a lawsuit over property interest in 320 St.
18 James, all of which is a proper use of the process of
19 the court.

20 I mean, you know, the thing about the law on
21 slander of title is that proof of bad will, spite, ill
22 will, malice, that alone is not enough. That alone is
23 not enough. You have to prove that somebody
24 essentially perverted the process to, in a way, extort
25 something from someone else. That is abuse of process

1 and so ---

2 THE COURT: What about --- I know what stage
3 we're at now, but what am I supposed to make of the
4 evidence which I have to take in the light most
5 favorable to the non-moving party that he raised
6 issues about a leak in the pool and the encroachment
7 of that fence to a neighbor's property. Why in the
8 world would he even bring that up? Why? Doesn't that
9 circumstantially, at least, indicate that he was
10 trying to abuse these people and run them off?

11 MR. AIKEN: Well, I can't speculate about
12 people's motives.

13 THE COURT: Well, his motives are at issue here.
14 a man who says I'm trying to unravel these agreements
15 that were reached in family court stating this that
16 and the other and by the way we have a leak in the
17 swimming pool and we have an encroachment.

18 MR. AIKEN: Well, there's no evidence that that's
19 not true.

20 THE COURT: Well, what difference did it make to
21 him? He didn't own it, and what difference did it
22 make? He is showing you another note.

23 MR. AIKEN: Yes, sir. He had an obligation to
24 disclose defects.

25 THE COURT: He didn't own it. Is he going to be

1 sued by Hu Ye?

2 MR. AIKEN: I don't know. I mean, it happens.
3 Whether it's got merit or not is a different story.

4 THE COURT: Well, I've got house in Sumter. Do I
5 need to go tell the people who bought it some 20 years
6 later that the brick patio that I put down might have
7 a couple of loose bricks, might be over the line? I
8 don't think so.

9 Anything else on abuse of the process that you
10 want to bring up?

11 MR. AIKEN: That's all I have, Your Honor. Thank
12 you.

13 THE COURT: All right. Ms. Ballard, where is
14 your invasion of privacy?

15 MS. BALLARD: Your Honor, the invasion of privacy
16 is contained in the letter, which is Exhibit No. 4,
17 Mr. Hammer's letter to Mr. Degenhart in which he
18 injected himself into the terms of the sale between
19 Mrs. Hammer and Hu Ye.

20 THE COURT: Keeping in mind ---

21 MS. BALLARD: The invasion of privacy ---

22 THE COURT: What is the invasion of privacy ---
23 and I'm not talking about that. What's inherently
24 private about this?

25 MS. BALLARD: What's inherently private about

1 this, at the time that it occurred, was the sales
2 price and those issues, they subsequently became
3 public record, but at the time they were not public
4 record. At the time the contract of sale which we've
5 introduced into evidence as Exhibit No. 2, that was
6 clearly a private matter, the amount that had been
7 offered and accepted and negotiated, that he was
8 clearly private. What Mr. Hammer did in that letter
9 that he delivered and as he testified in his
10 conversations with Mr. Degenhart, he was trying to
11 find out what those numbers were so that he could make
12 up the financial difference of whatever Mrs. Hammer
13 might lose if the purchaser's purchased his house
14 instead her house. He clearly was trying to get to
15 the bottom of what her financial transaction was going
16 to be by interfering with it and making all those
17 proposals about let's do it this way, let's do it that
18 way.

19 THE COURT: How about the slander of title?

20 MS. BALLARD: Your Honor, the slander of title is
21 privileged unless the filing party lacked any interest
22 at all in the property, and he truly lacked any
23 interest at all in the property. What the Palm Place
24 Partners says and the case from April of this year,
25 Solley vs. Navy Federal Credit Union, and these cases

1 are cited in my pretrial brief, Your Honor. They say
2 that it's privileged if he had an interest in the
3 property at the time of the filing, and I questioned
4 him thoroughly about that. He says if he filed the
5 lawsuit and if he had been successful in unraveling
6 the family court settlement and if this had happened,
7 then he could have claimed he had an interest, which
8 is the same way of saying no, I didn't have an
9 interest when I filed the lis pendens.

10 So clearly, there is a question of his
11 motivation, but as a matter of law, I think Your Honor
12 can find that he had no interest in the property.
13 There was deed. It's been introduced into evidence,
14 Exhibit No. 1. He had conveyed total fee simple title
15 to Shirley Hammer. He had no interest.

16 The next legal document that existed was the lis
17 pendens. The next legal document was the summons and
18 complaint in the 2009 action in which he sought a
19 declaratory judgment. He didn't even seek an
20 unwinding. He sought a declaratory judgment. He
21 wouldn't even reveal, of course, in his declaratory
22 judgment that he was talking about a family court
23 settlement. He called it a certain contract.

24 THE COURT: That's what I was just asking, what
25 contract are we talking about?

1 MS. BALLARD: We're talking about the May 2008
2 property settlement that was approved and made an
3 order of the family court in 2008.

4 THE COURT: Is that the certain contract,
5 Mr. Aiken?

6 MR. AIKEN: Yes, sir.

7 THE COURT: Why didn't he just say it?

8 MR. AIKEN: Oh, they just reminded me that there
9 was a sealing order that was entered by the family
10 court, so actually ---

11 THE COURT: Well, so he is going to use that as a
12 shield to call it what it is.

13 MR. AIKEN: I have ---

14 THE COURT: I don't understand the --- well,
15 there are a lot of things I don't understand about
16 this, but I don't understand the logic that's going on
17 here. Somebody who is wanting to unwind a document
18 that's under seal won't call it what it is. That
19 doesn't remove the --- that doesn't mess around with
20 the fact of the sealed. That let's them know what
21 they're pleading against. That certain contract
22 really doesn't make any sense to me.

23 All right, Ms. Ballard, do you really have any
24 type of evidence that Mr. Hammer knew about the
25 contract?

1 MS. BALLARD: Yes, sir, Mr. Hammer testified ---

2 THE COURT: Today?

3 MS. BALLARD: Mr. Hammer testified that he lived
4 a block from the house, and he could not have not
5 known that there were people looking at it.

6 THE COURT: What's the evidence that he knew
7 about the contract?

8 MS. BALLARD: Not that he knew about a contract,
9 no, sir. Now, he didn't know about the contract when
10 he filed the notice of lis pendens. But he did know
11 about the contract when he continued to allow it to
12 remain in effect through August 17th and up to
13 August 20th.

14 He clearly knew about the contract by that time
15 because he was trying to stop the closing. So he had
16 to know about the contract then when he showed up at
17 the Degenhart law firm trying to invalidate the
18 contract by making counter proposals, trying to stop
19 the sale by claiming there was leak in the pool and an
20 encroachment. Clearly he knew about the contract when
21 he did that.

22 I asked him several times did he understand that
23 the Degenharts represented the purchasers. He talked
24 around that several times, but clearly he showed up at
25 their office because he knew they represented the

1 purchaser. There was a purchaser, and he may not have
2 known who it was, but there was a closing about to
3 take place, so there had to be a contract of sale, so
4 allowing the lis pendens to remain in effect through
5 the sale that was supposed to have occurred on the
6 17th where he testified that Mr. Degenhart asked him
7 to lift the lis pendens and he refused to do so,
8 clearly he knew there was a contract at that time.

9 There is no evidence that he knew it on the
10 date that he filed the lis pendens, but by allowing it
11 to it remain in effect after Mr. Degenhart asked him
12 to remove it, clearly there is knowledge.

13 THE COURT: Okay.

14 MS. BALLARD: And clearly, Your Honor, as to the
15 slander of title, he had no interest in the property.
16 What he was trying to say in a roundabout way was, if
17 this happened and if this happened, then I would have
18 an interest in the property, but he did not allege he
19 had an interest in the property, nor could he because
20 he didn't.

21 I mean, the deed is a general warranty deed,
22 Exhibit No. 1, and it conveyed all of his interest in
23 the property to Shirley Hammer, so the slander of
24 title action, Your Honor, could be ruled on as a
25 matter of law because the documents reflect he had no

1 interest in it whatsoever at the time he filed the lis
2 pendens and at the time he allowed it to remain
3 pending.

4 The intentional interference with contract, Your
5 Honor, he testified that he offered his house, and he
6 wasn't sure whether he or Mr. Degenhart brought up the
7 issue of let's do it this way. Let them buy my house
8 instead of them buying Shirley's house, and I'll buy
9 Shirley's house and I'll move into Shirley's house.
10 Clearly he was trying to stop the contract.

11 THE COURT: Well, whoever it came from, that is
12 just absolutely bizarre.

13 MS. BALLARD: It is bizarre, Your Honor. He was
14 trying to stop --- he showed up at the closing. The
15 suggestion that he didn't know the closing was going
16 on was diffused by Ms. Degenhart when she said
17 everybody is parked out front. There's no way you
18 couldn't have known a closing was going on. He was
19 trying to stop the sale.

20 He abused process by filing the lis pendens and
21 allowing it to continue so that he could try to
22 negotiate and gain an advantage and renegotiate the
23 terms of the family court ruling. He tried to use
24 this case, and he called it that certain contract, and
25 he moved for a protective order not to reveal in this

1 court that it was really the family court matter that
2 he was talking about.

3 He has tried to use this action, both as a
4 slander of title, invasion of privacy, abuse of
5 process, and an intentional infliction of emotional
6 distress --- excuse me, intentional interference of
7 contract, that he was trying to stop the sale because
8 he didn't want Mrs. Hammer to move forward with her
9 life. That is clear from the evidence.

10 The offer of swapping houses is the most bizarre
11 thing I have ever heard. Clearly under the standards,
12 Your Honor has to look at under Rule 41 construing the
13 evidence in a light most favorable to my client, there
14 is more than sufficient evidence to allow these cases
15 to be decided on the merits.

16 THE COURT: Okay. Mr. Aiken, anything else in
17 response to what Ms. Ballard has said?

18 MR. AIKEN: I have no further argument, Your
19 Honor.

20 THE COURT: All right. I do have some serious
21 questions about a couple of these causes of action.
22 I'm going to deny your motions at this time. Of
23 course, you can renew those at the close of the
24 evidence in this docket number.

25 We will go forward now with the presentation of

1 your case.

2 MR. AIKEN: Thank you, Your Honor.

3 MS. BALLARD: Thank you, Your Honor.

4 THE COURT: All right, Mr. Aiken, you can call
5 your witnesses.

6 MR. AIKEN: We call Howard Hammer.

7 THE COURT: All right, Mr. Hammer, you are still
8 under oath.

9 HOWARD HAMMER,
10 having been previously sworn, testified as follows:

11 DIRECT EXAMINATION:

12 BY MR. AIKEN:

13 Q Where do you live, Mr. Hammer?

14 A I live in Columbia on Catawba Street.

15 Q How long have you lived in Columbia?

16 A All my life.

17 Q And you were once married to Shirley Hammer?

18 A Yes, I was.

19 Q And ---

20 A We were married in 1998. We started dating in
21 1995. We started dating on July 8th, 1995. Oddly
22 enough, we had had a difficult year during the year
23 2000. I had an operation, Shirley had an operation.
24 My father had three different events that he went to,
25 and he was going on 95 and had heart trouble. We

1 always worried about that. Shirley was very careful
2 with him, and I thank her for that and I was very
3 careful, but we had three major --- he was honored by
4 senate, he was honored by the United Jewish
5 Federation, nationally and he was honored by the
6 Supreme Court. During that period of time Shirley and
7 I, from January until May, were both sick.

8 On July 8th, I finally had a few minutes. We
9 were going to go out. We decided to stop back at my
10 father's house. Oddly enough on that very day, which
11 was ten years to the day of our first date, when we
12 arrived, Daddy was in the midst of a stroke. He died
13 several weeks later on August 4th, which was the
14 anniversary of our 7th --- the day of the anniversary
15 of our --- the 7th anniversary of our marriage, and we
16 had a difficult --- I had a very difficult time coping
17 with my father's death.

18 After that, we were --- Shirley and I were going
19 to the Labor Day weekend, and I came --- as I left my
20 office, I was served and came home and Shirley was
21 gone and the children were gone.

22 Q And you're the plaintiff in this lawsuit, right?

23 A I was the plaintiff in this declaratory judgment
24 action. All that I understand remains in the
25 declaratory judgment action are the counterclaims

1 against me.

2 Q What was the rationale for this lawsuit?

3 A The agreement that we had was filed in 2008.

4 Part of that agreement was that I was to receive a
5 substantial amount of personal property. I had a huge
6 collection of paintings worth several hundreds of
7 thousands of dollars at the time. I was to receive
8 \$300,000 that were put in --- that Shirley had put in
9 her name, which she has written letters that were
10 incorrect that I have should receive of my children's
11 money, which should have been me as trustee.

12 A year went by and Shirley refused to give any of
13 that consideration, plus she has refused to give
14 consideration on the building. She refused to give
15 the limited partnership, which she was to transfer
16 over to me, which I think had a value of \$500,000. I
17 had given her in cash money, \$1,250,000. I had given
18 her --- I paid off the mortgage to the house,
19 \$250,000, and I had paid another \$250,000 to her for
20 her interest in the house, and there were some
21 incidental matters, and I don't recall, but I think it
22 all added up to somewhere between --- somewhere close
23 to \$2,500,000, plus I paid all the taxes on property
24 that I had to sell in order to get the cash money for
25 her.

1 I think the --- that was not taken into account,
2 however, by the lawyers, and that's just something
3 that happened, so when this came about, Shirley had
4 not gone through with her part of the bargain. It
5 appeared to me that the contract had some questions in
6 it as to whether or not it was a legitimate contract
7 because of the question of whether or not it was void
8 because of the grievance, and also the question, it
9 appeared to me, based on my reading of the Mosier case
10 was that this was a --- there was clearly intent. There
11 were five different items in the contract, one an inure to
12 the heirs, which gave the heirs the right to bring
13 lawsuits.

14 They inured to the assigns. They gave the assigns
15 the right to bring lawsuits. Well, the assigns were not
16 parties to the family court. They couldn't bring actions
17 in the family court, so it was my thought and my belief
18 that the action should be brought in the circuit court in
19 order to contest the contract and to contest whether or
20 not it was void.

21 I was caught between a rock and a hard place because
22 there was also an order in the family court that you could
23 not --- that the action had to be unsealed.

24 So the action was --- and there was also a
25 question as to whether or not --- and I think Shirley

1 said something in her deposition that it was accurate
2 that part of her consideration for the lawsuit was the
3 dropping of some charges that she made against me
4 which ultimately Barney Giese found to be without
5 merit.

6 MS. BALLARD: Objection, Your Honor.

7 THE COURT: Let's do it this way. Let's ask
8 questions and then you can answer them. I don't even
9 know what he was answering. Let's do it in a question
10 answer form.

11 Now, you said why did he bring the lawsuit, and
12 the only thing I've gotten out of it so far is that
13 Shirley had not gone through with her part of the
14 bargain.

15 THE WITNESS: And additionally ---

16 THE COURT: No, he is going to ask you a
17 question.

18 BY MR. AIKEN:

19 Q Let me ask you, briefly, briefly tell me the
20 purpose of the lawsuit.

21 A (A) Shirley had not gone through with her part of
22 the bargain. (B) I believe that the lawsuit was void.
23 (C) I believe that the proper jurisdiction was in the
24 circuit court because of the factors in the lawsuit,
25 which included a statement that this is a contract

1 enforceable at law, among others. There were about
2 four or five, so I brought the action in the circuit
3 court.

4 As to --- do you want me to answer as to why?

5 Q No. No. Now, I'm showing you what's been marked
6 as Exhibit 3. Is that a lis pendens that you filed?

7 A Yeah. Is this the one that I was shown before? I
8 think it's just --- give me a moment. I think this is
9 what I was shown before. Yes, my name is on it. This
10 is the one for July 31st, and I think Ms. Ballard
11 asked me about it. And yes, this is the lis pendens
12 that I filed.

13 Q Now, I believe on the lis pendens, you indicate
14 that your claim is related to --- well, what's the
15 property identified in the lis pendens?

16 A It's 320 St. James Street is the property that
17 we're talking about.

18 Q I believe in there, you indicate that you have
19 filed or were about to file a case related to that
20 property. Now, what case is that?

21 A That was declaratory judgment action that we
22 filed in connection with --- to raise the issues that
23 we raised about the property, the partial property
24 settlement agreement, which was not part of the
25 divorce decree. It was a pure property settlement

1 agreement, and so I filed that action in the circuit
2 court raising the issue of the 320 St. James.

3 I don't know whether you asked me about the
4 certain contract or whether the judge mentioned it or
5 you want me not to say anything more about that.

6 Q Why did you reference in the pleadings in this
7 case in your claim a certain contract rather than
8 giving a more detailed description of it?

9 A There was an order in the family court, which was
10 a sealing order. The sealing order required that you
11 go before Judge Rucker in order to unseal --- that
12 both parties would have to have notice of that to
13 unseal anything having to do with it.

14 It was my intention through --- that you file the
15 lawsuit, and then you have discovery.

16 It was my intention to go --- that you have
17 discovery, and I took the position in --- we took the
18 position when I hired Ms. Lipscomb that there needed
19 to be further discovery before the issue of the
20 jurisdiction could be determined, and so it was my
21 intent to go to the judge to see whether --- to have
22 him unseal this after I filed the lawsuit.

23 I thought it appropriate to file the lawsuit
24 first, and then explain to the judge we had a lawsuit
25 pending and we wanted to unseal just that portion of

1 the lawsuit having to do with the record without
2 having to go to him without any reason.

3 So before I could do that, Ms. Ballard included
4 in a memo --- she attached the contract to her memo
5 with no evidence. She just attached the actual
6 contract to the memo, so the judge had the contract
7 before him at that time. That the point we did not go
8 to the judge to ask him to unseal it.

9 We thought, and still do think, that it was a ---
10 it was a --- you couldn't take judicial notice of it.
11 There is some cases on that that were not --- that the
12 Court of Appeals did not refer to, but that was not
13 the issue in the Court of Appeals, the issue was
14 jurisdiction. The other was dicta, but that's the
15 reason we brought in a certain contract.

16 Ms. Ballard attached the pleadings, so the secret
17 was out. The cat was out of the bag, and the judge
18 had the contract there before him, and he ruled on
19 jurisdictional grounds purely that we didn't have
20 jurisdiction to bring the lawsuit, and that was some,
21 I think, several months after this case started. I
22 can't give you the exact timing, but I think it was
23 some several months and everything in this case was
24 put on hold pending the appeal in the other case, in
25 the declaratory --- in the case that we were

1 originally claimants in this case.

2 Q In this case?

3 A Yes, yes.

4 Q In this case.

5 A I said other cases.

6 Q Now, you made reference to a declaratory judgment
7 case. Are you referring this case?

8 A I'm referring to this case that we were
9 originally the plaintiffs. We originally brought the
10 declaratory judgment action. We alleged a certain
11 contract because of the sealing order and this is
12 before we had an opportunity to go to the --- to a
13 judge or before Judge Rucker returned to the
14 jurisdiction in Richland where he was not, at the
15 time, and we would have to --- as I understood it,
16 appear before a judge in Richland County, go ---
17 before that happened, the contract was attached to a
18 memo and the judge had a copy of the memo, a copy of
19 the contract.

20 Q Mr. Hammer, do you remember the date on which you
21 filed this lawsuit?

22 A I don't remember the exact date. I remember that
23 I looked up and there was a certain period of time
24 between the time you could file the lis pendens and
25 you had to file a lawsuit, so I filed it during that

1 period of time and then immediately afterwards I filed
2 it just to protect the time period.

3 I had spoken with Ms. Lipscomb. She was busy or
4 out of town or for whatever reason, she could not file
5 the ---

6 THE COURT: Just stick to the question. Do you
7 know when you filed it? That's the question.

8 THE WITNESS: I don't know the exact date. I
9 know it was within the proper period. If I could have
10 a copy ---

11 BY MR. AIKEN:

12 Q If I showed you a copy, would it refresh your
13 recollection?

14 A I believe it would. I'm certain it would.

15 (Pause.)

16 I filed it August 18, 2009.

17 Q Now, Mr. Hammer, let's be clear about this, did
18 you or did you not know of the existence of a contract
19 for sale when you filed the lis pendens on 320 St.
20 James?

21 A Absolutely not.

22 Q When did you first find out about the contract of
23 sale involving Hu Ye and Shirley Hammer?

24 A When Mr. Degenhart called me on the morning of
25 August 19th.

1 Q What did Mr. Degenhart ask you about?

2 A May I have that letter to refresh?

3 MR. AIKEN: Your Honor, for the record, it's
4 Defendant's Exhibit 4.

5 THE COURT: Defendant Shirley Hammer has her own
6 stickers?

7 MR. AIKEN: Yes, that's correct, yes, sir.

8 BY MR. AIKEN:

9 Q Go ahead, Mr. Hammer.

10 A Mr. Degenhart lived in my neighborhood, so I knew
11 Mr. Degenhart, and it was a very pleasant
12 conversation, I thought. He called, and he told me
13 that there may be a problem because of a lis pendens,
14 and I --- seeing that I filed the action, I can only
15 imagine --- I told him I also filed an action.

16 I don't know that for certain, but since he
17 called me on the 19th, and I had filed it on the 18th
18 and we both were --- he is a lawyer, and I have some
19 knowledge in the law. I think I told him about that.
20 He told me there was a problem with that. I said that
21 I would like to help to try to work it out.

22 He told me that --- about Shirley's --- the lis
23 pendens and Shirley's request to me that this thing
24 be lifted. He didn't tell me he was representing the
25 buyer and he just said Shirley has requested that it

1 be lifted. I didn't know who he was representing. I
2 believe that additionally somebody else had called me
3 and told me that same morning, I believe it was Mr.
4 McLaren, someone had called Mr. McLaren and Mr.
5 McLaren told me that there was a lis pendens ---

6 MS. BALLARD: Objection, Your Honor.

7 THE COURT: Sustained.

8 MS. BALLARD: Thank you, Your Honor.

9 THE WITNESS: In any event, I was expecting a
10 call from some lawyer, and I got a call from
11 Mr. Degenhart to talk about it, and I was told there
12 was a twelve o'clock deadline, and they wanted to know
13 what I could do. They called me somewhere between
14 10:30 and 12 would be my estimation.

15 We then discussed what could be done. I asked
16 what suggestions do you have. We have talked about
17 several potential solutions. I don't recall all of
18 them.

19 I recall that I told him that I believed there
20 was a legal basis for the filing of the lis pendens,
21 that I had filed a lawsuit, that I believed that the
22 lawsuit was a legitimate lawsuit based on my reading
23 of Mosier, based upon the contract, based upon my
24 understanding that a void contract, even if --- even
25 if it becomes an order of the court and there is an

1 intent on the parties that it remain a contract that,
2 a void contract --- a contract void because of public
3 policy cannot be void as a public policy on the one
4 hand and on the other hand, a court say that it's
5 equitable and adopt it as the order of the court.

6 I believe that a --- I guess what I was saying
7 was that ---

8 THE COURT: Just answer the questions.

9 MR. AIKEN: Yeah. Yeah.

10 BY MR. AIKEN:

11 Q Is that all you spoke with Mr. Degenhart about?

12 A No. I told him that I was amenable to discussion
13 about it to see whether we could work it out and one
14 of the options that we discussed was possibility of
15 his purchaser or client --- by that time he had told
16 me that, I guess, that he was representing the
17 purchaser. He told me that she wants to live in
18 Wheeler Hill.

19 I said well, I filed the lawsuit obviously having
20 to do with the house, and so possibly if she wants to
21 live in Wheeler Hill and she's just interested in
22 living in Wheeler Hill, the houses were both in
23 Wheeler Hill.

24 We discussed the possibility of her buying my
25 house. He said that may be a possibility. He'd have

1 to contact her. I think he contacted her and called
2 me back and said that she was not interested.
3 Initially that was left up in the air. That was one
4 of the possibilities that I recalled, and we
5 discussed, in connection with that, we discussed what
6 price I would sell it for, what price. I didn't have
7 any real idea, but I thought my house might be less
8 and that might be something attractive to her.
9 Apparently it wasn't. I don't remember exactly ---

10 Q Okay. Okay. And ---

11 A May I add one thing?

12 Q I can ask you a question ---

13 A Okay.

14 Q --- and you can answer it. What else did you and
15 Mr. Degenhart discuss?

16 A I explained to Mr. Degenhart that that was not
17 something that I really wanted to do, and I put that
18 down in the letter, that I was amenable to discussion
19 about that resolution, but it was not something that I
20 really wanted to do. I had felt it would be
21 detrimental to my financial interests because I would
22 be losing --- I'd have to come up out of pocket with
23 some money and possibly might interfere with some
24 other plans of my purchasing a house otherwise, but I
25 told him not withstanding the hardship that might

1 occur to me --- that might incur --- that I might
2 incur that that would be something that I would
3 consider.

4 I told him that I had no malice towards Shirley
5 or towards Ms. Ye and, you know, if we could work
6 something out, I was amenable to working things out
7 and I have always believed in compromise and believe
8 that we should always work towards that, and I told
9 him I didn't think any of the solutions were in my
10 best interests, particularly that one, but I was
11 willing to try anything to come up with a
12 satisfactory relationship --- satisfactory arrangement
13 and that I understood I would hear back from him.

14 MS. BALLARD: Your Honor, I object. This is
15 about the third time he has read this letter into the
16 record.

17 THE COURT: Okay. The letter is in evidence.

18 MS. BALLARD: Thank you, Your Honor.

19 THE COURT: He is doing most of the talking, Mr.
20 Aiken.

21 MR. AIKEN: I understand.

22 THE COURT: I know he is a lawyer. I know
23 lawyers like to talk, but he is a witness.

24 MR. AIKEN: Yes, sir; yes, sir. I understand
25 your admonition.

1 BY MR. AIKEN:

2 Q Do you invest in the stock market?

3 A Yes, I certainly do. I watch the market every
4 morning and I usually get up somewhere between four
5 and six o'clock and see what the Asian market has
6 done, what the European market has done, what the
7 futures are. I've been doing that for as long as I
8 can remember.

9 Q Has your personal success or failure in the
10 market depended upon what you bought and what you
11 sold?

12 A Yes, if you'd like some examples, I can give you
13 numerous examples of what's been going on in the stock
14 market since 2009.

15 Q Please.

16 A Citibank. It was selling somewhere around ---

17 MS. BALLARD: Your Honor, I object to this. I'm
18 not sure of the relevance of it.

19 THE COURT: Mr. Aiken?

20 MR. AIKEN: Well, we had the nice lady who was
21 the certified financial planner talk about some
22 balanced portfolio of index funds or whatever. What
23 I'm trying to establish is the general parameters that
24 they use to come up with of those numbers don't really
25 reflect people's experience in the market because it

1 depends upon specific purchases and specific sales and
2 timing. It's not this historical exercise where you
3 go back and try to figure out what something is worth.

4 THE COURT: Yes, ma'am?

5 MS. BALLARD: Your Honor, if he wanted to do
6 that, he would have done it on cross-examination of
7 Mrs. Stocks or he could have brought in his own
8 financial planner. He has not attempted to qualify
9 Mr. Hammer as an expert in financial planning, nor do
10 I think he could. This is beyond the scope of proper
11 testimony.

12 THE COURT: All right. Overruled. Go ahead,
13 Mr. Aiken.

14 BY MR. AIKEN:

15 Q Tell us about what you've experienced in the
16 stock market recently?

17 THE COURT: No, no, no. The timeframe in
18 question.

19 MR. AIKEN: All right, I'm sorry, Your Honor. I
20 apologize. I should have known that.

21 BY MR. AIKEN:

22 Q Since ---

23 A From 2009 ---

24 Q Well, between August of 2009 and August of 2012?

25 A August or February?

1 Q August of 2012.

2 A All right.

3 A Well, my experience is that there has been
4 tremendous fluctuation in stocks. For instance, BB&T
5 in 2008, 2009 had gotten up into the 30's. It dropped
6 back down to 18. It went back up to 34 recently, and
7 I believe the most recent price was somewhere around
8 27 or 28. So if you bought it at 34 in 2009, you
9 would be losing money.

10 Bank of America, if you bought that in --- when
11 buying in the stock market, you just don't --- my
12 experience is and I think that would be common
13 knowledge you don't just take all your money and put
14 it all in at one time. You buy a little bit and a
15 little bit, you add to it, you add to it and subtract
16 from it.

17 In 2010, for instance, Bank of America --- it had
18 gotten up after it had a precipitous drop in 2008,
19 2009, it had gotten back up to 19. If you bought it
20 at 19, somewhere around 2010, it got as low as 2004
21 during this past year. It's back to somewhere in the
22 nines, but likewise with Citibank, United States Steel
23 went up to 170 during this period of time. It's at 20
24 right now.

25 Proctor and Gamble had been in the 60s. It's

1 still in the 60s. Ford Motor Company, if you bought
2 it after --- shortly afterwards, I think in 2010, it
3 was --- it had gotten up as high as 19. It's back to
4 9 or 10. If you bought A.K. Steel, it was 11 last
5 year. It's 4 now.

6 THE COURT: Okay. That's enough illustration.

7 MR. AIKEN: That's enough illustration. Yes.

8 I'm sorry, Judge. I should have stepped in there.

9 THE COURT: All right. The objective is to buy
10 low, sell high. Okay. You all maintain there is a
11 pie in the sky speculative picture?

12 MR. AIKEN: Yes, sir.

13 THE COURT: All right. I understand that's what
14 everybody's points are. They say it's realistic. You
15 say it's not.

16 MR. AIKEN: Yes, sir. Yes, sir. May I have just
17 one moment, please, sir?

18 THE COURT: Yes, sir.

19 (Pause.)

20 BY MR. AIKEN:

21 Q When you were --- when you went by --- did you go
22 by the Degenhart's law office to delivery Exhibit No.
23 4?

24 A Yes, that was on --- this says July 10th, but I
25 actually went by for one reason on the 20th. I went

1 by to deliver this letter that had memorialized our
2 conversation on the 19th. I did not know that they
3 were having a closing. I walked in. I handed the
4 letter to a lady. I don't think it was Ms. Degenhart.
5 She said there was a closing, and I said fine. Here
6 is the letter, and I gave them the letter and
7 explained a little bit about --- I think --- do you
8 want me to explain what I explained about?

9 Q No.

10 A All right. I gave them the letter. We had a
11 short --- Mr. Degenhart came out, and as I recall, we
12 had a short conversation. Mrs. Degenhart came out,
13 said she was in the middle of a closing. I didn't
14 have any idea that it was Shirley's closing or anybody
15 else's closing, and I left. I couldn't have been
16 there anymore than ten minutes. There was another
17 deed that I've learned of subsequently that was oddly
18 in effect at that time.

19 THE COURT: That's not your question, about
20 another deed.

21 MR. AIKEN: Yes, sir. I'm fixing to ask that
22 question.

23 THE COURT: Okay. But you run the show.

24 MR. AIKEN: I understand, Judge. I understand.

25 BY MR. AIKEN:

1 Q Mr. Hammer, you can obviously recognize your
2 ex-wife's signature, can't you?

3 A Yes.

4 Q If you would look at that for me and tell me
5 whether on the second page ---

6 MS. BALLARD: What exhibit, please?

7 MR. AIKEN: That is --- I have to look at my
8 list.

9 THE WITNESS: Yes, that's Shirley's ---

10 MR. AIKEN: Whoa, whoa, whoa.

11 THE WITNESS: I'm sorry.

12 THE COURT: Is that something that's already
13 being marked?

14 MR. AIKEN: It has not been marked.

15 THE COURT: Go ahead and get a sticker put on it
16 or what you --- whatever you might want to put in
17 evidence.

18 That's Plaintiff's Exhibit No. 1?

19 MR. AIKEN: I believe that is right, Judge.

20 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
21 for identification only.)

22 MS. BALLARD: Your Honor, I would object at this
23 time. As I told you earlier, Mr. Hammer never ---

24 THE COURT: He's not offering it, he's just
25 marking it right now.

1 MS. BALLARD: All right, sir.

2 THE COURT: If he ever wants to offer it, then
3 you can object. You want to object on the basis of
4 the no discovery?

5 MS. BALLARD: Yes, sir.

6 THE COURT: All right. Go ahead, Mr. Aiken. You
7 can at least at this point get the witness to identify
8 it.

9 BY MR. AIKEN:

10 Q Yes, sir. Mr. Hammer, can you look at the second
11 page of what's been marked as Plaintiff's Exhibit 1?

12 A Yes.

13 Q Is that your ex-wife's signature?

14 A It is.

15 Q Shirley Hammer?

16 A It is.

17 Q What is that?

18 A That is a deed dated the 7th day of August by
19 Shirley to her mother of the 320 St. James property,
20 August 7th.

21 THE COURT: Okay. He has identified it.

22 THE WITNESS: August 7th of 2009.

23 THE COURT: All right.

24 THE WITNESS: That's a deed.

25 MR. AIKEN: I move to admit this into evidence as

1 Plaintiff's Exhibit No. 1.

2 THE COURT: Yes, ma'am, Ms. Ballard?

3 MS. BALLARD: Your Honor, I object. As I said
4 earlier, Mr. Hammer has never responded to any of our
5 discovery. This document has not been produced to us.

6 THE COURT: Well, your client referred to it in
7 her testimony.

8 MS. BALLARD: In cross-examination she was asked
9 about this it, yes, sir, but we didn't offer it into
10 evidence, nor --- my point is that he never answered
11 any interrogatories. He never produced any documents,
12 yet he has been allowed to introduce evidence at
13 trial.

14 THE COURT: All right. Objection is overruled.

15 MS. BALLARD: Thank you, Your Honor.

16 MR. AIKEN: It's admitted into evidence at this
17 point.

18 THE COURT: All right.

19 MS. BALLARD: It's Exhibit 1?

20 MR. AIKEN: I just wanted to make sure. I
21 apologize.

22 MS. BALLARD: It's Exhibit 1?

23 THE COURT: Yes, ma'am. Plaintiff's Exhibit one.

24 MR. AIKEN: Excuse me. If I can have one moment
25 please, Your Honor.

1 (Pause.)

2 (WHEREUPON, Plaintiff's Exhibit 1 was admitted
3 into evidence.)

4 BY MR. AIKEN:

5 Q Mr. Hammer, when you filed this lawsuit
6 concerning the partial settlement of all outstanding
7 issues, what was referenced as a certain contract, was
8 there any activity in the family court concerning that
9 matter at that time?

10 A I believe that there were some motions pending in
11 the family court at that time, yes.

12 MR. AIKEN: Thank you, Mr. Hammer, if you could
13 answer any questions Ms. Ballard may have.

14 THE COURT: Ms. Ballard?

15 MS. BALLARD: Can I have a two minute comfort
16 break?

17 THE COURT: You may step down. Do not discuss
18 your testimony with anyone.

19 THE WITNESS: Yes, sir.

20 THE COURT: And that means anybody on the face of
21 the earth.

22 THE WITNESS: I'll just stay right here, Your
23 Honor, if you don't mind.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: All right. Ms. Ballard.

1 CROSS-EXAMINATION:

2 BY MS. BALLARD:

3 Q Mr. Hammer, are you divorced from Shirley Hammer?
4 That part of the family court proceedings, you don't
5 take issue with; is that correct?

6 A I'm sorry, I couldn't hear you.

7 Q So that part of the family court order, you don't
8 take issue with?

9 A There was a separate divorce decree. I haven't
10 taken issue with it, but if you ask whether I do, yes,
11 I do take issue with it, and the answer, if you want
12 --- I assume you want to know why.

13 Q I can't wait to hear.

14 A That divorce decree, during the --- from the
15 original separation agreement was entered into in
16 September of 2005. Shirley and I --- and I won't go
17 through how --- but I came back to the house. She
18 then wanted to move across the street for a larger
19 pool, for whatever reason. It doesn't matter. She
20 moved across the street to another house. She stayed
21 there for a year. Then she moved to a third house.

22 During all of this time, there was --- she
23 finally brought in --- the end of 2006, she brought a
24 rule to show cause against me. I hadn't hired a
25 lawyer for 15 months. There was no answer to the

1 original pleading for 15 months. We had dated. We
2 did more than date. We spent --- husband and wife
3 except living in separate houses. We went on two or
4 three vacations together, we went to a house that we
5 had in Isle of Palms, but regardless, she brought this
6 against me.

7 I thought we were getting back together frankly,
8 because I still loved her and had very strong feelings
9 for her. I didn't understand why we were apart, to be
10 truthful and did not realize it until just recently.
11 I won't go into why. I don't think it's necessary,
12 although it may have some relevance, but in any event
13 the ---

14 THE COURT: The question is why do you take issue
15 with the divorce?

16 MS. BALLARD: Thank you.

17 BY MS. BALLARD:

18 A All right. During that period of time in 2006,
19 Judge Rolly Jacobs issued an order that dismissed her
20 attorney, Mark Taylor. When her attorney was
21 dismissed, the case was stayed. That was in 2006.

22 The case was stayed throughout 2006 and into
23 2007, still stayed. In 2007, Shirley brought a
24 divorce decree, an amended complaint against me at the
25 time that the action was stayed.

1 Now, it's invalid. The action is stayed. There
2 is no validity. There is no jurisdiction in the lower
3 court. She amended the original complaint while the
4 original complaint was stayed, so it would have been
5 invalid.

6 So when 2008 came around we had the divorce
7 hearing. At the time we had the divorce hearing,
8 there was no legitimate complaint, no legal complaint,
9 because the complaint had been filed as part of an
10 action, an amendment to an action that had been
11 stayed.

12 A So technically, technically, technically that
13 would be the answer. Is there a divorce decree? Yes.

14 Do I --- would I --- could I take issue with it?
15 I guess I could for that technical reason.

16 Q But you don't dispute your divorce from Shirley?

17 A I don't dispute that there's a divorce decree.

18 Q But you dispute that your divorced from Shirley?

19 A I don't know how much clearer I could explain it.

20 THE COURT: Do you dispute that you're divorced?

21 THE WITNESS: According to the divorce decree, I
22 am divorced. If the divorce decree is not valid
23 because of the reasons that I have just now enunciated
24 that I'm not divorced. There's not been a judicial
25 determination of that. All that stands now is there

1 is a divorce decree. There is a question, at least in
2 my mind.

3 THE COURT: Did you appeal from the decree?

4 THE WITNESS: Did not appeal from the decree, but
5 the question then would be would you have to appeal
6 from an invalid decree.

7 THE COURT: All right. Continue.

8 MS. BALLARD: Thank you, Your Honor.

9 BY MS. BALLARD:

10 Q Mr. Hammer, when --- you've talked about the 2008
11 decree in family court. There was also a 2009 order
12 in the family court that had to do with custody and
13 reincorporated and approved the 2008 contract, wasn't
14 there?

15 A The 2009 custody agreement?

16 Q It reaffirmed the earlier 2008 property
17 agreement, did it not?

18 A I'd have to hook at it. That's not my
19 recollection.

20 Q Okay.

21 A No, it did not.

22 Q All right, and the record --- let me ask a
23 question before you answer it.

24 A Okay. I wanted to make sure I answered your last
25 question correctly. May I look at that custody

1 agreement to make sure that my answer is correct,
2 please?

3 Q You filed this action on August 18th, 2009. A
4 summons and complaint referring to quote, that certain
5 contract; is that correct?

6 A I believe that's correct. I don't have it in
7 front of me.

8 Q And on August 19th, 2009, you filed a pro se
9 motion in the family court to reconsider the order
10 that you're now claiming is void; is that correct?

11 A No.

12 Q You deny that the family court record reflects
13 that you filed a pro se motion to rescind or
14 reconsider on August 19th, 2009, in the family court?

15 A In 2009 --- there was a custody agreement that
16 was entered into in June 2009. That's one year and
17 one month after the 2008 partial settlement agreement.

18 Q My question relates to a motion that you filed
19 August 19th, 2009, in the family court in which you
20 attempted to rescind and reconsider the earlier orders
21 of the family court, did you not?

22 A I'm trying to explain that to you, ma'am. I
23 filed an order --- a motion to rescind the 2009
24 custody agreement, not to rescind it, but no order had
25 been filed. There is a case called Ford vs. Ethics

1 Commission. It says that until an order is filed, the
2 judge can change his or her mind. We had --- that
3 custody agreement arose out of a contract.

4 Q So you filed that motion in family court the day
5 after you filed the lawsuit in this court, correct?

6 A It was --- it had to do with the custody
7 agreement. It had nothing to do with this case. I
8 moved to withdraw my agreement to the custody
9 agreement in the family court. I moved ---

10 Q So you still had matters pending before the
11 family court on August 19th, 2009; did you not?

12 THE WITNESS: Your Honor, may I finish my answer?

13 THE COURT: Mr. Aiken, are you going to object?
14 You can't object, Mr. Hammer. This is the last time
15 I'm going to tell you.

16 THE WITNESS: May I tell you ---

17 THE COURT: No, sir.

18 You are a witness.

19 MR. AIKEN: The witness is entitled to finish his
20 answer.

21 THE COURT: Well, stand up for him and take up
22 for him instead of him doing that because he is not a
23 lawyer.

24 MR. AIKEN: Yes, sir. He ---

25 THE COURT: Excuse me, he is not the lawyer in

1 this case.

2 Let him finish the question and show him the
3 papers if you have papers.

4 MS. BALLARD: All right, sir.

5 THE COURT: Just show them to him. Let's move
6 through this thing because I know --- I'm following
7 you, but it's not helping me if you're talking about
8 all this stuff that's foreign, like doing this in 2008
9 and doing this in 2009. Just remember, you all are
10 trying to convince me of stuff, not trying to win an
11 argument.

12 MS. BALLARD: Well, we're going to ask the court
13 to take judicial notice of the family court matter.

14 THE COURT: Well, fine. If you have something
15 you want me to take judicial notice of. I can't take
16 judicial notice of something where he doesn't say
17 yeah, that piece of paper exists. You're just talking
18 and he's just talking. I need to see some papers.

19 MS. BALLARD: Yes, sir.

20 THE COURT: We're getting bogged down in
21 personalities.

22 MS. BALLARD: Yes, sir.

23 THE COURT: You against him instead of what the
24 issues are.

25 MS. BALLARD: Yes, sir.

1 BY MS. BALLARD:

2 Q Mr. Hammer, as I understand your earlier
3 testimony, you still want to be married; is that
4 correct.

5 A No. I didn't say anything of the sort.

6 Q Okay, but you want to set aside the 2008 divorce
7 decree?

8 A I didn't say anything of that sort.

9 THE COURT: That's not relevant to what we're
10 talking about.

11 MS. BALLARD: Okay.

12 BY MS. BALLARD:

13 Q As part of the property settlement, Mr. Hammer,
14 you were supposed to receive a property located at
15 Number One Rice Court, correct?

16 A I was supposed to receive it. I never got a deed
17 for it. It did not go to me, it went to the attorney.
18 There was never a proper delivery of that.

19 Q Didn't you subsequently sell the property at
20 Number One Rice Court?

21 A What happened --- there was a sale.

22 Q By you ---

23 A I signed the deed.

24 Q But you ---

25 A If I may finish. I signed the deed, but the

1 delivery of the deed was made to the purchaser. It
2 was never made to me. Shirley would not deliver the
3 deed to me. She delivered it to the purchaser's
4 attorney. Whether that's valid or not, I don't know.
5 All I know is I signed the deed. My understanding is
6 in order to have a transfer there has to be a
7 delivery. There was never any delivery to me. I was
8 asked to sign the deed. I signed the deed. I pointed
9 out there was no delivery. I signed the deed. That's
10 all I can tell you.

11 Q And that was ordered to be conveyed to you in the
12 property settlement agreement. So you accepted the
13 cash when that property was sold, did you not?

14 A There was --- may I explain that?

15 THE COURT: You have to answer the question
16 first.

17 BY MS. BALLARD:

18 Q First you answer it, yes, sir.

19 A There was a mortgage on that piece of property
20 that I had to pay off, and I don't recall what the
21 amount of mortgage was, but it was a substantial
22 mortgage that I had to pay off before I was supposed
23 to get the property. The property was located
24 directly behind the property that Shirley was living
25 at 320 St. James. Why she wanted me to have the

1 property directly behind her and then later complain
2 about ---

3 THE COURT: Mr. Hammer, that doesn't answer the
4 question. The question is: did you receive proceeds
5 from the sale of some property.

6 MS. BALLARD: Number One Rice Court.

7 THE COURT: I'm not familiar Rice Court.

8 THE WITNESS: All right.

9 THE COURT: Did you receive the proceeds, yes or
10 no?

11 THE WITNESS: There were proceeds. I think that
12 --- I'd have to look at the paperwork, but I believe
13 that those proceeds --- and I'm not sure, but I
14 believe those proceeds went to the payment of the
15 mortgage. It went to reimburse whoever paid off the
16 mortgage. I don't recall.

17 BY MS. BALLARD:

18 Q All right. The mortgage was in your name? The
19 mortgage that was paid off with the proceeds of the
20 sale, correct?

21 A I thought the property was in Shirley's name. I
22 thought the mortgage was in both of our names, and I
23 was a guarantor on it, and it hadn't been paid for
24 several months.

25 Q All right. Let me show you Defendant's Exhibit

1 No. 1 and ask if you signed that document?

2 THE COURT: Defendant's --- just to make sure I'm
3 straight. Number 1 --- Defendant's No. 1 is Shirley's
4 number 1?

5 MS. BALLARD: Yes, sir.

6 THE COURT: Okay.

7 BY MS. BALLARD:

8 Q Did you sign this document?

9 A Yes, I signed this document.

10 Q And you did so in accordance with the family
11 court order requiring you to do so, correct?

12 A Pursuant to an order is what it says, yes.

13 Q All right. So you complied with the order of the
14 family court that you're now saying is invalid by
15 conveying the interest in 320 St. James to Shirley,
16 correct?

17 A I complied with a partial --- at the time I
18 complied with it. At the time I didn't know that
19 Shirley was not going to comply with her part of the
20 consideration.

21 Q So you complied with the court order, correct?

22 A I complied with the part --- I gave my
23 consideration, expecting to receive back the
24 consideration on the other side, which I did not ---
25 which did not happen.

1 Q And you've transferred other properties to
2 Shirley as part of the settlement in 2008 in the
3 family court, have you not?

4 A Could you ---

5 Q Other personal property, cash, other things?
6 You've complied with that order in any number of ways,
7 have you not?

8 A You'll have to help me with that. I think the
9 only thing I was supposed to comply with was that I
10 was supposed to pay her \$1,250,000 within a week, and
11 I did that. I think I was supposed to give her the
12 house. I did that. I think I was supposed to pay off
13 that mortgage and all within a week or ten days or
14 something.

15 I did all of those things, and what happened was
16 a year went by and I had done mine in a week and
17 nothing on her part was done --- none of her
18 consideration was carried through on and her promises
19 were not carried through.

20 Q And you, in fact, sought relief in the family
21 court as a result of that, have you not?

22 A I'm not sure exactly what you're talking about.

23 Q Isn't it true that the litigation in the family
24 court that supposedly was settled in 2008, 2009 is
25 continuing to this day?

1 A There is a --- there are matters on appeal.

2 Q You just filed four briefs with the Supreme
3 Court, did you not? Four initial briefs?

4 A I had lawyers handling this for me the entire
5 time until about some time the middle of September.
6 The lawyers were relieved and I had to file the
7 briefs.

8 Q So the answer to my question is yes?

9 A The answer is yes, but to give a proper
10 perspective I was not representing myself during any
11 of those times.

12 Q In fact, those briefs you just filed with the
13 Supreme Court include, among other issues, your
14 challenge to the viability of the 2008 settlement
15 under the public policy grounds that you're
16 articulating today, correct?

17 A Not directly. Indirectly they were brought up,
18 but they were not directly brought up because I don't
19 think they're directly at issue. I would have to go
20 look at the briefs, but I think they were indirectly
21 brought up.

22 Q Well, if, in fact, the record reflects that the
23 briefs you filed in the Supreme Court raised the issue
24 of the viability of the 2008 settlement agreement,
25 then you've never stopped litigating the viability of

1 the 2008 settlement agreement in the family court,
2 have you?

3 A I'm not sure that I completely understand your
4 question.

5 Q Well, my question, Mr. Hammer, is you're
6 continuing to litigate the viability of the 2008
7 family court order in family court. Why was it
8 necessary to file the action in circuit court?

9 A The action in circuit court was filed first. The
10 action in the family court was filed after you took
11 the position that it should be filed in family court,
12 so in order to protect the statute of limitations ---
13 I don't know why my lawyers did it, but my lawyers
14 filed that in family court afterwards.

15 I didn't file it. I'm not the one that has been
16 litigating and filing the litigation. I have lawyers
17 who have been doing that for me. I know that it says
18 that I abused the system. I frankly would be a
19 little --- I'm a little disconcerted that it said I
20 abused the system when I had very good, responsible,
21 well respected lawyers who followed Rule 11 and who
22 filed all of these items for me. I didn't file
23 anything until the lawyers were relieved at --- during
24 about a month ago, and I had to end up filing all the
25 briefs.

1 Q I'm curious what order you're talking about that
2 found that you abused the judicial system?

3 A You had mentioned that when you gave your opening
4 statement.

5 Q Well, what order are you talking about when you
6 answered my question?

7 A I'm talking about what you were --- I'm referring
8 to your statement. You made a statement that I had
9 abused the judicial system and that there was an order
10 saying I abused the judicial system, and I don't know
11 exactly which order you're talking about, but all I
12 know is that I haven't abused anything personally, and
13 I don't think my lawyers have abused anything.

14 Q When you talked to Paul Degenhart on August 19th,
15 2009, you were not willing to dismiss the lis pendens,
16 were you?

17 A Yes, I told him that I was willing to discuss
18 dismissing the lis pendens. We discussed that.

19 Q You put conditions on it, though, right?

20 A I didn't put conditions on it, he and I discussed
21 possible solutions.

22 Q And you did not dismiss the lis pendens, did you?

23 A When I called, he said this had to be done by
24 12:00 o'clock. He had not called me back, and he said
25 there was a deadline, and I called and said I

1 initially --- I called initially before 12:00, at
2 which time ---

3 Q Mr. Hammer, you don't need to read the letter for
4 the fourth time. My question is did you dismiss the
5 lis pendens?

6 A No. The lis pendens was not dismissed.

7 Q Okay. And you allowed the lis pendens to
8 continue even though you knew Shirley had a contract
9 to sell the property?

10 A No. I did not --- at what time are you talking
11 about please, ma'am?

12 Q I said, during your conversation with
13 Mr. Degenhart on the 19th of August, 2009, you knew
14 there was a contract to sell the property?

15 A At that --- after that point, I knew there was a
16 contract to sell the property.

17 Q All right.

18 A I didn't know that Ms. --- let me make something
19 clear to you. It wasn't clear to me that Mrs. Hammer
20 owned the property on August 19th --- at the time I
21 spoke to him or at the time I filed my lis pendens.

22 Q So my question was, you did not lift the lis
23 pendens. You did not dismiss the lis pendens,
24 correct?

25 A I've answered that several times.

1 THE COURT: He did not. He did not.

2 BY MS. BALLARD:

3 Q All right. And you agree that your complaint in
4 this action was eventually dismissed and the Court of
5 Appeals affirmed that, correct?

6 A I answered that for you before. I agreed that my
7 complaint was dismissed on jurisdictional grounds. It
8 was not dismissed on the merits.

9 Q But you never dismissed or vacated the lis
10 pendens ever, did you?

11 A The issue on the merits hasn't been decided. I
12 haven't dismissed it, but as Mr. Aiken said, it would
13 be my understanding that the issue of the lis pendens,
14 as far as it relates to the case about which it was
15 filed, that is, the declaratory judgment would
16 automatically have been dismissed at the time of the
17 affirmation of the appeal.

18 Q Why did you find it necessary to deliver your
19 letter, which has been introduced into evidence as
20 Exhibit No. 4, to Mr. Degenhart's office rather than
21 faxing it or e-mailing it or putting it's in the US
22 mail?

23 A I didn't have a --- at that time I had no
24 secretary. I had no help at all. I went over to
25 another lawyer's office and asked them to help me with

1 it, and I was a little bit --- they were a little
2 busy. They were kind enough to loan me a secretary to
3 get this letter out, and I took it over there, because
4 I thought that would be just as easy as faxing it.

5 Q You took it over there because you knew the
6 closing was taking place, did you not?

7 A I had no idea the closing was taking place. I
8 didn't know when the closing took place. I would have
9 no way of knowing when the closing took place, and
10 Mr. Degenhart didn't mention the closing taking place.
11 He didn't mention that it was Mrs. Hammer's closing
12 that was taking place at the time I was over there.

13 Q Let me ask you a question. You've made reference
14 in answering an earlier question ---

15 A Excuse me for a second.

16 Q --- that you lived in Wheeler Hill?

17 A Excuse me for a second. Let me correct that. I
18 said Mr. Degenhart didn't do that. Mrs. Degenhart may
19 have come out and she said there was a closing and I
20 don't recall whether she said it was Shirley's closing
21 or not.

22 Q You said earlier that the offer you made to
23 Mr. Degenhart was for the purchasers, whoever they
24 were, to buy your house in Wheeler Hill as opposed to
25 buying 320 St. James; is that correct?

1 A They told me they wanted to buy a Wheeler Hill
2 house and I --- and one of the suggestions was that
3 that was a possibility. Now whether it was me or
4 Mr. Degenhart, I don't recall.

5 Q And you, in fact, bought that house in Wheeler
6 Hill so that you could be close to your ex-wife,
7 Shirley Hammer, so that you could be close to 320 St.
8 James, did you not?

9 A No. I have always lived --- I have lived ---
10 since 1970, I've always lived within a mile of where I
11 live now. I've always lived downtown. I lived on
12 Barnwell Street from 19 --- during the early 70s. I
13 moved into 1619 Hollywood, which is about a block ---
14 two or three blocks away in the same line in the mid
15 to late 70s. In 1985 I bought 320 St. James. All of
16 those houses are within two miles of each other, so
17 after having lived from 1970 to 2005, within a mile or
18 two mile area probably in a straight line, I was used
19 to living downtown, near Five Points in that area.

20 I moved over to my cousin's house who also had a
21 place in Wheeler Hill. He had a small apartment
22 downstairs. I stayed with him for three or four
23 months until it was clear that --- he didn't ask me to
24 leave, but it was clear I was becoming a bit of a
25 burden on him, and I started to look for another place

1 to live.

2 The house next door to my cousin's house came up
3 for sale at that time. It came up at a very --- what
4 I was told was a very fair and reduced price. I
5 looked at the house, and I bought it.

6 Q And it was about a block from Shirley's house,
7 correct?

8 A Its happened to be a block from the house I had
9 originally bought at 320 St. James. Actually it's two
10 blocks.

11 Q You're taking issue with the fact it was
12 Shirley's house. 320 St. James was Shirley's house
13 when you bought the property a block or two from her,
14 correct?

15 A I think it's --- I'm trying to tell you --- I'm
16 trying to decide that --- I don't know the exact date
17 that I bought the house in --- that I live in. I
18 think it was with --- it was close to the same time.
19 I may have signed the contract actually before --- I
20 really don't know. It is close in time.

21 THE COURT: That's a no.

22 MS. BALLARD: Thank you, Your Honor.

23 BY MS. BALLARD:

24 Q You lived close enough to Shirley's house at 320
25 St. James to see the For Sale sign in the yard, did

1 you not?

2 A If it was there, I'm sure I must have seen it.

3 Q You saw it, Mr. Hammer, didn't you?

4 A I said if it was there, I'm sure I must have seen
5 it. I don't have an independent recollection of
6 seeing a For Sale sign at this juncture. If it was
7 there, I don't deny seeing it.

8 Q All right. You knew the house was for sale if
9 you saw the For Sale sign.

10 THE COURT: He says he doesn't know.

11 MS. BALLARD: All right. Thank you, Your Honor.

12 THE COURT: He said he didn't know she had a
13 buyer.

14 MS. BALLARD: Okay.

15 BY MS. BALLARD:

16 Q And Mr. Hammer, your purpose in telling
17 Mr. Degenhart or Mrs. Degenhart or whoever it was that
18 you spoke to, that there was a leak in the pool and
19 there was an easement problem on the back of the 320
20 St. James was to stop the sale of 320 St. James, was
21 it not?

22 A No. My purpose was this. I had understood that
23 when you sign it --- that when you sell a house, you
24 have to sign under the new law that a --- sign a
25 disclosure, and when we sold this house, when I made

1 the transfer to Shirley, I don't recall signing any
2 disclosure.

3 Q Well, wouldn't that be Shirley's problem?

4 A I don't know whether it would be or not because I
5 didn't sign a disclosure. I don't know how far back
6 it went, but not knowing that, not having anybody tell
7 me that it wasn't, I told Mr. Degenhart what I knew
8 about it. I thought I had an obligation to do so.
9 And as far as --- are you talking about the --- the
10 encroachment also, or are you not talking about the
11 encroachment?

12 Q Mr. Hammer, you don't get to ask me questions.

13 There was no leak in the pool, was there?

14 A Yes, there was a leak in the pool.

15 Q You sat through the deposition of the purchaser
16 who told you there was no leak in the pool, didn't
17 you?

18 A I did not sit through her entire deposition. I'm
19 telling you that when I left the house there was a
20 leak in the pool and it had not been fixed.

21 Q Why was it --- I'm just curious. Why did you buy
22 a house in River Club right down the street from
23 Shirley after she sold St. James?

24 A I don't know what this has to do this, but I
25 didn't buy a house in River Club after she sold St.

1 James.

2 Q Do you deny that you lived in a house in River
3 Club just down the street from Shirley after she moved
4 to Lexington?

5 A I never lived in a house down the street from
6 Shirley after she lived in Lexington.

7 Q Do you deny that you had anything to do with the
8 creation of an LLC by the name of One RS LLC that
9 bought the property down the street from Shirley in
10 Lexington?

11 A No, One LLC bought as an investment based upon a
12 realtor's advice a --- he said get out of --- this was
13 in 2009 when I perceived that the stock market was
14 dropping, and as it turned out, I was right because it
15 dropped from 10,000 to 6,000.

16 THE COURT: The question is not ---

17 THE WITNESS: And ---

18 THE COURT: The question is were you part of One
19 RS LLC.

20 THE WITNESS: Yes.

21 THE COURT: Okay. Next question.

22 BY MS. BALLARD:

23 Q And One RS LLC purchased a house in River Club
24 right down the street from Shirley, did it not?

25 A As an investment.

1 Q And it just so happened that that investment was
2 right down the street from Shirley, wasn't it?

3 A That's ---

4 Q Pure coincidence?

5 A That's the house that the realtor advised me to
6 --- that's the house that the realtor advised me to
7 buy. He said it was \$600,000, I could get it for 400
8 and some change. I took the money out of the stock
9 market and put it into that house. I never --- the
10 only time I stayed there was one time to meet --- was
11 maybe five times to meet someone to turn on
12 electricity, to meet someone to fix a light that
13 needed to be done, to meet someone about the cable,
14 and I think-1 other time something to do with a leak
15 under the house.

16 Q And you, in fact, just a couple of weeks ago with
17 your Realtor Ray Covington started looking at the
18 house directly behind Mrs. Hammer in River Club, did
19 you not?

20 A Nonsense.

21 Q You deny that?

22 THE COURT: He denies it.

23 MS. BALLARD: All right.

24 MR. AIKEN: I don't know where she's going with
25 this, but I don't see how it's relevant to anything

1 involved in this case.

2 MS. BALLARD: Your Honor, it's relevant to the
3 intent that he showed to disrupt Mrs. Hammer's life in
4 anyway he could as evidenced by the filing of the lis
5 pendens, as indicated by his showing up at that
6 closing. I could go on and on.

7 THE COURT: All right. The objection is
8 overruled. You can continued.

9 BY MS. BALLARD:

10 Q Isn't it true that your children ---

11 THE COURT: Could somebody clarify what Rice
12 Court is, where that is?

13 MS. BALLARD: Rice Court, Your Honor, was a piece
14 of property that was owned by Shirley that was awarded
15 to Mr. Hammer in the property settlement.

16 THE COURT: Does she live there now?

17 MS. BALLARD: No, sir.

18 THE WITNESS: And, Your Honor ---

19 THE COURT: No, no, no.

20 MS. BALLARD: It was part of the property
21 settlement and she conveyed, pursuant to the property
22 settlement agreement in family court, she conveyed
23 title of that to Mr. Hammer who then sold it.

24 THE COURT: Okay. And River Club is that where
25 Rice Court is?

1 MS. BALLARD: No, sir, River Club is where Mrs.
2 Hammer lives now.

3 THE COURT: All right. You can continue.

4 MS. BALLARD: All right.

5 BY MS. BALLARD:

6 Q You denied having looked at a piece of property
7 directly behind Shirley in River Club?

8 A You asked whether I had looked --- was going to
9 --- whether I had looked at one to purchase.

10 Q No. I asked ---

11 A I looked --- I went out with Ray Covington. He
12 showed me a bunch of properties that he was looking at
13 for some investor. What did I like about this one?
14 What did I think about that one? I told him what I
15 thought about each one.

16 Q Did you happen to point out to him that was in
17 Shirley's backyard?

18 A He knew that. He took me out there. He knew
19 where she lived. He knew the area. He is a realtor.
20 This is 25, 30 miles away. He is more familiar with
21 it than I am.

22 Q So, again, it's just a coincidence that he
23 happened to show you a piece of property that was in
24 the backyard of Shirley's current home; is that
25 correct?

1 A Mr. Covington and I are friends. He knows that I
2 at one time had a decorating business. He knows that
3 I am reputed to have some pretty good taste, that I
4 have done some architectural things. He asked what I
5 thought about some houses for an investment for
6 somebody. That was the end of it.

7 Q So it's a coincidence?

8 A Coincidence what?

9 Q That you happened to look at a piece of property
10 with a realtor that's located directly behind
11 Shirley's house within the past month?

12 A I don't know whether it's a coincidence or not.
13 You would have to ask Mr. Covington. He asked me to
14 go out there and look at these houses and I did.

15 Q Mr. Hammer, do you dispute that the South
16 Carolina Supreme Court has found that you were
17 obsessed with Shirley?

18 A Not only do I --- I dispute that they have found
19 it, but I dispute the truth of the matter. The
20 Supreme Court ---

21 Q Well, my question relates to what they found. Do
22 you dispute ---

23 A It --- the record ---

24 Q Let me finish the question. Do you dispute that
25 the Supreme Court found that you were obsessed with

1 your ex-wife Shirley Hammer?

2 A The Supreme Court found that I was obsessed with
3 that and was obsessed with retaining my reputation.

4 Q Are you obsessed with Shirley Hammer?

5 A No. I'm glad you asked that. No, I'm absolutely
6 not obsessed with Shirley Hammer. The Supreme Court
7 also required that I submit a doctor's report on a
8 regular basis. I have a doctor, Dr. Clyde Flanagan,
9 who has a resume like this. He taught at Bethesda
10 hospital over in Washington. He started the
11 psychoanalytical in North Carolina, and he has
12 written ---

13 THE COURT: That's not part of the question.

14 MS. BALLARD: Thank you, Your Honor.

15 THE COURT: Just --- I've read the order. It
16 says what it says, and he disputes that that's
17 correct.

18 MS. BALLARD: Yes, sir.

19 THE COURT: And he is entitled do that just from
20 where he sits.

21 BY MS. BALLARD:

22 Q Mr. Hammer, you and I talked earlier about a
23 ruling of the Supreme Court that found that you had
24 abused the judicial system. You asked me to show you
25 a copy of it, so I am going to show you copy of it.

1 It's dated September 7th, 2012, and ask if, in fact,
2 the Supreme Court has found that you have abused the
3 judicial system?

4 A They do say that they take measures to curtail
5 Howard Hammer's abuses of the judicial system, but I
6 did have lawyers the entire time. I don't know
7 whether Howard Hammer could have abused the system
8 when Howard Hammer's lawyers were acting on his
9 behalf, unless they are saying that Howard Hammer's
10 lawyers abused the system, and I would take issue with
11 that. I had very responsible well represented lawyers
12 who filed all of the actions for me, so if they are
13 saying my lawyers did that, I can't speak to that.

14 Q Is that what they're saying?

15 A No, but I said if that's what they're saying, I
16 can't speak to that. If they are saying ---

17 Q Well, did you abuse the judicial system?

18 A I couldn't have. I was not acting as my lawyer.
19 How could I, if I have had other lawyers acting for
20 me. I took legal ---

21 Q So they abused the judicial system for you?

22 THE COURT: Let him finish.

23 MS. BALLARD: Yes, sir.

24 BY MS. BALLARD:

25 Q Go ahead.

1 A I asked lawyers to act for me. The lawyers acted
2 in good faith for me. I don't think they abused
3 anything. I think they filed legitimate actions on my
4 behalf. I think they filed legitimate actions to the
5 18 or so actions that Mrs. Hammer has filed against
6 me. I think that the --- I think that the claims that
7 you have made in your briefs and that others have made
8 in their briefs are inaccurate. The comments that you
9 have made about me, and calling me rather ugly names
10 are ---

11 Q Where did I do that, Mr. Hammer?

12 A In a brief that you filed in the appellate court.

13 Q Have you moved to strike my brief?

14 THE COURT: Okay. That's --- let's move on.

15 MS. LIPSCOMB: Thank you, Your Honor.

16 THE COURT: It's not about you, Ms. Ballard,
17 okay.

18 BY MS. BALLARD:

19 Q All right. So, you disagree with the Supreme
20 Court's order from November 2011, and you disagree
21 with the Supreme Court orders of September 2012,
22 correct?

23 THE COURT: He disagrees with it.

24 MS. BALLARD: Okay.

25 BY MS. BALLARD:

1 Q Isn't it true that in the family court, you're
2 the one that asked for the order sealing the record?

3 A We both asked for the order sealing the record.

4 Q So the fact that the record was sealed in family
5 court was due, at least in part, based on your own
6 request?

7 A I don't recall whether Mrs. Hammer wanted to do
8 it and I acceded to it like I acceded to everything
9 else she asked, or whether somebody suggested it. It
10 was done by --- on both of our joint requests.

11 Q Why didn't you release the lis pendens after
12 Judge Manning ruled that there was no jurisdiction in
13 the circuit court for this action that you brought?

14 A The matter was on appeal. My lawyers handled it
15 from that point on. You'd have to ask them.

16 MS. BALLARD: Could I have just a moment, Your
17 Honor?

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 THE COURT: I don't have anything further, Your
21 Honor.

22 THE COURT: Anything else of this witness, Mr.
23 Aiken?

24 MR. AIKEN: May I have just one second please,
25 Your Honor?

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. AIKEN: No redirect, Your Honor.

4 THE COURT: All right. Step down.

5 All right. Next witness, Mr. Aiken?

6 MR. AIKEN: May I have just one moment to speak
7 to Mr. Hammer?

8 THE COURT: Yes.

9 (Pause.)

10 MR. AIKEN: Nothing further.

11 THE COURT: Anything in reply?

12 MS. BALLARD: Nothing in reply, Your Honor.

13 THE COURT: All right. We will note that any
14 motions have at this point, just to make sure the
15 record is preserved.

16 MS. BALLARD: Thank you, Your Honor.

17 THE COURT: You may want to repeat yours or add
18 to yours, but in the interest of time and the
19 gentleman that's been waiting patiently, I'd like to
20 move into the 1634 case.

21 Ms. Lipscomb, the gentleman behind you will be
22 your first witness.

23 MS. LIPSCOMB: Yes, Your Honor, Mr. Turbeville.

24 THE COURT: Would you folks like to take a brief
25 break and discuss anything before we begin?

1 MS. BALLARD: I'm fine, Your Honor.

2 MS. LIPSCOMB: I would.

3 THE COURT: All right. I won't get stuck down
4 the hall this time. I'm just going to wait right
5 outside for about three or four minutes.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: All right.

8 MS. LIPSCOMB: Your Honor, they're discussing an
9 issue that came up in the last part of the
10 cross-examination where there was some confusion, and
11 I spoke to Mr. Turbeville, and he said he actually
12 would like to come back in the morning. He has got a
13 call. He has been out here all day.

14 THE COURT: Well, would you like to start in the
15 morning?

16 MS. LIPSCOMB: Yes, Your Honor.

17 THE COURT: Okay. Do you have a problem with
18 that, Ms. Ballard?

19 MS. BALLARD: No, sir, but I'd like to know who
20 their witnesses are going to be tomorrow. They have
21 not told me.

22 THE COURT: Well, have they been ---

23 MS. LIPSCOMB: I sent you an e-mail.

24 THE COURT: Okay, well, then ---

25 MS. LIPSCOMB: I'll be glad to tell them.

1 MS. BALLARD: What time do you want us to start
2 in the morning, Your Honor?

3 THE COURT: Well, I'll tell you what time I'd
4 like to start.

5 MS. BALLARD: You're the boss.

6 THE COURT: I would like to be talking on the
7 record at 9:30.

8 MS. BALLARD: We'll be here.

9 THE COURT: But I want to let you guys make your
10 motions unless you just want to make everything at the
11 end of both cases. I won't forget. We don't have a
12 jury to worry about.

13 MS. BALLARD: It would be fine with me if we make
14 all the motions at the end of the presentation of the
15 evidence.

16 THE COURT: All right. So if we would --- is
17 9:30 a problem for you?

18 THE WITNESS: That's fine.

19 THE COURT: 9:30 is awfully early in the public
20 sector. I'm still not used to that. I would rather
21 start at 8:15, but I don't want to be mistaken for
22 another judge.

23 THE WITNESS: 9:30 works for me.

24 MS. LIPSCOMB: I'm tentatively scheduled for a
25 conference with Judge Morris at 9:00, but I'm going to

1 go back now and ---

2 THE COURT: Well, let's just go --- we'll shoot
3 for 9:45 to 10:00. That will give you ---

4 MS. LIPSCOMB: We're going to finish easy
5 tomorrow.

6 THE COURT: He is right down the hall?

7 MS. LIPSCOMB: Yes, Judge Morris is in family
8 court.

9 THE COURT: So what time would you like to start
10 then? I'll leave that up to you. How about that?

11 MS. LIPSCOMB: I was going to just go and cancel
12 it, but 9:45.

13 THE COURT: 9:45.

14 MS. BALLARD: Thank you, Your Honor.

15 MS. LIPSCOMB: Thank you, Your Honor.

16 THE COURT: All right. Anything before we break
17 for today, Ms. Ballard?

18 MS. BALLARD: No, sir, I think you've released
19 the witnesses that I have under subpoena that I would
20 have released. I think that's all. And reserving our
21 motions as Your Honor said.

22 THE COURT: All motions are reserved. We'll take
23 care of all the motions in Hammer vs. Hammer at the
24 end of the entire case.

25 MR. AIKEN: Yes, sir.

1 THE COURT: I've noted them as being made for the
2 record. Ms. Lipscomb, can you think of anything we
3 need to resolve before we break?

4 MS. LIPSCOMB: No.

5 THE COURT: Mr. Aiken?

6 MR. AIKEN: No, sir.

7 THE COURT: Mr. Hammer?

8 MR. HAMMER: No, sir. I can't.

9 THE COURT: Okay. Thank you very much and I'll
10 see you tomorrow morning. I'll be here before then,
11 but we'll be on the record at 9:45. In you run into
12 a problem with Judge Morris time wise, just let me
13 know.

14 MS. LIPSCOMB: Another question that I had is,
15 one of the depositions that we took in this case in
16 1634 was of a Barney Ackerman, who is --- he is in
17 Rock Hill. He's an accountant and he was qualified
18 and moved in and consented to as an expert by
19 everybody. Now, I didn't know how you wanted to
20 proceed on that. I didn't know if you wanted us to
21 designate, make deposition designations or just give
22 it to you to read. I'm happy to do whatever the court
23 want.

24 THE COURT: Well ---

25 MS. BALLARD: Your Honor, what we agreed to prior

1 to taking Mr. Ackerman's deposition is that since he
2 is in Rock Hill and in lieu of bringing him in, we
3 would like to introduce his entire ---

4 THE COURT: The designation doesn't really
5 matter. That's just to make an order for a jury.

6 MS. BALLARD: I'd like to just introduce the
7 whole thing.

8 THE COURT: Does that suit you all?

9 MS. LIPSCOMB: Yes, Your Honor.

10 THE COURT: Mr. Aiken, I guess your ---

11 MS. BALLARD: He can go.

12 THE COURT: You don't have a dog in this fight,
13 at least for tomorrow. Are you going to be here
14 anyway?

15 MR. AIKEN: I will be here, yes, sir.

16 THE COURT: I admire you.

17 MR. AIKEN: Standing tall.

18 MS. LIPSCOMB: Your Honor, Mr. Hammer is
19 representing himself in that case, and he objects to
20 --- well, he objects to ---

21 MS. BALLARD: Could he speak for himself?

22 THE COURT: We're not on the record.

23 (WHEREUPON, there was an off-the-record
24 discussion.)

25 (WHEREUPON, court was adjourned for the day and

1 there was an overnight recess.)

2 THE COURT: I think yesterday when we stopped, we
3 had moved to the 1634 Main L.P. vs. Shirley Hammer vs.
4 Howard Hammer, docket number 2010-CP-40-2889.

5 There was some discussion yesterday about who the
6 first witness might be. I believe Ms. Lipscomb
7 indicated that it might be Mr. Ackerman by way of
8 deposition. When we stopped, it was made known to me
9 there was some difference in opinion on how the
10 deposition was to be offered. What I'll do now,
11 Ms. Lipscomb, is allow you to call your first witness.

12 MR. HAMMER: Your Honor ---

13 MS. BALLARD: Your Honor, could I bring one
14 housekeeping matter to the Court's attention?

15 THE COURT: Yes, ma'am.

16 MS. BALLARD: Yesterday in the testimony in the
17 320 case --- the 2009 case, Your Honor asked if the
18 2008 property settlement order was in the record, and
19 it is. It's Exhibit No. 15.

20 THE COURT: Of the exhibits you introduced
21 yesterday?

22 MS. BALLARD: Yes, sir, Exhibit No. 15. It has a
23 number of the orders related to the property
24 settlement agreement.

25 THE COURT: All right.

1 MR. HAMMER: And, Your Honor, I'd ask the
2 witnesses to be sequestered again.

3 THE COURT: All right. I see Mr. Boyle, Medlin
4 and ---

5 MS. BALLARD: How many witnesses will be
6 sequestered?

7 MR. HAMMER: Mr. Boyle, Mr. Medlin, and Mr.
8 Turbeville.

9 THE COURT: Who is your first witness?

10 MS. LIPSCOMB: It will be Mr. Ackerman.

11 THE COURT: By way of deposition?

12 MS. LIPSCOMB: Yes, Your Honor.

13 THE COURT: You're not going to read that into
14 the record.

15 MS. LIPSCOMB: No, sir, and I've handed up a copy
16 of the errata sheet that shows no change.

17 MS. BALLARD: I've received that.

18 THE COURT: Do you have that, Mr. Hammer?

19 MR. HAMMER: I haven't gotten that. I understood
20 that to be the case.

21 THE COURT: There's no changes?

22 MR. HAMMER: Yes, sir.

23 THE COURT: Okay. So ---

24 MS. LIPSCOMB: And we made our motions on the
25 record as to the form and there was only one

1 particular motion that, I understand, Mr. Hammer
2 wanted heard.

3 THE COURT: Any objection? Which one is that,
4 Mr. Hammer?

5 MR. HAMMER: Your Honor, I --- the

6 MS. BALLARD: What page?

7 MR. HAMMER: During the course of Mr. Ackerman's
8 deposition, I believe that he is --- it is
9 Exhibit No. 3 --- Exhibit 3 and Exhibit 8.

10 THE COURT: Okay. Would you tell me what page
11 number we're dealing with so I can object --- I'm
12 sorry, so I can review the objection.

13 MS. LIPSCOMB: Your Honor, if I may step out and
14 ask my --- them to bring my copy of the deposition.
15 Do you want to look at your copy?

16 THE COURT: Okay. Would you like yours back?
17 The one you gave me yesterday?

18 MS. LIPSCOMB: I have another one across the
19 street.

20 THE COURT: Okay.

21 MR. HAMMER: If Your Honor would allow me to look
22 at it for just a moment, I think I can put my hand on
23 it. I'm sorry, I don't have my copy.

24 THE COURT: Yes.

25 (Pause.)

1 THE COURT: Are we ready?

2 MR. HAMMER: It appears in two places, on page 35
3 and page 49 which will connect together.

4 THE COURT: All right.

5 MR. HAMMER: On page 35, what was introduced was
6 Exhibit No. 3. Exhibit No. 3 was a document that was
7 a K-1 prepared by Mr. Ackerman. Appended to that
8 document and stapled to that document were some notes
9 that were made by someone other than Mr. Ackerman.

10 THE COURT: Who were they made by?

11 MR. HAMMER: They were made by Mr. Turbeville.

12 THE COURT: This gentleman out here?

13 MR. HAMMER: Yes, sir, and they were stapled to
14 them. As you noticed, I asked them --- I initially
15 said are these notes she introduced it on page 35, the
16 middle of page 35, the same pages 23 through 27 or 29
17 are not Mr. Ackerman's notes.

18 THE COURT: Right.

19 MR. HAMMER: I then on page 45 ---

20 THE COURT: Forty-five or 49?

21 MR. HAMMER: I'm sorry, did I say on the
22 original ---

23 THE COURT: Thirty-five and 49.

24 MR. HAMMER: On 49 then, and I'm not sure what
25 part.

1 THE COURT: You said you object to the portion
2 that he did not prepare and it being entered into the
3 record?

4 MR. HAMMER: That's correct. So later on we also
5 had an Exhibit No. 3, which was the part he prepared,
6 which as I recall, was a K-1 or summary of the K-1
7 with the other attached to it and then later on
8 Exhibit 8 was just the K-1 without the portion
9 prepared to it.

10 THE COURT: So 3 and 8 are the same except
11 Exhibit 3 had notes made by Mr. Turbeville.

12 MR. HAMMER: And he said that he did not prepare,
13 they were not his notes.

14 THE COURT: Did he base his preparation of the
15 K-1 in any way on Mr. Turbeville's notes?

16 MR. HAMMER: It was my understanding that he had
17 used --- that the notes he had been given --- that was
18 not clear, but from my understanding was that
19 Mr. Turbeville had given these to him, but they were
20 summaries and the only thing he would use it for is if
21 he needed to find some backup, so ---

22 THE COURT: What do the notes say?

23 MS. LIPSCOMB: Can I --- excuse me. I just
24 wanted to add, what he does, because I was there, he
25 said he based ---

1 THE COURT: I mean, I read it. I just didn't see
2 what the big deal was.

3 MS. LIPSCOMB: I didn't think there is a big
4 deal. What Mr. Ackerman testified to was that he
5 based his K-1 on trial balances that he either made or
6 got from Marion and that this --- this was not his
7 creation, and I don't know why it was attached to the
8 tax return, but he admitted that he didn't --- it was
9 just an operating statement. He also said, I think,
10 that it only reflected part of the records because
11 there were other accounts.

12 THE COURT: Do you want those notes to come in?

13 MS. LIPSCOMB: I don't.

14 MR. HAMMER: No, sir.

15 MS. LIPSCOMB: There is no reason for them. He
16 have didn't testify to them.

17 MS. BALLARD: Your Honor, I think there is a
18 place where he did. He testified that it's the type
19 of thing he is normally provided with in connection
20 with preparing his tax returns. For that reason it is
21 relevant and should be put it into evidence, but I'm
22 having trouble finding the page where he said that.

23 THE COURT: Yes, sir, Mr. Hammer.

24 MR. HAMMER: But even if he did said that, he
25 didn't say in this specific case that it was what he

1 used in this specific case. He made a distinction
2 between trial balances and check registers he said
3 this was not a check register.

4 THE COURT: Okay.

5 MR. HAMMER: So we don't --- we don't think that
6 it's part of the ---

7 THE COURT: All right.

8 MR. HAMMER: It might be appropriate for
9 Mr. Turbeville, but not for it to be included as an
10 exhibit, and we are objecting to it at this juncture.

11 THE COURT: Well, I confess I only got to page
12 108 last night. I didn't get to the last 60 pagers.

13 MS. BALLARD: You missed the good part.

14 THE COURT: In the middle of the deposition there
15 were four or five straight pages of intense discussion
16 amongst the lawyers, and I frankly skipped over that,
17 too, but I'll take a look at your objection on these
18 things. I have to, of course, read the notes, too,
19 and decide whether or not this is something that this
20 expert says is customary to rely on in this type of
21 scenario and whether or not he did rely on it. If he
22 did, he did. If he didn't, he didn't. If it's common
23 then it may come in. If they come in through
24 Ms. Turbeville, they may come in.

25 MR. HAMMER: As I understand it, Your Honor,

1 since you're acting as judge and jury, you'll read it
2 and you will make a decision at that time. You're
3 going to consider it or not consider it. You don't
4 need to give us a ruling right now.

5 THE COURT: Right.

6 MR. HAMMER: Thank you very much, Your Honor.

7 THE COURT: All right. Now, you are offering the
8 entire deposition transcript in, Ms. Lipscomb?

9 MS. LIPSCOMB: Yes, Your Honor, with the
10 understanding that you'll rule on the motions and rule
11 whatever you think is appropriate.

12 THE COURT: So all of the objections you want me
13 to rule on ---

14 MS. LIPSCOMB: As far as --- yes, sir.

15 THE COURT: All right. And Ms. Ballard, do you
16 agree with that proposition?

17 MS. BALLARD: That's fine with me, Your Honor.

18 THE COURT: And Mr. Hammer?

19 MR. HAMMER: And I'm offering the part of the
20 deposition that begins at the --- I gave Ms. Ballard a
21 note, that begins at the cross-examination by me
22 through the end of the deposition.

23 THE COURT: All right. But Ms. Lipscomb is
24 offering that, too.

25 MR. HAMMER: We're both offering that. I'm not

1 joining in her offer of the first part.

2 THE COURT: Do you have any objection to what she
3 is offering?

4 MR. HAMMER: Except as to ---

5 THE COURT: Except as to the objections you noted
6 on page 35 and 49.

7 MR. HAMMER: Except to the extent that I have
8 already noted and any other objections I would have
9 had on the record.

10 THE COURT: All right.

11 MR. HAMMER: If you need me to explain any of
12 those objections --- some of them were just objections
13 without going through any long explanation.

14 THE COURT: Well, I ---

15 MR. HAMMER: I think you'll be able to determine
16 and we certainly rely on that. I'm certain you will
17 ask us if we want to find out.

18 THE COURT: All right. Thank you.

19 All right. Next witness.

20 MS. LIPSCOMB: Mr. Howard Hammer.

21 THE COURT: Mr. Turbeville will have to step out,
22 is that right?

23 MS. LIPSCOMB: Yes, sir.

24 MR. HAMMER: Your Honor, we would ask that the
25 two witnesses ---

1 MS. BALLARD: These are not witnesses, Your
2 Honor.

3 THE COURT: Okay. She's indicated these are not
4 witnesses.

5 MR. HAMMER: We may be calling ---

6 THE COURT: All right. Let's go on the record
7 about that. What is your --- you may be calling who?

8 MR. HAMMER: We may need to call Mr. Medlin in
9 reply.

10 THE COURT: Would he be called as an expert or a
11 lay witness or what?

12 MR. HAMMER: He probably --- it depends on the
13 extent of the testimony, but he may be called as --- I
14 would anticipate a lay witness.

15 THE COURT: Well, call in reply.

16 MR. HAMMER: Yes.

17 THE COURT: Do you have any reply? You are a
18 third-party defendant.

19 (An electronic device sounds.)

20 MR. HAMMER: I thought I turned this thing off.
21 Let me turn it off.

22 THE COURT: The way the order will go is
23 Ms. Lipscomb will present her case for 1634.
24 Ms. Ballard will present her case for Shirley Hammer.
25 You will present your case for the third-party

1 defendant.

2 MR. HAMMER: Well ---

3 THE COURT: Wait a minute. Let me finish. Then
4 1634 and/or maybe even Mrs. Hammer will be able to
5 present some reply but not you.

6 MR. HAMMER: But my case will include any reply
7 that may come up from Ms. Lipscomb's case or their
8 case that they present against me.

9 THE COURT: Have you listed Mr. Medlin as a
10 witness?

11 MR. HAMMER: I believe he's been listed.

12 THE COURT: Have you ---

13 MR. HAMMER: I haven't listed him as a witness.

14 THE COURT: All right, sir. I'm not going to
15 sequester Mr. Medlin, because number one, this will be
16 partly some recognition of yall's total failure to
17 answer interrogatories until the witching hour and
18 also that you may call him as a lay witness, may call
19 him as an expert.

20 On the chance that he might be called as an
21 expert, he gets to hear all of this. So your request
22 that he leave the courtroom is denied. For that
23 matter, is Mr. Turbeville a fact witness or an expert
24 witness?

25 MS. BALLARD: Fact.

1 THE COURT: All right. You may ---

2 MR. HAMMER: May I consult with the attorney on
3 an attorney-to-attorney matter before we begin?

4 THE COURT: Yes.

5 (Pause.)

6 MS. LIPSCOMB: Your Honor, there will be some
7 testimony, I believe, about the formation of the
8 company and the limited partnership and the fact that
9 Mrs. Hammer --- what percentage she has, and my
10 understanding is that some of the tax planning that
11 went on with regard to developing a lifetime exchange
12 and her interest that Mr. Medlin was involved in that,
13 so we may need to call him for that purpose, and I
14 believe he was identified by us.

15 THE COURT: He's going to call him as a lay
16 witness or an expert witness?

17 MS. LIPSCOMB: Oh, a lay witness.

18 THE COURT: An expert witness or a fact witness?

19 MS. LIPSCOMB: A fact witness because he was
20 involved with, my understanding, Bob Young and the
21 like kind exchange, which resulted in ---

22 THE COURT: Are you joining in this request that
23 he be sequestered?

24 MR. LIPSCOMB: Yes, Your Honor.

25 THE COURT: All right. Professor Medlin, if

1 you'll please step out.

2 All right. Swear him again, please.

3 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
4 for identification only.)

5 THE CLERK: Yes, sir.

6 HOWARD HAMMER,

7 after being duly sworn, testified as follows:

8 THE CLERK: Thank you. Please have a seat in the
9 witness stand and state your full name for the record.

10 THE BAILIFF: Watch your seat. Speak into the
11 microphone.

12 THE WITNESS: Howard Hammer.

13 THE COURT: All right. Ms. Lipscomb.

14 MS. LIPSCOMB: Thank you.

15 DIRECT EXAMINATION:

16 BY MS. LIPSCOMB:

17 Q Mr. Hammer, what is --- where are you living at
18 this time?

19 A I live in downtown Columbia, 1609 Catawba Street.

20 Q And are you a lawyer currently not practicing
21 law?

22 A I'm a lawyer not practicing law. I am suspended
23 from the practice of law, so I'm not permitted to
24 practice law, nor do I consider myself that I have the
25 right to represent clients.

1 Q All right. And do you have any interest in
2 something known as 1634 Main L.P.?

3 A I personally have a --- I believe it's been --- I
4 can't give you an exact percentage, a 33 percent
5 interest or 37 percent interest. I can't recall.
6 It's part of Mr. Ackerman's deposition, and I would
7 defer to Mr. Ackerman's accounting of that.

8 Q And do you know what percentage SH-5 --- or what
9 is SH-6?

10 A SH-5 is an LLC.

11 Q And who is the general partner of --- well, who
12 are the partners of SH-5?

13 A SH-5 has a member. I am the member.

14 Q What is SH-5, if any, duties or relationship with
15 1634 Main L.P.?

16 A SH-5 is the general partner. It owns a
17 percentage of the L.P.

18 Q And the other limited partners are whom?

19 A The other limited partners are Shirley Hammer
20 56.8 percent, my percentage of 37. I believe, it's
21 37.3 percent. I stand to be corrected on that. Our
22 son Mike --- David Hammer, 4.7 percent, and I believe
23 that's the entire amount.

24 Q All right.

25 MS. LIPSCOMB: Your Honor, my understanding is,

1 and I just want to clear for the record that all of
2 the exhibits that have been previously marked and
3 moved into evidence in the Howard versus Shirley case
4 are moved into evidence in this case as well.

5 THE COURT: I believe that's correct. Is that
6 right?

7 MS. BALLARD: Yes, Your Honor. I had 1 through
8 10 and they had one exhibit. Those have already been
9 introduced. In addition, my exhibits 11 through 29
10 for this case were also introduced into evidence.
11 There were no exhibits introduced by any other lawyer
12 other than me.

13 MS. LIPSCOMB: I think there was one.

14 THE COURT: In the 1634 Main case?

15 MS. LIPSCOMB: Oh, I'm sorry, I ---

16 THE COURT: Okay. So 1 through 29 are in. I'm
17 just going to consider them as exhibits for both
18 cases.

19 MS. LIPSCOMB: I just want to clear that.

20 THE COURT: Do you agree with that, Mr. Hammer?
21 One through 29 are in evidence.

22 THE WITNESS: Your Honor, I was not given one
23 through 29 because I was not involved. I did not
24 receive one through 29, and I don't want to ---

25 THE COURT: Well, they're in evidence.

1 MS. BALLARD: Thank you, Your Honor.

2 THE WITNESS: I don't want to get into a quibble
3 about it so...

4 BY MS. LIPSCOMB:

5 Q All right. Mr. Hammer, would you tell us how
6 Mrs. Hammer came to have any interest in 1634 Main
7 L.P.?

8 A Yes. In 2001 or 2002 Shirley owned a beach house
9 at Isle of Palms. Somewhere between 2002 --- it was
10 bought --- it doesn't matter when it was bought. In
11 2001 and 2002, that beach house was sold. There was a
12 significant profit on that beach house, maybe \$200,000
13 or more.

14 In 2002, my father had bought the 1634 Main and
15 then had, initially the 1634 Main was bought by my
16 father. I had bought a portion of it with loaned
17 funds from my father. So initially, my father
18 actually owned the whole thing, and I owned a portion
19 with a mortgage backing it, if I recall. I don't
20 recall whether it was recorded or not. All right.
21 Now, I needed to say that as a background.

22 In 2001, by that time, the L.P. owned the entire
23 dirt, the real estate of 1634 Main. When Shirley
24 bought the --- when Shirley sold the property at the
25 Isle of Palms, there would have been a large capital

1 gains tax that would have had to have been paid. It
2 could be deferred by a 1031, I believe is a --- I
3 don't remember what it --- I can never remember
4 whether it's 1031 or 1033, but it's a like kind
5 exchange.

6 I met with the accountant in connection with
7 that.

8 I believe that Mr. Medlin had some discussions
9 with the accountant. Not the accountant, the tax
10 attorney. The tax attorney came up with a plan.

11 MS. BALLARD: Your Honor, I object.

12 THE COURT: Yes, ma'am.

13 MS. BALLARD: I object to the hearsay.

14 THE COURT: He said he came up with a plan.

15 MS. LIPSCOMB: Yes, sir.

16 THE COURT: Is that hearsay?

17 MS. BALLARD: Well, when he tells us what the
18 plan is, it will be.

19 MS. LIPSCOMB: Not if he was part and parcel with
20 the plan.

21 THE COURT: All right. The objection is
22 overruled.

23 MS. LIPSCOMB: Thank you, Your Honor.

24 THE WITNESS: The plan was that Mrs. Hammer would
25 buy half of the --- or a 50 --- whatever the monies

1 that she had, which was I think \$395,000 that she
2 would buy half of the --- or 52.75 percent of the real
3 estate in 2001 or 2002 when this sale from Isle of
4 Palms occurred; that the plan was that ultimately that
5 real estate after an appropriate number of years could
6 be converted into a --- into an interest in the L.P.
7 without a tax consequence, at least that was the
8 opinion of the tax attorney.

9 I believe that he said wait two or three years,
10 so in 2005 --- and I had discussions with Shirley. I
11 had gone down there. We talked about it. I explained
12 what was happening. I don't know whether she recalls
13 or not, but I explained. I don't know whether
14 Mr. Medlin explained or not.

15 Q All right. Well let me just ask you, stop you
16 just a minute. Can you tell me what exhibit 14 is?

17 THE COURT: Is this already in?

18 MS. LIPSCOMB: Yes, Your Honor. It's one ---

19 MS. BALLARD: It's my exhibit, Your Honor.

20 MS. LIPSCOMB: It's one of the stipulated
21 exhibits, I guess.

22 THE COURT: All right.

23 BY MS. LIPSCOMB:

24 Q All right. What is number 14?

25 A It's the deed of --- just let me look at it, it's

1 the deed by which 1634 Main in 2002 --- February
2 of 2002, transferred to Shirley 52.75 percent of the
3 interest in the dirt, in the real estate, the building
4 and the land.

5 That was done --- according to the affidavit for
6 395 --- the consideration was \$395,531.

7 Q All right.

8 A So there was some --- over \$200,000 gained. That
9 was done in 2001, 2002, end of 2001 with the
10 contemplation that after the appropriate number of
11 years according to the code or according to the
12 accountant's calculations that would be transferred to
13 Shirley. Shirley would give a deed back, and
14 Mr. Medlin was going to handle the giving of the deed
15 back, to the L.P. in return for which the L.P. would
16 transfer an appropriate interest, which Mr. Ackerman
17 calculated to be 48 percent, so that was the plan.

18 In 2005, I was informed that that was the ---
19 that the plan had --- that that was the appropriate
20 time for the plan to be put into effect. Mr. Ackerman
21 had conversations with the --- as he noted in his
22 deposition with the tax attorney, and in 2005, the
23 L.P. transferred to Shirley an additional 48 percent
24 of the ownership in the L.P. She became a limited
25 partnership. She had 8 percent which had been gifted

1 to her by my father and my mother, so she had
2 8 percent, and the calculation came out that in order
3 to exchange her interest in the real estate for which
4 she was supposed to give a deed from Shirley Hammer to
5 1634 L.P. and Mr. Medlin was supposed to prepare that
6 as was my understanding. I don't know who was really
7 supposed to prepare it or how that was going to be
8 done, but that was my understanding. In any event,
9 we're married at the time.

10 The accountant --- we go to the accountant. The
11 accountant does a K-1. He shows that Shirley has that
12 interest. Shirley and I signed in 2005 a joint tax
13 return. The joint tax return shows that she has that
14 interest of now in 2005 as opposed to the 2004, her
15 interest as increased from 8 percent to 56.8 percent.

16 Q Okay. Let me stop you just a minute.

17 MS. BALLARD: I don't have any objection.

18 BY MS. LIPSCOMB:

19 Q You're --- let me just identify --- can you
20 identify what's marked as Plaintiff's No. 1 for
21 identification?

22 A These were the gifts that my parents assigned in
23 2000, 2001, and my father signed in 2000 a two percent
24 interest to Shirley. My mother assigned a 2 percent
25 interest in 2000 to Shirley, into the L.P., and my

1 mother assigned the 2 percent interest in 2001.

2 So Shirley by 2000 and 2001 received interest,
3 gifted interest, from my parents of 8 percent of the
4 L.P.

5 Q Okay.

6 A So that's how she had the 8 percent to begin
7 with.

8 MS. LIPSCOMB: Your Honor, I would move these
9 into evidence.

10 THE COURT: Any objection?

11 MS. BALLARD: No objection.

12 THE COURT: Mr. Hammer, do you have any
13 objection?

14 MR. HAMMER: No, sir.

15 (WHEREUPON, Plaintiff's Exhibit 1 was admitted
16 into evidence.)

17 MS. LIPSCOMB: Thank you, Your Honor.

18 BY MS. LIPSCOMB:

19 Q All right. Mr. Hammer, with regard to the
20 interest of Mrs. Hammer, would you please look at
21 what's been marked Ms. Ballard's Exhibit 19 and tell
22 me what that is?

23 MS. BALLARD: Is that the best way to refer to
24 it?

25 THE COURT: I was just thinking about that. I

1 would just say either Shirley Hammer or ---

2 MS. LIPSCOMB: Okay. Shirley Hammer's exhibit.

3 THE COURT: I think that's the way I've got it
4 written.

5 MS. LIPSCOMB: I just want to make sure.

6 THE COURT: Okay. I've got it. Do you have it,
7 Mr. Hammer?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 BY MS. LIPSCOMB:

11 Q Go ahead, sir.

12 A It is the automatic --- the application for
13 automatic six months extension time to file a joint
14 return for the year 2005 for myself and for Shirley
15 Hammer.

16 Q All right. Would you go over about three fourths
17 of the way through, please, where it says summary ---
18 at the top, summary's of partner's affected ratios?
19 It has page number 11 at the bottom.

20 A Yes.

21 Q And the --- those reflect that SH-5 LLC has a
22 63 percent interest in the 11 --- I'm sorry, 1634 Main
23 L.P.; is that correct?

24 A No.

25 Q All right. What does it mention?

1 A SH-5 has a .0063 percent interest.

2 Q I'm sorry. You're right. What do you have?

3 A I have a 37.8 percent interest.

4 Q And what is Shirley Hightower reflected as
5 having?

6 A Let me go back. When I say .0063, it has a .63
7 interest, six tenths plus three interest, 63 tenths of
8 an interest. I had 37.8 percent interest. Shirley
9 Hammer on that tax return, that's in 2005, now had an
10 interest of 56.8 percent. David Hammer had an
11 interest of 4.7 percent, and the other partners, the
12 other individuals who had been partners who had been
13 members or limited partners had no more interest.

14 Q Had they in effect been bought out?

15 A They had been --- according to the --- yes,
16 bought out might be a term, I think more accurately
17 than a distribution been made. I think the way the
18 accountant explained it, there had been a realignment
19 of the interest because of the deed that Mrs. Hammer
20 was to give to the L.P.

21 Q All right. Look, please, on page 13. Do you see
22 where it goes, page 11 that we were looking at a
23 second ago, look on page 13 and tell me what that is.

24 Q At the top it says K-1, partner number one?

25 A Yes. Excuse me.

1 (Pause.)

2 Q May I see the ---

3 A That is the K-1.

4 Q All right. The first K-1, it has a little 1 at
5 the top, right, the top left?

6 A I'm trying to find it. That's the SH-5, the one
7 that you're talking about, correct?

8 Q Right. And I'm ---

9 A I don't see the number one, but --- yes, I see
10 number 1. I'm sorry.

11 Q And that shows this SH-5 partnership interest as
12 what?

13 A .63 percent, and SH-5 was designated as the
14 number --- as partner designated number one.

15 Q I think you testified a minute ago that you
16 thought it was 6.3 percent, but it's actually .63
17 percent, right?

18 A I'm sorry, .63 percent.

19 Q And the prior year it had one percent, correct?

20 A I believe --- yes.

21 Q All right. And then if you'll turn to partner
22 number two, who is partner number two on page 14?

23 A Partner number two would have been me.

24 Q All right.

25 A Howard Hammer.

1 Q And you're percentage is shown as 37.8 percent?

2 A My percentage is shown as 37.8 percent. It had
3 dropped from 63 percent to 37.8.

4 Q All right. And then on partner five on page 15,
5 who was that?

6 A That was Shirley Hightower who is Shirley
7 Hightower Hammer.

8 Q And that reflects that she originally had or
9 prior to 2005 had 8 percent interest in a limited
10 partnership?

11 A Yes.

12 Q And that she then had an ending interest in 2005
13 of 56.8 percent?

14 A 56.8 percent pursuant to the alignment that it
15 made, which was made pursuant to the plan of the tax
16 attorney.

17 Q Okay. For the like kind exchange?

18 A Well, the like kind exchange had occurred
19 earlier. In order to convert the like kind exchange
20 into an L.P., into a percentage in the L.P. without
21 Mrs. Hammer having to pay the taxes on the like kind
22 exchange at the time of the conversion, it was
23 converted into the L.P. so she would not have to pay
24 those taxes. That was my understanding of the reason
25 that he worked it out. That was my understanding of

1 the timeframe and I relied --- we all relied on his
2 opinion and his advice.

3 Q Okay. And the expectation was that it was in ---
4 sometime prior to 2005, and some time after about two
5 years after the deed of the property to Mrs. Hammer,
6 her contribution, she would deed property back to the
7 L.P. and her contribution or ownership percentage in
8 the L.P. would be increased; is that right?

9 A Yes, and as I understand your --- to explain your
10 question, I want to make sure I understand it
11 correctly. The consideration that she would give for
12 the increase from 8 percent to the 56.8 percent was
13 the --- was to deed her interest that she originally
14 received in 2002.

15 Q Of the dirt?

16 A Yes, of the dirt. To deed that 52.75 percent to
17 make a deed back to the L.P., which she was supposed
18 to have done in 2005. The other leg of the
19 consideration was completed. She received her
20 consideration. That is the 56.8 percent.

21 Q All right. And the next page, page 16 partner
22 six, this is that?

23 A Partner six is David Hammer, our oldest boy and
24 his interest was reduced at that time from 8 percent
25 to 4.7 percent.

1 Q Okay. And that was part of realignment?

2 A That was the way the accountant and the tax
3 attorney calculated the realignment so Mrs. Hammer
4 could have her 56.8 percent in return for the deed
5 that she was supposed to have delivered.

6 Q All right.

7 A She got her --- may I finish?

8 Q Absolutely.

9 A She got her portion of the consideration in
10 connection with the agreement.

11 Unfortunately, the deed was never delivered.

12 Q The deed from Mrs. Hammer to ---

13 A To the L.P.

14 Q Of the 52 percent?

15 A Of the 52 percent, was for whatever reason never
16 put on record by Mr. Medlin or by whoever Mrs. Hammer
17 was going to have it done. We were all of the
18 understanding and belief that it had been done.

19 Q All right. Now, the next page is 17 for partner
20 number seven. That appears to be Alvin Hammer with a
21 beginning balance of 8 and an ending balance of zero.
22 Correct?

23 A That's correct.

24 Q Do you know?

25 A I ---

1 Q Can you explain that?

2 A Let me explain that. Again, that was explained
3 to me as --- and in the deposition as the method in
4 which the tax attorney and the accountant had
5 determined the realignments in order to have Shirley
6 have her interest and they would be barred out
7 essentially with the portion of the money that Shirley
8 would --- that Shirley had put in originally into
9 the --- into the.

10 Q Okay.

11 A The \$395,000 that she bought her --- her, her
12 interest in the land and dirt. The ending of all of
13 this was her \$395,000 was going to go into the
14 building so that she would own an --- own 52 percent
15 of the land and dirt and not have to pay the taxes in
16 a legal manner for a like kind exchange K. It would be
17 a like kind exchange. She would take that money, put
18 it into the dirt to begin with.

19 Since the L.P. owned everything --- the L.P.
20 owned the dirt, but the L.P. --- the operating was
21 done --- the L.P. received all the interest from the
22 operating, the main thing was to get Shirley into the
23 operating, so Shirley couldn't buy a 52 percent
24 interest in the operating portion in 2002 because that
25 would have violated the 1031 code. The tax attorney

1 determined that after a certain number of years you
2 could make this exchange. So those years were past
3 and that gave Shirley the 52 percent in the L.P. and
4 that's the way it ended up.

5 Q 56.8 percent?

6 A 56.8 percent in the L.P. which was the entity
7 that actually ran the building that got the rents that
8 any profits that we would have had would have inured
9 to Shirley in that way.

10 When the building was sold, the L.P. owned the
11 land, would have owned all the land and dirt, so
12 Shirley would have then had 52 percent of whatever the
13 profits would have been from the land and dirt.

14 Q 56?

15 A I keep saying 52, 56.8 percent, I'm sorry.

16 Q All right. I want you to look at Exhibit 20
17 Ms. Shirley Hammer's Exhibit 20 and tell me what that
18 is?

19 A That's the 2006 tax return.

20 Q All right. Please find her K-1 in that year?

21 A And that was the joint return signed by myself
22 and Shirley. The K-1 on that appears to be at page
23 12. Excuse me.

24 THE COURT: That is a joint return? My item
25 number 20 is a partnership return.

1 BY MS. LIPSCOMB:

2 Q It's ---

3 A I'm sorry, I'm sorry. It's a partnership return.
4 I thought I had been handed the joint return. It's
5 the partnership return. I apologize.

6 MS. BALLARD: I'm sorry. What page are we on?

7 THE WITNESS: We're on page number 11 and
8 that's --- I'm sorry, thank you for correcting me.
9 That's the partnership return and let me just make
10 sure that I didn't misstate the other one.

11 THE COURT: It's a partnership return.

12 MS. LIPSCOMB: You identified ---

13 THE WITNESS: The first one was the
14 partnership --- let me correct myself.

15 THE COURT: Actually that was the application for
16 the extension.

17 THE WITNESS: The application for the extension,
18 both of these were partnership returns.

19 THE COURT: I'm clear. You can go ahead and ask
20 your question.

21 BY MS. LIPSCOMB:

22 Q Thank you. Page 11 of Ms. Hammer's Exhibit 20 is
23 what?

24 A On page 11, it shows that SH-5 still had it's
25 .63 percent.

1 Q And the next page shows that you had what
2 percent?

3 A It shows Howard Hammer still having the
4 37.8 percent.

5 Q And the next page shows Mrs. Hammer as having
6 what?

7 A This is the 2006 return. The 2006 return still
8 shows Mrs. Hammer has having the 56.8 percent.

9 Q And then the last page shows David ---

10 A Still shows David of having the 4.7 percent.

11 Q If you can look at Mrs. Hammer's Exhibit 21?

12 A And that again is a partnership return.

13 Q Is that of 1630 ---

14 A 1631 partnership --- 1634 L.P. --- let me take my
15 glasses off, 1634 L.P. partnership return.

16 Q And over again on page 11, is that --- if you
17 will look and just see if that's the K-1 for SH-5?

18 A That is the K-1 schedule for SH-5, again showing
19 in 2007 that their partnership interest remained the
20 same at .63 percent.

21 Q And the next page shows you having what percent?

22 A It shows that my partnership interest remained
23 the same at 37.8 percent.

24 Q And that's your K-1 for 2007?

25 A That was the K-1 for 2007, yes, ma'am.

1 Q And the next page is the K-1 for 2007 for Mrs.
2 Hammer?

3 A K-1 for 2007 for Shirley Hightower, who is
4 Shirley Hightower Hammer, 56.8 percent remained the
5 same.

6 Q And then the last page shows David's K-1?

7 A Shows David, his remained the same in 2007 at
8 4.77 percent.

9 Q Would you look at Mrs. Hammer's Exhibit 22?

10 A Yes, ma'am. That is the 1634 Main partnership
11 income return for 2008, and I am turning over to page
12 12 in anticipation of your question.

13 Q I think it's page 11.

14 A Page 11.

15 Q No. It is page 12, I'm sorry?

16 A Page 12, in anticipation of your question and it
17 shows that again in 2008 the partnership interest of
18 SH-5, the LLC remained at .63 percent, and it shows on
19 the next page that the partnership interest in 2008 of
20 Howard Hammer remained at 37.8 percent. It shows in
21 2008 on the next page that the K-1 shows that the
22 partnership interest of Shirley Hammer remained the
23 same at 56.8 percent, and it shows that the
24 partnership interest of David Hammer in 2008 remained
25 the same at 4.77 percent.

1 Q All right. If you'll look at 24 --- Mrs.
2 Hammer's exhibit, Shirley Hammer's Exhibit 24.
3 Identify that, please.

4 A Do you want to hand them all to me at the same
5 time and then we can ---

6 MS. BALLARD: I'm sorry. I can't hear the
7 question.

8 MS. LIPSCOMB: He asked me to hand him all of
9 them at the same time to save time.

10 BY MS. LIPSCOMB:

11 Q And 24 ---

12 A Twenty-four is the partnership return for 2010,
13 and at page ---

14 Q Is that the 1634 Main ---

15 A That's ---

16 THE COURT: Let's her finish the question. The
17 court reporter is going to have a problem. You may
18 know what she is going to ask.

19 THE WITNESS: I'm sorry.

20 THE COURT: But the court reporter has got to
21 hear it. She is not going to know what to transcribe.
22 Please repeat the question.

23 THE WITNESS: Are you ready?

24 BY MS. LIPSCOMB:

25 Q Would you --- is this the 2010 partnership return

1 for 1634 Main L.P.?

2 A It is 1634 Main L.P. partnership return.

3 Q All right. Would you turn over to page ---

4 A I think it's page 13.

5 Q Yes, 13. Tell me what that is?

6 A In 2010 SH-5 LLC still had the same interest,
7 .63 percent, on page 14, Howard Hammer, it shows still
8 had the same interest of 37.8 percent. On page 15 it
9 still shows that Shirley Hammer still had the same
10 interest of 56.8 percent, and on page 16 it shows that
11 David Hammer still had the same interest of
12 4.77 percent.

13 Q Okay. Would you then look, please, at what's
14 being marked Shirley Hammer's exhibit 25?

15 A Yes.

16 Q And what is that?

17 A That is the --- again, the 1634 Main L.P.
18 partnership return. Then on page ---

19 Q Fourteen.

20 A Fourteen, it shows again that in 2011, SH-5 LLC
21 still had its same interest of .63 percent.

22 On page 15 it shows that Howard Hammer still had
23 the same interest of 37.8 percent, and on page 16 it
24 shows that Shirley Hammer listed as Shirley Hightower,
25 Shirley Hightower Hammer, still had the same interest

1 of 56.8 percent and on page 17 it shows that David
2 Hammer still had the same interest of 4.77 percent.

3 Q As the general partner or as the member of SH-5
4 LLC acting as general partner for 1634 Main L.P., what
5 is your understanding today of the percentage interest
6 of 1634 Main L.P. that is held by Ms. Shirley
7 Hightower Hammer?

8 A It would be the amount shown on all these tax
9 returns, 56.8 percent, which is consistent with the
10 plan, which is consistent with the amount that was
11 transferred to her in 2005 as explained by the
12 accountant.

13 Q All right.

14 A And I made sure I correct myself. 56.8 percent.

15 Q Do you know to date whether the plan has been
16 effective to defer any taxes on the --- or any capital
17 gain taxes on the sale of the beach house at Isle of
18 Palms?

19 A I have no information on that. It was my
20 understanding that that was the reason for the plan
21 itself so that Mrs. Hammer would not have to incur
22 that expense and I assume that she has not in accord
23 with the tax plan.

24 Q Let me show you what has being marked 1634's
25 Exhibit 2 two for identification?

1 THE COURT: Number what again?

2 MS. LIPSCOMB: Two, 1634's number 2.

3 THE COURT: Has that been marked?

4 THE COURT REPORTER: I was going to say, I have
5 not marked that one.

6 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked
7 for identification only.)

8 BY MS. LIPSCOMB:

9 Q And this ---

10 A This is an agreement entered between 1634 Main
11 L.P. and Danville Business Associates. It's a
12 management agreement whereby they became the managing
13 and leasing agent with all the duties attendant there
14 to.

15 Q And what --- is that management agreement still
16 in effect?

17 A Yes.

18 MS. LIPSCOMB: Your Honor, I'd move that into
19 evidence as 1634 Main's Exhibit 2.

20 MS. BALLARD: No objection.

21 THE COURT: All right. Sir, do you have an
22 objection?

23 THE WITNESS: No.

24 THE COURT: All right. It's in. Two is in.

25 (WHEREUPON, Plaintiff's Exhibit No. 2 was

1 admitted into evidence.)

2 BY MS. LIPSCOMB:

3 Q Looking at what's been marked now and entered as
4 1634's No. 2, which you identified as the exclusive
5 leasing and management agreement, can you review it
6 and tell me generally what are some of the duties and
7 responsibilities that have been assumed by Danville
8 Business Advisor's by virtue of this agreement?

9 A Yes, the natural ones are to collect the leases
10 the rentals, to take care of the occupancy, to take
11 care of the rental payments, tax escalations,
12 percentage rentals, things of that sort.

13 Importantly, to institute all legal actions or
14 proceedings required in the best judgment of the
15 owner, with owner's consent, with the collection of
16 rent or other amounts from the premises.

17 Generally to employ, promote, discharge and
18 supervisor people who need to be for the management
19 and care of the building, the clean-up people, the
20 painters when needed, the air conditioning people,
21 things of that sort to make --- to make or cause to
22 make all repairs, replacements, additions,
23 expenditures not in excess of \$500 without the prior
24 written consent of the owner, to purchase all
25 supplies, to make the contracts for the electricity

1 and to take care of that.

2 MS. BALLARD: Your Honor, I object to him reading
3 it out loud.

4 THE COURT: Yes, I can read it.

5 MS. BALLARD: Thank you, Your Honor.

6 THE COURT: It's management agreement.

7 MS. LIPSCOMB: Yes, Your Honor.

8 THE COURT: Okay.

9 BY MS. LIPSCOMB:

10 Q Then let me just ask you, did it have --- did it
11 provide for making or causing to be made repairs?

12 A I'm sure it did.

13 Q Look at number E on the second page.

14 A Yes, make or cause to make all repairs, et
15 cetera.

16 Q Did there ever come a time when you, acting as
17 general partner, inquired about the need for any
18 repairs or discussed that with someone at Danville?

19 A Yes, that was sort of an ongoing thing. We would
20 periodically go over what needed to be done, and I
21 would get a report when anything major needed to be
22 done.

23 Q And in 2009, did the you ever ask --- did you
24 ever have any requests for any information concerning
25 maintenance?

1 A Yes. May I explain?

2 Q Yes.

3 A About that time I observed to be what appeared to
4 me to be some deterioration of the eaves. I asked to
5 have a study done of that. As a result of the study,
6 I came to realize that the eaves cannot be washed,
7 that it had to be removed and all that. It was an
8 expensive operation, so I asked that a study be made
9 of all the necessary repairs to get the building up to
10 standard so that we could have a proper --- so that we
11 would be able to be ready --- the market was very bad
12 at that time. We needed to have the building in top
13 notch condition to have even the minimum amount of
14 rent.

15 MS. LIPSCOMB: Your Honor, may I consult with
16 Ms. Ballard a moment about Shirley's Exhibits 23?

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 MS. LIPSCOMB: Your Honor, Exhibit 29 had what I
20 think is ---

21 THE COURT: 29 or 23?

22 MS. LIPSCOMB: I'm sorry. Number 23 has an
23 aberrant attachment that Ms. Ballard agrees should not
24 be attached. May we just pull it off?

25 THE COURT: Should it have another exhibit number

1 on there or is it a duplicate?

2 MS. BALLARD: It's a duplicate.

3 THE COURT: Show to it Mr. Hammer since he is
4 counsel on this case. That would begin with the US
5 partnership income for 2009?

6 MS. LIPSCOMB: Yes, Your Honor.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. Exhibit 23 will now end with a
9 page that has the word proposal at the bottom?

10 MS. BALLARD: And the top.

11 THE WITNESS: I don't have any objection. May I
12 ask a question, Your Honor? It being pulled off in
13 this case, is it also being taken off in the other
14 cases?

15 THE COURT: No. It's also in evidence as ---
16 well, there is not a 2009 partnership return.
17 Shouldn't that be number ---

18 MS. LIPSCOMB: I guess it should be two 22-A.

19 THE COURT: Okay. All right, sir. The I.R.S. E-
20 filed signature authorization and the accompanying
21 2009 partnership return is now two 22-A.

22 MS. BALLARD: Thank you, Your Honor.

23 MS. LIPSCOMB: And I'm --- Desa, this is the
24 original, I'm pulling it off, okay.

25 MS. BALLARD: Suits me.

1 THE WITNESS: Your Honor, as an attorney, may I
2 ultimately see the --- you've mentioned two different
3 things. May I ultimately see that?

4 THE COURT: If Ms. Lipscomb hands it to you then
5 you certainly can.

6 THE WITNESS: This is 22-A?

7 MS. LIPSCOMB: This is 22-A. Exhibit 22 is the
8 2008 return for the partnership and this would be 22-
9 A.

10 THE WITNESS: And I thought I heard something
11 about a --- yes, the I.R.S. E-file authorization.

12 THE COURT: It's the first page.

13 THE WITNESS: Yes, I see that.

14 (WHEREUPON, Defendant's Exhibit No. 22-A was
15 marked for identification only.)

16 THE WITNESS: Your Honor, it's little bit
17 unusual. May I counsel to counsel even though I'm on
18 the witness stand?

19 THE COURT: Yes. That's fine.

20 THE WITNESS: Ms. Lipscomb, I don't recall and
21 I'm not sure. Did we go through the 2009?

22 MS. LIPSCOMB: We're going to.

23 THE WITNESS: Okay.

24 BY MS. LIPSCOMB:

25 Q All right. Would you look, please --- we'll take

1 a step back just a minute and look about what's been
2 marked as 22?

3 A 22-A and would you like me to identify it to move
4 along?

5 Q Yes, please.

6 A It is the E file and it is the one that we didn't
7 go through it. It is the 2009 US partnership return
8 for 1634 Main Street on page --- anticipating your
9 questions, if I may, Your Honor.

10 THE COURT: Go ahead. It has all the same
11 interest.

12 THE WITNESS: It shows the same interest, the
13 .63 percent interest. It shows the 37.8 percent
14 interest. It shows the interest of Mrs. Hammer is
15 still at 56.8. It shows 4.77 for David Hammer in
16 2009.

17 Q All right. And that is the ---

18 A 2009 return.

19 Q For ---

20 A For 1634 Main L.P., yes.

21 Q Now, would you look at Shirley Hammer's
22 Exhibit 23?

23 A Yes.

24 Q All right. Would you tell us what that is,
25 please?

1 A This is a letter that was written to --- or a
2 memo that was written to the limited and general
3 partners on November 12, 2009, after I had received the
4 report from Mr. Turbeville showing that in order to
5 get the building up to par, the total amount of
6 expenditures would be \$155,000 rounded off, and it
7 shows what each partner would be tried contribute.
8 Mrs. Hammer, who is shown as Shirley Hightower, was
9 notified of an \$88,040 contribution. Mr. Hammer,
10 Howard Hammer ---

11 MS. BALLARD: Objection, Your Honor, to the lack
12 of foundation. Mr. Hammer testified that people were
13 notified. There is no evidence in the record that
14 anyone was notified.

15 THE COURT: So you take issue with the fact that
16 your client was notified?

17 MS. BALLARD: Correct.

18 THE COURT: All right. Your objection is noted.
19 You can explore that on direct. You may be able to
20 clarify with him what he means by notified.

21 MS. BALLARD: Thank you, Your Honor.

22 THE COURT: The objection is technically
23 sustained.

24 BY MS. LIPSCOMB:

25 Q May I see ---

1 A Yes. I'll explain that.

2 Q Let me ask the questions, okay. The first page
3 is what. Of Exhibit 23 is what?

4 A The first page is the memo that I mailed to all
5 the of the --- it contains information that I mailed
6 to all of the partners.

7 Q And were they actually mailed?

8 A Yes.

9 Q All right. And this was when?

10 A This was on or about November 12th, 2009,
11 obviously with the mail, she has it.

12 Q All right. The second page is what?

13 A The second page is the attachment showing the
14 basis for the mailing and the breakdown of what the
15 amount --- what the problems were with the building,
16 what needed to be done for capital improvements and
17 showing a breakdown of that, of a total of \$155,000
18 was the amount that needed to be done in order to
19 bring the building up to par.

20 Q And attached to this letter --- is this letter
21 from Mr. Turbeville?

22 A Yes.

23 Q Attached to the letter are what?

24 A The percentage that each partner would have to
25 pay in order to complete the work.

1 Q That's actually page two of the letter, isn't it?

2 A Page two is the percentages, yes.

3 Q All right. And attached to that letter is what?

4 A The percentages show the amount of money that
5 each partner would have to pay.

6 Q What are the ---

7 THE COURT: She is talking about the interior
8 stone designs. What was all that?

9 THE WITNESS: This was the breakdown of some of
10 the things that needed to be done, some of the bid
11 proposals that he had on what needed to be done. I
12 don't think it was all of them, but it included some.

13 BY MS. LIPSCOMB:

14 Q All right. Did the general partner ever
15 determine whether or not these repairs and things
16 needed to be --- maintenance needed to be done?

17 A They desperately needed to be done.

18 Q Have they been done today?

19 A Unfortunately they have not been done today and
20 it hasn't had an impact on the ability to rent space
21 out of the building. It has also caused additional ---
22 I would call it patch work type of repairs for water
23 damage that seeps in and things of that sort that is
24 done on a patch basis with the limited funds that we
25 have.

1 Q Okay. Do you have any understanding as to
2 whether the general partner may maintain reserves or
3 make assessments?

4 A Yes.

5 Q With regard to 1634 L.P.?

6 A Yes.

7 Q And what is your understanding?

8 A It's clear that he can.

9 Q All right.

10 A Or that it can.

11 Q All right.

12 A In this case it's an it, the SH-5.

13 Q All right. And was the --- what's been marked as
14 Exhibit 23, was that the attempt at making such an
15 assessment?

16 A Yes.

17 Q And what were the assessments paid by limited
18 partners or the general partner?

19 A Mrs. Hammer did not pay hers. There were --- I
20 offered a confession of judgment as I did not have
21 those funds at that time. I believe I was going onto,
22 just going on Social Security at the time anyway. I
23 offered a confession of judgment for properties that I
24 anticipated the confession of judgment would sell in
25 order to pay that and those are different from the

1 properties I have now because some of them have been
2 sold off to pay tax liens, but at that time I did
3 offer a confession of judgment, and as to David's
4 small amount, there was nothing done as to David's
5 4.7 percent. I had intended to see whether my mother
6 would be kind enough to cover that.

7 Q All right.

8 THE COURT: So the question is has anybody ---
9 whether or not Shirley has paid.

10 MS. LIPSCOMB: Yes, Your Honor.

11 THE COURT: I understand from --- obviously
12 there's no secret that she has not. Has Mr. Hammer
13 paid?

14 MS. LIPSCOMB: That's what he was just saying.

15 THE COURT: Well, he was saying what he did do.
16 The question is did he pay any money.

17 Did you pay any money?

18 THE WITNESS: Have not paid any money.

19 THE COURT: So ---

20 THE WITNESS: But ---

21 THE COURT: So 1634 L.P. has not sued Mr. Hammer?

22 MS. LIPSCOMB: He offered a confession of
23 judgment.

24 THE COURT: All right.

25 THE WITNESS: And can I ---

1 THE COURT: No, sir, you can ---

2 THE WITNESS: Well, I have ---

3 THE COURT: You may be able to explore that when
4 you are quote unquote asking yourself questions, but
5 she is the attorney asking the questions now.

6 THE WITNESS: Okay.

7 BY MS. LIPSCOMB:

8 Q So you have offered a confession of judgment for
9 your percentage thinking it would be paid when it
10 was ---

11 A I assumed that a confession of judgment would be
12 entered. I offered that at the very beginning. I
13 know you've been busy. I had anticipated the
14 confession of judgment would be made and a --- I did
15 have a property at that time that could have been sold
16 that would have paid it.

17 Q All right. And if you did that at or about the
18 time that this suit was brought?

19 A Yes.

20 Q Okay. And do you know who engaged me to bring
21 suit on behalf of 1634 Main in this case?

22 A Yes.

23 Q Who?

24 A Mr. Turbeville, in accord with the agreement and
25 I would have done that anyway, because I felt as

1 though there may be some potential for some ---

2 THE COURT: The answer is Mr. Turbeville.

3 THE WITNESS: Yes, Mr. Turbeville.

4 BY MS. LIPSCOMB:

5 Q All right. Is it your understanding that as a
6 single member of SH-5 the general partner for 1634
7 L.P. that it is requesting a judgment against
8 Ms. Hightower Hammer for her percentage interest in
9 the assessments?

10 A Yes, that's exactly what's being asked for.

11 MS. LIPSCOMB: May I have a moment, Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. BALLARD: Your Honor, may I make a statement
14 for the record while she's taking her moment?

15 THE COURT: Yes, ma'am.

16 MS. BALLARD: Your Honor, I have a witness who is
17 going to be here at 11:30 who has a class at
18 two o'clock.

19 THE COURT: Who is that?

20 MS. BALLARD: Professor Adams. Would it be
21 possible to take him out of order? He has to teach
22 class at two o'clock. If Ms. Lipscomb is finishing
23 the direct of Mr. Hammer, I can squeeze him in
24 relatively quickly.

25 THE COURT: And then you would cross-examine

1 Mr. Hammer later?

2 MS. BALLARD: Yes, sir.

3 THE COURT: Do you have any objection to that,
4 Ms. Lipscomb.

5 MS. LIPSCOMB: I don't.

6 THE COURT: Mr. Hammer, do you have any
7 objection?

8 THE WITNESS: Yes, I would have an objection. I
9 don't think it would be fair to have Mr. Adams come in
10 and testify, get information from Mr. Adams, and then
11 use that potentially for cross-examination.

12 MS. BALLARD: He is my witness, Your Honor.
13 Obviously I have spoken to him.

14 THE COURT: He is talking.

15 MS. BALLARD: Okay.

16 THE COURT: Anything else?

17 THE WITNESS: No, sir.

18 THE COURT: All right. Ms. Ballard, your
19 response?

20 MS. BALLARD: My response is he's my witness. I
21 have spoken to him. If I cross-examine Mr. Hammer,
22 I'll have even more to speak to Mr. Adams about.
23 Mr. Hammer's objection just doesn't make sense.

24 THE COURT: Anything else, Ms. Lipscomb?

25 MS. LIPSCOMB: No.

1 THE COURT: What we're going to do right now is
2 take a recess anyway. Then I'll let you know.

3 MS. BALLARD: Thank you, Your Honor.

4 THE COURT: You may not discuss your current
5 testimony with anyone. All right, sir?

6 That may change if I allow Mr. Adams, Professor
7 Adams to testify out of order, but for right now,
8 don't discuss your testimony with anyone. All right,
9 Mr. Hammer?

10 THE WITNESS: Thank you very much, Judge.

11 THE COURT: Thank you.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: All right. So Ms. Lipscomb, you did
14 not object to Professor Adams being called out of
15 order?

16 MS. LIPSCOMB: No, sir.

17 THE COURT: And you do?

18 THE WITNESS: I do, yes, sir.

19 THE COURT: All right. And who would your next
20 witness be?

21 MS. LIPSCOMB: I would rest.

22 THE COURT: You would rest?

23 MS. LIPSCOMB: (Nods in the affirmative.)

24 THE COURT: All right. And then it would be your
25 case?

1 MS. BALLARD: Yes, sir.

2 THE COURT: I'm going to overrule Mr. Hammer's
3 objection and allow Professor Adams to testify. You
4 can step down. Of course, you'll be able to question
5 him as part of this process. That doesn't have
6 anything to do with your objection, but I respectfully
7 overrule your objection.

8 THE WITNESS: I understand. In the interest of
9 time, there was one question, so I can remember it
10 later on without having to go back, and you said, Your
11 Honor --- I started to try to ask it, and you said you
12 can ask that later. Do you remember what that was
13 about? I didn't have any notes to write it down. I
14 have forgotten it right now, and that would be a
15 question for me to clear up on redirect on this after
16 he is through?

17 THE COURT: I really don't know. Ms. Lipscomb,
18 do you remember?

19 MS. LIPSCOMB: I'll try to remember.

20 THE WITNESS: All right.

21 MS. LIPSCOMB: Your Honor, one other just
22 housekeeping matter, I believe it was just purely an
23 error, but the wrong operative counterclaim was
24 attached to the pretrial brief. It was the one before
25 this, and this was the final one.

1 MS. BALLARD: That's the one I thought I
2 attached.

3 THE COURT: Her pretrial brief?

4 MS. LIPSCOMB: Yes, Your Honor. The one before
5 this is the one that was attached, and this is
6 actually the ---

7 MS. BALLARD: It could have been an accident. I
8 didn't personally attach it.

9 THE COURT: I'll take it.

10 MS. LIPSCOMB: And the only difference is this
11 one is a ---

12 THE WITNESS: I --- you ---

13 (Talking over each other.)

14 MS. LIPSCOMB: The other one accidentally had it
15 in.

16 THE WITNESS: You asked for no comments on the
17 pretrial brief if I recall correctly.

18 THE COURT: No comments on the pretrial brief?

19 THE WITNESS: No discussion or there was some
20 comment ---

21 MS. BALLARD: Your Honor, could I call my
22 witness?

23 THE COURT: Hold on just a second.

24 I don't understand, if I did say that, what's the
25 problem?

1 THE WITNESS: We can --- just let her call her
2 witness if you don't mind. I don't want to get into
3 something that's going to be long and involved.

4 THE COURT: All right. Okay. Step down.
5 Call your witness, please.

6 MS. BALLARD: Your Honor, we'd call Dr. Greg
7 Adams to the stand.

8 GREG ADAMS,
9 after being duly sworn, testified as follows:

10 THE CLERK: Thank you. Have a seat in the
11 witness stand and state your full name for the record.

12 MR. HAMMER: Your Honor, we have an objection if
13 we may put it on the record.

14 THE COURT: Yes, sir.

15 MR. HAMMER: It is our understanding, based on
16 the information that we have received, is that
17 Mr. Adams is called as an expert in interpreting a
18 matter that is before the court. That is to interpret
19 an agreement that is before the court.

20 It would be our position, Your Honor, that that
21 is something that the court will have to determine the
22 meaning of, not Mr. Adams. It's not Mr. Adam's view
23 of what the agreement is, it's what Your Honor's view
24 of what the agreement is.

25 THE COURT: All right. Ms. Lipscomb, do you join

1 in that objection?

2 MS. LIPSCOMB: Yes, Your Honor.

3 THE COURT: Ms. Ballard, of course, the only way
4 that I will know any of this is if it's proffered, so
5 I'll hear it. She does have the right to proffer.
6 Your objection is noted. Of course, there is
7 relatively recent case that does say that --- I think
8 it was in the context of an expert's affidavit.

9 MS. BALLARD: Yes, sir.

10 THE COURT: An expert cannot offer a legal
11 opinion.

12 MS. LIPSCOMB: I understand that, Your Honor.

13 THE COURT: So I will be able to deal with that.

14 MS. LIPSCOMB: And ---

15 MS. BALLARD: He can offer a factual opinion,
16 Your Honor, regarding his interpretation of a
17 particular document.

18 THE COURT: Well, that remains to be seen, but
19 Mr. Hammer, your objection is noted. I'll leave it up
20 to you and Ms. Lipscomb to determine whether or not
21 you need to interpose that objection again as we go.

22 I'm not going to imagine what the Court of
23 Appeals might do with regard to error preservation.
24 I'm not going to take offense at it, but what I don't
25 want you to do is to object to every single question

1 based on the same premise, so I will leave it up to
2 you other than that. Of course, if you have any
3 additional objections, you can make those as the
4 witness testifies.

5 MR. HAMMER: I ---

6 MS. LIPSCOMB: But we do not have a continuing
7 objection.

8 THE COURT: Well, there is case being tried down
9 the hall where Judge Cooper said he would let the
10 objections continue. The Court of Appeals said,
11 tough, that's easy for him to say, but we don't accept
12 that.

13 MS. LIPSCOMB: Okay.

14 THE COURT: I'll leave it up to you as advocates
15 to preserve the record. I would venture to say that
16 you do not have to object that he is offering improper
17 opinion testimony continuously, but it's not up to me
18 to make those determinations in the end. It's up to
19 the Court of Appeals or the Supreme Court in
20 determining whether or not you preserved your
21 position.

22 MR. HAMMER: Begging your apologies before we get
23 started, rather than being on the safe rather than the
24 sorry side, and I know you want to move this along,
25 but I will probably be making the objections to a lot

1 of the questions, so I apologize for that at the
2 beginning based on what you said.

3 THE COURT: All right. All right. Discretion is
4 the better part of valor, but you do what you feel
5 like you have to do.

6 All right. Go ahead.

7 MS. BALLARD: Thank you. May I inquire as to
8 whether or not you will stipulate to his expertise in
9 his area of partnership law?

10 MR. HAMMER: No. We will not stipulate.

11 THE COURT: Okay. Just go ahead and let's just
12 ask away.

13 MS. BALLARD: Thank you, Your Honor.

14 DIRECT EXAMINATION:

15 BY MS. BALLARD:

16 Q Professor Adams, where are you employed?

17 A I am a law professor at the University of South
18 Carolina School of Law.

19 Q How long have you been a professor of law?

20 A Thirty-three or 34 years at USC and two years
21 before that at Southern University.

22 Q What is your educational background?

23 A I have a J.D. and a B.S. from L.S.U., and I have
24 an L.L.M. and a J.S.D. from Columbia University Law
25 School in New York City.

1 Q Have you had occasion to write or publish in the
2 area of partnership law?

3 A I have written in the area of business
4 corporations that includes in our South Carolina
5 Corporate Practice manual, a chapter on entity
6 selection that goes through partnerships, limited
7 partnerships, limited liability partnerships, limited
8 liability companies, and all of the varieties of
9 corporations under South Carolina law. So we analyze
10 the characteristics of each of those.

11 Q Have you had occasion to teach classes in each of
12 those subjects areas?

13 A Yes, I have.

14 Q Can you venture a guess as to how many times, how
15 many years you have taught classes regarding corporate
16 structure and partnership at the law school?

17 A It would be between 20 and 25 years.

18 Q Okay. Have you had been qualified as an expert
19 in the areas of corporate and/or partnership law by
20 the State courts in South Carolina?

21 A Yes, I have on a number of occasions and in
22 federal court.

23 Q And, in fact, the Supreme Court of South Carolina
24 has recognized you as an expert in that area as well;
25 is that correct?

1 MR. HAMMER: Objection, leading question.

2 BY MS. BALLARD:

3 Q Has the Supreme Court of South Carolina
4 recognized you as an expert in any particular field?

5 A Yes, the Supreme Court has recognized my
6 expertise and indeed the only two opinions the Supreme
7 Court had an opportunity to deal with it in both cases
8 said it was reversible error not to qualify me as an
9 expert.

10 Q One of those cases was the Haynesworth case.
11 What was the other one? I don't recall off the top of
12 my head?

13 A The name escapes me, although I believe it's on
14 my CV that I gave you.

15 MS. BALLARD: Your Honor, I would offer into
16 evidence as a court's exhibit Dr. Adams' resume.

17 THE COURT: Any objection, Ms. Lipscomb?

18 MS. LIPSCOMB: Not to the resume.

19 THE COURT: All right. Mr. Hammer, do you
20 object?

21 MR. HAMMER: Your Honor, if the resume is being
22 introduced for the purposes of establishing him as an
23 expert to give an opinion in this case based upon a
24 the case that Your Honor has just referenced to us,
25 yes, I would object.

1 THE COURT: But as far as the authentication ---
2 the authenticity of the document, do you dispute that?

3 MR. HAMMER: I don't dispute that. I would say
4 that it has no relevance because he would be --- my
5 position would be that ---

6 THE COURT: You're earlier objection.

7 MR. HAMMER: He is being offered only as a fact
8 witness. He can only be offered as a fact witness.

9 THE COURT: And you say that would be improper?

10 MR. HAMMER: I would say it would be improper for
11 him to be offered as anything other than a fact
12 witness.

13 THE COURT: Okay.

14 MR. HAMMER: He is here to give facts, not
15 opinions and only an opinion --- only an expert can
16 give opinions. He doesn't have --- there's been no
17 basis to establish anything that he can give any fact
18 basis on, and this would not be relevant therefore.

19 THE COURT: All right. The objection is
20 overruled.

21 MS. BALLARD: Thank you, Your Honor. I'd make
22 this Court's Exhibit No. 1.

23 (WHEREUPON, Court's Exhibit No. 1 was marked for
24 identification only.)

25 BY MS. BALLARD:

1 Q Professor Adams, have you been retained by
2 Shirley Hammer in connection with this case?

3 THE COURT: Have you offered him as an expert?

4 MS. BALLARD: Yes, sir. Oh, I'm sorry. I
5 didn't. Your Honor, I would offer Professor Adams as
6 an expert in the area of corporation and partnership
7 law.

8 THE COURT: All right. Very direct question. I
9 just want a direct answer. Ms. Lipscomb, do you
10 dispute that he is an expert in this field? I'm not
11 talking about anything involved in this case. Do you
12 dispute that he is an expert?

13 MS. LIPSCOMB: No.

14 THE COURT: Mr. Hammer, do you dispute that he is
15 an expert?

16 MR. HAMMER: May I voir dire him on one matter,
17 sir?

18 THE COURT: As long as it doesn't have anything
19 to do with this case. You can voir dire him on his
20 qualifications.

21 MR. HAMMER: That's what I'm doing.

22 THE COURT: All right.

23 MR. HAMMER: In connection with the limited
24 liability, which is what we're here about, she asked a
25 question about your expertise in that, and you said

1 you had written one article on limited liability, I
2 believe.

3 THE WITNESS: There's a chapter in the South
4 Carolina Corporate Practice manual that I'm the lead
5 author of.

6 MR. HAMMER: All right.

7 THE WITNESS: This deals with that.

8 MR. HAMMER: All right. So in connection with
9 limited partnerships, there is one chapter that you've
10 written in connection with that out of all the other
11 things that I've written. Do I understand you
12 correctly?

13 THE WITNESS: Yes, sir.

14 MR. HAMMER: Now, have you ever taught --- and I
15 make this a specific question. Have you ever taught a
16 course on limited partnerships, not on --- not as part
17 of any other course, have you ever taught a course on
18 limited partnerships, period?

19 THE WITNESS: No, sir, at our law school ---

20 MR. HAMMER: I didn't ---

21 THE COURT: Wait a minute. Mr. Hammer, we play
22 by the same rules. He answers and he can explain.

23 MR. HAMMER: I --- I --- I didn't ask for an
24 explanation, Your Honor. I didn't hear an objection.

25 THE COURT: But --- you can answer, Mr. Adams.

1 THE WITNESS: Thank you, Your Honor.

2 At our law school, like every other law school in
3 the United States that I'm aware of, limited
4 partnerships are not separated out for a separate
5 course. Nor would the limited liability partnerships.

6 The courses tend to put all of the partnerships
7 together. Indeed the standard practice is to put
8 limited partnerships, limited liability partnerships,
9 general partnerships, and limited liability companies
10 together in the same course.

11 THE COURT: You may continue, Mr. Hammer.

12 MR. HAMMER: That really wasn't my question, but
13 you have raised another question. You said as you are
14 aware of. Have you done any studies? Can you give me
15 the names of ten universities that only do it --- or
16 20 universities that you have studied, that you have
17 looked at their curriculum and that you have seen that
18 this is the only way they've done it?

19 THE WITNESS: I cannot name the universities.
20 Several years ago we did a thorough review of the
21 curriculum and we adjusted our business classes. I
22 was one of the members of the subcommittee that looked
23 at the courses being offered by law schools around the
24 country.

25 MR. HAMMER: That's several years ago. I'm

1 talking about right now have. Can you tell me whether
2 or not any other law schools offer courses purely in
3 limited liability, L.P. courses?

4 THE WITNESS: No.

5 MR. HAMMER: All right. And you've answered that
6 and you told me that you, at the university, have
7 never taught a course solely, exclusively limited to
8 limited partnerships, correct?

9 THE WITNESS: Yes.

10 MR. HAMMER: And you can't tell me that other
11 schools --- you told me that you know of none that do.
12 You know of none that do not. You can't tell me that
13 you know that no universities or no majority of the
14 universities at the present time, based on your
15 present knowledge, based on present factual
16 information that you have do not offer limited
17 liability --- pure courses in limited liability
18 partnerships?

19 THE WITNESS: Mr. Hammer, I have no idea what
20 your question is. I'd be happy to answer it if you'd
21 rephrase it for me.

22 MR. HAMMER: I'm sorry. You cannot tell me
23 whether there are any --- whether you know --- whether
24 there are any schools that do offer courses in limited
25 liability partnerships?

1 THE COURT: That's a limited partnership.

2 MR. HAMMER: Limited partnerships.

3 THE COURT: He wants to know if you know of any
4 universities that offer a course solely on limited
5 partnerships.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: All right.

8 THE WITNESS: No, I do not.

9 MR. HAMMER: You don't know of any that do, but
10 by the same token, you do not know that any do not
11 offer that?

12 THE WITNESS: I do know that many universities do
13 not offer that course.

14 MR. HAMMER: But you don't know whether some may
15 offer that course?

16 THE WITNESS: Correct.

17 MR. HAMMER: So there may be some universities
18 throughout the country that offer that course; is that
19 correct?

20 THE WITNESS: Yes.

21 MR. HAMMER: And there may be some number --- you
22 don't know, there may be some great number. There may
23 be some small number. You don't know the answer to
24 that, do you?

25 THE WITNESS: Correct.

1 THE COURT: All right. Any objection to his
2 qualifications, Mr. Hammer?

3 MR. HAMMER: Your Honor, based upon what he said
4 in connection with limited liability partnerships ---

5 THE COURT: Limited partnerships?

6 MR. HAMMER: Limited partnerships, I'm sorry,
7 L.P.s, I would object to any testimony --- to him
8 being qualified as an expert on that for these
9 reasons. One, he has never taught a course on limited
10 partnerships. Two, he has written one article on
11 limited partnerships. Three, he does not know whether
12 any other universities do or do not know that,
13 although I think he says that --- if I understood his
14 question, that they may offer those courses.

15 Well if they may offer those courses, then we
16 need someone who can say, yes, they offer those
17 courses, yes, I teach in that. He may or may not be
18 an expert from what his own testimony is.

19 THE COURT: So if you have an evidence professor,
20 keeping in mind that 404 is a big rule, 609 is a big
21 rule, they're not an expert just because they don't
22 teach one course on 404?

23 MR. HAMMER: He is not being offered as an
24 expert. He is being offered as an expert whose
25 testimony in this case --- the relevant issue in this

1 case is the limited liability partnership. Nothing
2 else.

3 THE COURT: Limited partnership.

4 MR. HAMMER: Limited --- I'm sorry. I apologize
5 for keeping on saying that.

6 THE COURT: It's an L.P. I just don't want the
7 record to ---

8 MR. HAMMER: That's right. You're right. I
9 apologize.

10 THE COURT: So you're saying that because of all
11 that he said in response to your questions that he is
12 not an expert in the field of partnership entities or
13 limited partnership entities?

14 MR. HAMMER: I'm saying based on what he said, he
15 has not brought forth enough evidence from which this
16 court can conclude that he is an expert, particularly
17 in that field and particularly given that he has only
18 written one article. We don't know what's taught in
19 his classes, Your Honor. We don't know whether he
20 spends five minutes, five hours, five months. All we
21 know is he teaches a course that has a big grouping to
22 it.

23 We do know, we do know about his expertise in
24 limited liability partnerships. One argument. We do
25 know that other schools offer those type of courses.

1 We do know that he does not teach that.

2 THE COURT: He said he didn't know.

3 MR. HAMMER: I thought he said that some schools
4 may teach that.

5 THE COURT: But he doesn't know.

6 MR. HAMMER: Okay. We do know that some schools
7 may teach that. We know that he does not. We know
8 that he does not at this school, and so I think I've
9 said enough to ---

10 THE COURT: Well, yeah, I think you have.

11 MR. HAMMER: I don't mean to belabor the point,
12 Your Honor.

13 THE COURT: Yes, one thing you need to do is pick
14 your battles, your objection is overruled.

15 MR. HAMMER: Thank you.

16 THE COURT: He is qualified as an expert in the
17 area of partnerships and limited partnerships. All
18 the business about whether he knows what other schools
19 do is --- it doesn't make any difference.

20 Go ahead, Ms. Ballard.

21 MS. BALLARD: Thank you, Your Honor.

22 THE COURT: You may question the witness.

23 BY MS. BALLARD:

24 Q Dr. Adams, have you been retained by Mrs. Hammer
25 in connection with a case entitled 1634 Main L.P. vs.

1 Shirley Hammer vs. Howard Hammer?

2 A I have been retained by her counsel, yes.

3 Q By me?

4 A Yes.

5 Q And what documents did I provide you with?

6 A A copy of the limited partnership agreement of
7 1634 Main L.P.

8 Q Let me show you what's already been introduced
9 into evidence as Defendant's Exhibit No. 11 and ask if
10 that is, in fact, a copy of the document that I
11 provided to you as part of your retention in this
12 case?

13 A It appears to be, yes.

14 Q And what, Dr. Adams, did I ask you to do in your
15 review of Exhibit No. 11?

16 A You asked me to look at the issue of whether a
17 limited partner would have an obligation to contribute
18 to the expenses of the partnership or to make an
19 additional contribution to cover the losses of the
20 partnership.

21 Q And have you, in fact, reviewed Defendant's
22 Exhibit No. 11 one and applied your specialized
23 knowledge to the interpretation of the particular
24 facts set forth in this particular partnership
25 agreement?

1 A Yes, I have. I have reviewed it in the context
2 of the South Carolina Uniform Limited Partnership Act
3 and my many years of study in the issues of limited
4 partnerships and our law in South Carolina, as well as
5 the fiduciary duties of partners as it applies in a
6 situation like this.

7 Q In forming an opinion on the factual issues that
8 I asked you to address did you refer to any specific
9 sections of the South Carolina code?

10 A I looked at three sections of the South Carolina
11 Uniform Limited Partnership Act in particular that
12 seemed to be particularly relevant and provide the
13 context for various paragraphs in the limited
14 partnership agreement.

15 The three sections I looked were 3342-430 on
16 liability of the partners to third parties,
17 particularly paragraph (A) 3342-820 on the liability
18 of limited partners for contributions to the
19 partnership, and 3342-830 on the way profits and
20 losses are to be accounted for and shared amongst the
21 partners.

22 Q And did you rely, at least in part, on those
23 statutes in the factual conclusion that you have drawn
24 regarding the operative effect of Defendant's Exhibit
25 No. 11?

1 A Those statutes and the official comments.

2 Q Now, have you had an opportunity, Dr. Adams, to
3 form an opinion as to the obligations, if any, created
4 by Defendant's Exhibit No. 11 one as to limited
5 partner's obligations to contribute additional capital
6 contributions to the partnership?

7 A Yes, I have.

8 MR. HAMMER: Your Honor ---

9 THE COURT: Just a second. Ms. Lipscomb, do you
10 have an objection?

11 MS. LIPSCOMB: Objection as to any legal opinion
12 or factual opinion that is really, in fact, a legal
13 opinion.

14 THE COURT: A legal argument.

15 MS. LIPSCOMB: A legal argument.

16 THE COURT: Mr. Hammer, same objection?

17 MR. HAMMER: Same objection.

18 THE COURT: Okay. I'll rule on that later. I'm
19 going to treat that right now as a proffer and we'll
20 just go forward. You can continue.

21 MS. BALLARD: All right. Thank you, Your Honor.

22 BY MS. BALLARD:

23 Q Do you remember the question?

24 A I do.

25 Q Okay. And what opinions, if any did you draw

1 regarding the obligation of limited partners under the
2 terms of Exhibit No. 11 to contribute to --- to
3 contribute additional capital contributions or
4 maintenance funds to the limited partnership?

5 THE COURT: Same objection?

6 MR. HAMMER: Same objection, Your Honor.

7 MS. LIPSCOMB: Same objection, yes.

8 THE COURT: Okay. Go ahead.

9 BY MS. BALLARD:

10 Q Go ahead, sir.

11 A Under this limited partnership agreement, the
12 limited partners in this limited partnership have no
13 obligation whatsoever to contribute the first penny in
14 additional contributions or to put any funds into the
15 limited partnership in order to help cover losses or
16 expenses.

17 Q All right. Did you have an opportunity as you
18 were reviewing Exhibit No. 11 to determine factually
19 who the general partner is of 1634 Main L.P.?

20 A Yes, I did.

21 Q And who was the general partner of 1634 Main
22 L.P.?

23 A The general partner is SH-5, LLC.

24 Q All right. Just for the record, what is an LLC?

25 A An LLC is a limit liability company. It's a

1 relatively new form of business entity and has been
2 around for 15 or 20 years now.

3 Q And if we assume that a limited liability
4 corporation is owned by a single individual, does the
5 single individual --- is it called a pass through for
6 purposes of --- for tax purposes?

7 MR. HAMMER: Objection, Your Honor.

8 THE COURT: Yes.

9 MR. HAMMER: He's not been qualified as a tax
10 expert.

11 THE COURT: All right. Ms. Ballard?

12 MS. LIPSCOMB: I have join in that objection,
13 Your Honor.

14 THE COURT: Okay.

15 MS. BALLARD: Your Honor, he's been offered as an
16 expert in the field of business entities, limited
17 liability corporations ---

18 THE COURT: All right. I'll let him answer the
19 question.

20 BY MS. BALLARD:

21 Q All right. Again, would that be for purposes of
22 tax obligation?

23 A I was depends on the election made by the LLC,
24 but that is an option that is the most common tax
25 framework that's chosen in an LLC is to have it taxed

1 as a partnership with its direct pass through. It's
2 not a taxpaying entity.

3 Q Are there any fiduciary obligations created under
4 Exhibit No. 11?

5 THE COURT: Same objection?

6 MR. HAMMER: Same objection.

7 MS. LIPSCOMB: Same objection.

8 THE COURT: All right

9 BY MS. BALLARD:

10 Q Do you remember the question?

11 A I do.

12 Q And what fiduciary obligations are created in
13 your opinion by the specific terms of Exhibit No. 11?

14 MR. HAMMER: Same objection.

15 THE COURT: Go ahead.

16 THE WITNESS: In this partnership the general
17 partner would have fiduciary duties to all of the
18 limited partners in the partnership duty of honesty, a
19 duty of fair dealing, a duty of truthfulness, a duty
20 to put the interests of the partnership ahead of the
21 financial interests of the general partner where they
22 conflicted. A duty generally of the highest level of
23 trust and confidence where the general partner is
24 treating the limited partners honestly, truthfully and
25 fairly.

1 Q Would that fiduciary obligation include providing
2 truthful and accurate information for purposes of a
3 tax return that was filed on behalf of the limited
4 partnership?

5 MR. HAMMER: Objection, again, Your Honor. Same
6 objection.

7 MS. LIPSCOMB: Same objection. It's asking for a
8 legal argument or opinion.

9 THE COURT: Okay. All right. Go ahead.

10 THE WITNESS: Yes, it would. The general partner
11 in this partnership would have a fiduciary duty to
12 deal honestly and truthfully with the limited partners
13 in connection with any tax return filed on behalf of
14 the limited partnership.

15 Q If, in fact, Dr. Adams the general partner of
16 1634 Main L.P. did not provide any source documents of
17 any type to the C.P.A. who prepared the tax returns
18 for the partnership, in your opinion, would that be a
19 deviation from the fiduciary obligation owed by the
20 general partners to the limited partners?

21 MR. HAMMER: Objection, Your Honor. There would
22 be no foundation for him to answer that question and
23 the objection is also made on the previous grounds.

24 THE COURT: Ms. Lipscomb?

25 MS. LIPSCOMB: Those same objections in addition

1 to it does not address --- well, I can handle that on
2 cross.

3 THE COURT: Okay. Go ahead.

4 THE WITNESS: I have no expert opinion on that.

5 BY MS. BALLARD:

6 Q All right. Have you been asked to review the tax
7 returns of 1634 Main L.P.?

8 A No, I have not.

9 Q Let me make sure I understand. The general
10 partner's fiduciary obligation is to who?

11 A To the limited partners ---

12 MR. HAMMER: Same objection.

13 THE COURT: Noted. Ms. Lipscomb?

14 THE WITNESS: To the limited partners and to the
15 limited partnership.

16 BY MS. BALLARD:

17 Q Okay. To the L.P. itself, as well as to the
18 individual limited partners?

19 A Yes.

20 Q From what source documents would the general
21 partner determine the identity of the limited partners
22 of 1634 Main L.P.?

23 A It would be the limited partnership agreement as
24 amended.

25 Q Would those amendments ---

1 A The current version of the partnership agreement.

2 Q Were you provided to any amendments to Exhibit
3 No. 11?

4 A I was not.

5 Q All right. So are your opinions based on the
6 assumption that there are no written amendments to
7 Defendant's Exhibit No. 11?

8 A Yes.

9 MS. BALLARD: That's all I have. Please answer
10 any questions that Ms. Lipscomb or Mr. Hammer might
11 have.

12 THE COURT: All right. All questions asked by
13 Ms. Lipscomb or Mr. Hammer are subject to their
14 objections. Ms. Lipscomb, do you want to go first?

15 MS. LIPSCOMB: I'll let him go first.

16 MR. HAMMER: I'm going to go first.

17 THE COURT: That's fine. Go ahead, Mr. Hammer.

18 MR. HAMMER: May I get the limited partnership
19 agreement that was introduced into evidence earlier?

20 THE COURT: Exhibit 11.

21 MS. LIPSCOMB: Yes. Thank you.

22 CROSS-EXAMINATION:

23 BY MR. HAMMER:

24 Q Mr. Adams, what you're here offering is your
25 opinion, if I understand correctly?

1 A My expert opinion, yes, sir.

2 MR. HAMMER: If Your Honor will bear with me for
3 one moment.

4 (Pause.)

5 BY MR. HAMMER:

6 Q Mr. Adams, you would not disagree with the
7 Merriam Webster dictionary definition that an opinion
8 is a view, a judgment or appraisal formed in mind of a
9 particular matter?

10 A I don't think that is an accurate expression of
11 what an expert opinion is.

12 Q I'm not asking you for that. I'm asking you
13 would you not agree that an opinion is a view,
14 judgment or appraisal formed in the mind about a
15 particular matter?

16 A That seems to be one definition in common
17 parlance.

18 Q All right, sir. A belief stronger than an
19 impression and less strong than positive knowledge.

20 A I would agree that you probably are reading that
21 accurately and that's what that one particular
22 dictionary says, yes.

23 Q So if your opinion is not an expert opinion, your
24 opinion is just that, it is just your belief?

25 A Yes.

1 Q Okay. Now, we were talking about some of the
2 fiduciary duties of a general partner. You discussed
3 those, if I recall correctly?

4 A Yes.

5 Q Have you read the entire partnership agreement?

6 A Yes.

7 Q What is the duty --- when a partner wants to
8 transfer his interest? How does that come about?

9 A It depends on whether the limited partner wants
10 to transfer the interest to another limited partner or
11 to someone else. There are different provisions in
12 the agreement depending upon who the intended
13 transferee is.

14 Q And if the limited partner is transferring their
15 interest, are there any limitations on that transfer?

16 A Yes.

17 Q What is that?

18 A Well, again it depends upon which of the sections
19 in the agreement the particular transfer falls under
20 depending on who the intended transferee is. If it's
21 a transfer to another limited partner, then the
22 requirement is simply that the general partner has to
23 give written consent and there is a requirement that
24 the general partner not unreasonably withhold that
25 written consent.

1 Q Isn't there a provision that requires rather than
2 the general partner give written consent, isn't the
3 provision actually that the person who wants to make
4 the transfer offer to all the other partners first
5 their interest?

6 A Not if the intended transferee is another limited
7 partner. The agreement is very clear in that regard.
8 There are two different sets of requirements that it
9 sets out in Article 12, and it tells us which ones
10 apply to which situations.

11 Q Let me read you from 12.3. Notwithstanding
12 anything contained in this agreement to the contrary,
13 no sale, assignment or other transfer shall be made
14 under any circumstances unless all of the provisions
15 of this agreement have been complied with, such sale,
16 assignment or other transfer together with all other
17 sales or transfer of interest and partnership within
18 the preceding 12 months will not result in the
19 termination of the partnership pursuant to section 708
20 of the code and the transferor provide the general
21 partner with all information reasonably requested by
22 him by the general partner concerning the transfer and
23 transferee and the transfer necessary to allow the
24 general partner to compile with 12.7?

25 MS. BALLARD: Your Honor, I would just note for

1 the record he did not read that accurately and I would
2 ask that Professor ---

3 THE COURT: What did he miss?

4 MS. BALLARD: He stated, requested by him, by the
5 general partner.

6 THE COURT: Request of him. I read it. I
7 noticed it. He did miss that one word.

8 MS. BALLARD: Thank you, Your Honor.

9 MR. HAMMER: Excuse me?

10 THE COURT: You missed a word, but don't worry
11 about it, go ahead. It's not going to make any
12 difference because I can read this real easily.

13 THE COURT: Why don't you just ask him if he
14 agrees that Section 12.3 ---

15 BY MR. HAMMER:

16 Q Okay, and you agree that 12.3 is applicable,
17 correct?

18 A To transfer to another limited partner, yes, it
19 would be applicable.

20 Q It says notwithstanding anything contained in
21 this agreement, no sale, assignment or other transfer
22 shall be made under any circumstances.

23 You say that's --- when they say no sale, you're
24 saying it's only a sale to a limited partnership? I
25 don't see the words from one limited partner to

1 another limited partner. I see the words no sale?

2 THE COURT: Your question is whether or not that
3 applied to a transfer to a limited partner. Can you
4 answer that, please?

5 THE WITNESS: Yes, sir, it does apply to a
6 transfer to another limited partner.

7 BY MR. HAMMER:

8 Q And also to anyone else?

9 A Yes.

10 Q And it does require a 30-day notice; isn't that
11 correct?

12 A There is nothing in 12.3 about a 30-day notice,
13 Mr. Hammer.

14 Q Is there anything in other sections that require
15 a 30-day notice?

16 A There is in 12.4, which only applies to a
17 proposed transfer to a non-partner. 12.4 does not
18 apply to a proposed transfer to another limited
19 partner.

20 Q I don't quite understand that 12. ---

21 THE COURT: Can I ask a question? Is there an
22 issue in this case about her transferring her
23 partnership interest?

24 MR. HAMMER: Yes, sir, there may be.

25 MS. BALLARD: Yes, sir.

1 THE COURT: All right, sir.

2 Who did she transfer it to; is that a mystery?

3 MS. BALLARD: No, sir, the family court ordered
4 her to transfer it to Mr. Hammer. She did so.
5 Mr. Hammer refused to accept it.

6 MR. HAMMER: That's not accurate, Your Honor.

7 THE COURT: All right. That's her position.
8 Your position is obviously 180 degrees, so go ahead.

9 BY MR. HAMMER:

10 Q 12.1, have you reviewed 12.1?

11 A Yes, sir.

12 Q It says a limited partner assigning thereof may
13 sell, assign, pledge, give pass by will intendancy, or
14 other transfer all or any part of his interest to the
15 partnership, but only after complying with 12.3 and
16 12.5 obtaining the written consent of the general
17 partner, which consent may not be unreasonably held to
18 anyone who already is a limited partner.

19 So that does include a transfer to a limited
20 partner, correct?

21 A 12.1 applies to a transfer to another partner
22 either limited or general.

23 Q All right.

24 A 12.2 applies to other transfers. It begins
25 except as provided in 12.1 and then it creates a more

1 rigorous set of requirements.

2 Q Right. And then 12.3 says notwithstanding
3 anything else in this, notwithstanding 12.2 and 12.1,
4 notwithstanding anything else, no sale or assignment
5 shall be made under any circumstances unless the
6 matters that I read to you are provided with, correct?

7 A 12.3 applies to any transfer, whether to another
8 partner or not.

9 Q I see.

10 A 12.4 on the other hand does not apply to a
11 transfer to another partner.

12 Q Well, doesn't 12.3, and I don't mean argue with
13 you, it says notwithstanding anything contained in
14 this agreement to the contrary, so if 12.4 is to the
15 contrary, wouldn't that mean that those terms
16 requiring the 30-day notice would have to be complied
17 with?

18 A No, of course not.

19 Q But you do agree that there is a requirement of a
20 selling partner providing written notice to the
21 partnership and all partners of the terms and
22 conditions of such offer?

23 MS. BALLARD: I object to the question, Your
24 Honor.

25 THE COURT: Basis?

1 MS. BALLARD: He has not quoted 12.4 exactly in
2 that ---

3 MR. HAMMER: Well, you have it in your hand and
4 you're reading it?

5 THE COURT: I'm reading it.

6 MS. BALLARD: Thank you, Your Honor.

7 THE WITNESS: Mr. Hammer, 12.4 does not apply,
8 does not say it applies. Indeed it says it doesn't
9 apply to a proposed transfer to another limited
10 partner, so I do not agree that it creates any
11 requirement of notice in a transfer to another limited
12 partner.

13 BY MR. HAMMER:

14 Q Well, doesn't it say in 12.4 that each partner
15 shall have a right to purchase the portion of the
16 selling partner's interest offered for sale?

17 A Yes, it says that with regard to a proposed
18 transfer to a non-partner. It's a classic kind of
19 buyout provision where the existing partners have a
20 right to purchase before a stranger is allowed to
21 purchase it, but this entire agreement, all of article
22 12 is consistent. It's carefully worded, and what
23 we're talking about is a 12.1 transfer to another
24 limited partner, which has nothing --- 12.4 doesn't
25 apply to that.

1 Q Well, that isn't the question I asked you. Where
2 in 12.4 does it say that it does not apply to another
3 limited partner?

4 A In the third line it says ---

5 THE COURT: Third line of what, sir?

6 THE WITNESS: Third line of 12.4.

7 THE COURT: Okay.

8 THE WITNESS: It says that 12.4 applies to a
9 transfer under 12.2.

10 Now, we go back and look at 12.2, and we see it's
11 the provision that applies to transfers to non-
12 partners. 12.1 applies to transfers to partners.
13 12.2 applies to transfers to strangers and 12.4 says
14 it's only those 12.2 transfers to strangers that are
15 within 12.4.

16 Q Doesn't it actually say --- does it say that
17 only --- it only applies to transfer to strangers? It
18 says notwithstanding anything contained in this
19 agreement to the contrary, as a condition if you're
20 going to transfer it to a stranger. It doesn't say it
21 only has to be to a stranger.

22 If you're going to transfer it to a stranger,
23 then it's to be done under article 12.2. It doesn't
24 simply say that it only refers to transfers to
25 strangers. It says as a condition precedent to

1 consummation of agreement to transfer or transfer of
2 any interest in the partnership under 12.2. So it
3 doesn't limit it to 12.2. It says as a condition if
4 you're doing it under 12.2. Isn't that what it says?

5 A Yeah, it says that these requirements of 12.4
6 only apply as a condition precedent to a 12.2
7 transfer, which is --- as I've said, a transfer to
8 strangers. It does not apply. By its own clear terms
9 it does not apply to a 12.1 transfer to another
10 limited partner or to the general partner.

11 Q Where in it do you see that it says it does not
12 apply?

13 A It says it only applies to 12.2 transactions ---

14 Q Well, where do you see the word only?

15 MS. BALLARD: Your Honor, could he finish his
16 answer before he's interrupted?

17 THE COURT: All right. Go ahead, Dr. Adams. You
18 can finish your answer.

19 THE WITNESS: It's a condition precedent to a
20 12.2 transaction. It's not a condition precedent to
21 any other transaction, so only was my explanation.
22 It's not a word that's in here. This is written very
23 clearly, though, Mr. Hammer.

24 You have 12.1 transactions, which are transfers
25 to other partners and you have 12.2 transactions,

1 which are proposed transfers to anybody who is not a
2 partner. 12.4 says its procedures are a condition
3 precedent to a 12.2 transfer to a stranger. It does
4 not say its provisions are conditioned precedent to a
5 12.1 transfer to another partner.

6 BY MR. HAMMER:

7 Q But it doesn't say also that it's only a
8 condition precedent as you have said to a --- to an
9 outsider, does it? It doesn't use the word only that
10 you have added to the interpretation. It doesn't have
11 that word in it, does it not?

12 A It does not ---

13 Q That's a yes or no question.

14 MS. BALLARD: Can he answer the question and
15 explain it?

16 THE COURT: Wait a minute. Let's make something
17 clear. He said the word only is not in there.

18 MR. HAMMER: Okay.

19 THE COURT: He used the word only to explain his
20 interpretation.

21 MR. HAMMER: Okay.

22 THE COURT: The word only is not in there.

23 BY MR. HAMMER:

24 Q So that's your interpretation of the agreement.
25 Now, you haven't spoken to Mrs. Hammer, have you?

1 A No.

2 Q About the agreement?

3 A No.

4 Q And you haven't spoken to anybody else who
5 entered into the agreement, did you?

6 A No.

7 Q So you have no way of knowing ---

8 MS. BALLARD: I would object to the foundation
9 of that question. Mrs. Hammer was not a limited
10 partner at the time this document was executed.

11 THE COURT: Well, the objection is overruled.

12 MS. BALLARD: Thank you, Your Honor.

13 BY MR. HAMMER:

14 Q You have no way of knowing what was in the minds
15 and what was the intent of those, the actual intent,
16 of those who were parties to the agreement, do you?

17 A I have no way of knowing any intent other than
18 that clearly expressed in this thorough document.

19 Q Well, you say clearly, but it doesn't use the
20 word only, so that's your interpretation without
21 referring to the intent of the parties. The parties
22 may have intended something different than your
23 interpretation. Fair enough?

24 A They may have.

25 Q Okay.

1 A But that would have no legal effect. We
2 abandoned the purely subjective theory of contracts
3 almost 100 years ago, Mr. Hammer.

4 Q The legal effect, the intent of the parties
5 would ---

6 A We look at external manifestations of intent,
7 such as a document like this, not what is the secret
8 intent in someone's mind when they enter into a
9 contract.

10 Q And if they express that intent among themselves
11 and they meant to put that down and that was the
12 intent, you're saying that because they didn't use the
13 word --- you are adding the word only as part of their
14 intent?

15 A I'm explaining that this language clearly only
16 applies to the requirements of 12.4 as a condition
17 precedent to a 12.2 sale to stranger.

18 Q But ---

19 A Yes, that word only is my expert opinion of what
20 this means. It's ---

21 Q And ---

22 A It's a clear explanation of what I believe is a
23 clear provision.

24 Q And the fact that the parties left out the word
25 only could also mean that the intent of the parties

1 was that it didn't apply only. The fact that they
2 didn't include that word, that could have been their
3 intent also, correct?

4 A No.

5 Q Now, the provisions of the agreement allow for
6 the purpose of the partnership to acquire, buy,
7 develop, own, invest, manage, operate, et cetera.

8 MS. BALLARD: Which section are you reading from?

9 MR. HAMMER: Purpose four.

10 THE COURT: Excuse me?

11 MR. HAMMER: Purpose number four.

12 THE COURT: Section four?

13 MR. HAMMER: Yes, sir.

14 THE COURT: Okay.

15 BY MR. HAMMER:

16 Q Develop, own, invest, and operate, and I'll call
17 your attention to manage and operate, and any and all
18 activities, incidental are related to the foregoing.
19 Isn't that in the agreement?

20 A Yes.

21 Q And the --- one of the matters that would be
22 incidental would be in connection, repair and operate
23 would be in connection with manage and operate and
24 even lease would include repair of the building and
25 maintenance of the building. Would you disagree with

1 that?

2 A No, I would not.

3 Q And that would be one of the obligations of the
4 general partner to oversee that that was --- to
5 oversee that is done, correct?

6 A Correct.

7 Q And the general partner would have to take
8 whatever steps are necessary in order to oversee that
9 that is done, correct?

10 A Well, whatever legal steps were necessary.

11 Q Now, you're not a tax expert, if I understand it.
12 You've not been qualified as a tax expert?

13 A I do not believe I was qualified as a tax expert,
14 no. I don't claim to be a tax expert.

15 Q And therefore in 73 ---

16 THE COURT: 7.3?

17 BY MR. HAMMER:

18 Q Yes, 7.3 on page three where they talk about the
19 individual's capital account may be --- shall be
20 maintained for each partner in accordance with the
21 capital accounting rules of 704 B of the code --- you
22 don't --- and applicable regulations, you don't claim
23 to be an expert or to know all of the applicable
24 regulations, do you?

25 A No, sir.

1 Q So you cannot foreclose the possibility that
2 there is an applicable regulation which requires that
3 the --- that in order for the general partner to
4 manage the building and in order to comply with the
5 tax code, that there is a provision that requires
6 that --- and in order to comply with the capital
7 account requirements, there is a provision that he
8 make assessments. You've cannot say that the
9 regulations don't require that, can you?

10 A I cannot.

11 Q And if they did require that, that would become a
12 part of the agreement, correct?

13 A No, sir.

14 Q Which says --- doesn't it say that the --- it's
15 to be done in accord with the regulations and with the
16 code?

17 A It does say that, but it also --- there's an
18 interesting provision in here that deals with this
19 issue you're talking about, and that's the provision
20 in 8.3 C, which is expressly designed to make sure
21 that no limited partner's capital account ever becomes
22 negative.

23 Q But ---

24 A The way that's done is where there is a potential
25 for that happening.

1 MR. HAMMER: Objection, Your Honor ---

2 THE COURT: He is answering your question.

3 MR. HAMMER: But he is not answering my question,
4 Your Honor.

5 THE COURT: He is. Your objection is overruled.
6 You can continue.

7 THE WITNESS: That provision provides that in
8 that circumstance instead of the limited partners
9 capital account becoming negative, which might trigger
10 some of these I.R.S. regulations, instead, this
11 agreement says that those losses are to be allocated
12 to the general partner so the limited partners'
13 capital account never falls below zero.

14 THE COURT: Now, you can continue Mr. Hammer.

15 BY MR. HAMMER:

16 Q Well, that's your interpretation without knowing
17 the regulations under the code, correct? Under the
18 tax code.

19 A Without knowing specifically. I have some
20 general knowledge based on the courses that I have
21 taught and the work that I did in team teaching that
22 with our tax professor, Professor Hellwig, but no, I
23 don't have a specific regulation in mind.

24 Q So you can't say that the specific regulations
25 don't countermand what you've just now said, can you?

1 A No.

2 Q And do you know and it refers to --- in F of that
3 section, it refers to reducing the capital account by
4 items described in 1.704-1B(iid-4) of the code. Do
5 you know what 1.704-1B(iid-4) of the tax code is?

6 A I did not review those in preparing to give my
7 opinions here ---

8 Q And likewise in the other ---

9 A Correct.

10 Q --- in the other section that said that?

11 A I did not know specifically what those others
12 are.

13 Q So you don't know as a matter of fact that these
14 sections do not countermand what you have said and do
15 not, in fact, give the right to the general partner to
16 make these assessments contrary to what you say? You
17 do not know that the codes do not do that, correct?

18 A I do not know that.

19 Q Okay. So there is a possibility that the codes
20 do do that and that notwithstanding what you
21 testified to, the codes, which would take precedence
22 do give that right, correct?

23 A Yes.

24 MR. HAMMER: Thank you very much.

25 THE COURT: Ms. Lipscomb.

1 CROSS-EXAMINATION:

2 BY MS. LIPSCOMB:

3 Q Is there any conclusion of a limited partner
4 transfer in his or her interest to the partnership as
5 opposed to another limited partner or general partner?

6 THE COURT: Would you repeat the question,
7 please?

8 BY MS. LIPSCOMB:

9 Q Yes, is there any entity in what's been marked as
10 exhibit --- Mrs. Hammer's Exhibit 11, is there any
11 preclusion for a limited partner to transfer his or
12 her interest to the partnership as opposed to a
13 general or limited partner? Does that make sense?

14 A Yes, I understand your question. I do not recall
15 any preclusion of that in this agreement.

16 Q Is that something that could be done or typically
17 would be done?

18 A It certainly would be a possibility that it could
19 be transferred to the partnership.

20 Q Okay. Would transfer of the limited partnership
21 interest to the partnership, would that require 30
22 days notice?

23 THE COURT: To the partnership itself?

24 MS. LIPSCOMB: Yes, sir.

25 THE WITNESS: I believe it would --- it's not a

1 --- it would not be a 12.1 transaction to transfer it
2 to the partnership itself.

3 Q It would be a 12.4?

4 A It would be a 12.2 transaction and 12.4 would be
5 applicable to it, yes.

6 Q So that means the 30-day requirement would be
7 required?

8 A Yes.

9 Q I mean the 300-day provision would be imposed ---

10 A There would be a 30-day notice requirement under
11 12.4, yes.

12 Q --- if it's part of a plan, and I know you're not
13 a tax attorney, I'm asking just from a limited
14 partnership law standpoint.

15 (Pause.)

16 Dr. Adams, there is no problem is there with a
17 general partner delegating certain authorities to a
18 management company, is there?

19 A Depends on the nature of the authority that was
20 delegated, but certainly ministerial tasks, routine
21 tasks and managing the property could be delegated.

22 Q And that would be not be a breach of fiduciary
23 duty?

24 A It would not.

25 Q Okay.

1 A As long as they exercise reasonable care in
2 selecting that management company.

3 MS. LIPSCOMB: That's all the questions I have.

4 THE COURT: Redirect?

5 MS. BALLARD: Yes, sir, just briefly.

6 REDIRECT EXAMINATION:

7 BY MS. BALLARD:

8 Q You were asked about the rights and obligations
9 of the general partner by Mr. Hammer. Would it be a
10 violation of the general partner's fiduciary duty as
11 spelled out in Exhibit 11 for the general partner to
12 bring suit against a limited partner?

13 THE COURT: Repeat the question, please.

14 MS. BALLARD: Yes, sir.

15 THE COURT: I lost the last half of it.

16 MS. BALLARD: Yes, sir.

17 BY MS. BALLARD:

18 Q Under Exhibit 11, would it be a violation of the
19 general partner's fiduciary duty to bring a lawsuit
20 against a limited partner for additional contributions
21 when there had been no agreement among the partners
22 pursuant to 7.2 that all partners contribute?

23 MR. HAMMER: Objection, Your Honor. There is no
24 foundation to that. It's contrary to the evidence
25 that's already been established and it's not --- it

1 would not be something that would be pertinent or
2 relevant to our argument here right now.

3 THE COURT: Ms. Lipscomb.

4 MS. LIPSCOMB: There is no breach of fiduciary
5 duty cause of action, so we would object to the action
6 as enlisting irrelevant evidence.

7 MS. BALLARD: It's irrelevant to the abuse of
8 process claim, Your Honor.

9 THE COURT: Okay. The partners --- the
10 partnership, the limited partnership brought the suit,
11 right?

12 MS. BALLARD: The limited partnership is the
13 plaintiff, yes, sir.

14 THE COURT: Okay. You asked whether or not it
15 would be a breach of the fiduciary duty for the
16 general partner to bring an action, correct?

17 MS. BALLARD: Correct.

18 THE COURT: Is that what happened?

19 MS. BALLARD: According to the testimony, yes,
20 sir.

21 THE COURT: What testimony?

22 MS. BALLARD: Well, Mr. Turbeville will testify
23 and has testified that Mr. Hammer instructed him in
24 his capacity as general partner to bring a lawsuit.

25 MS. LIPSCOMB: Mr. Hammer is not the general

1 partner. SH-5 LLC is the general partner.

2 THE COURT: He is a managing member of that LLC?

3 MS. LIPSCOMB: Yes, sir.

4 MR. HAMMER: That is not a part of the evidence
5 at this time, so his testimony would have to be based
6 on whatever the evidence is at this time.

7 MS. BALLARD: He is not allowed to ---

8 MR. HAMMER: That ---

9 THE COURT: Don't interrupt. One at a time.
10 Yes, sir, Mr. Hammer.

11 MR. HAMMER: I have ---

12 THE COURT: You're saying it's not part of the
13 evidence at this time.

14 MR. HAMMER: It's not part of the evidence at
15 this time. It's contested --- it's highly contested,
16 in fact, the evidence at this time was, if you recall,
17 Your Honor, that I felt as though there may be a ---
18 that in order to avoid any question that in accord
19 with the management agreement, I delegated that duty
20 and it's in the management agreement that that duty to
21 determine whether or not to bring the lawsuit was with
22 Mr. Turbeville.

23 THE COURT: Okay.

24 MR. HAMMER: So that would be the evidence.

25 THE COURT: Ms. Lipscomb, anything else?

1 MS. LIPSCOMB: No, sir.

2 THE COURT: Ms. Ballard, anything else on this
3 point?

4 MS. BALLARD: No, sir.

5 THE COURT: All right, sir. The objection is
6 overruled, of course, conditioned on the fact that
7 testimony or other evidence established that suit was
8 brought at the behest of the general partner.

9 MS. BALLARD: Yes, sir.

10 MS. LIPSCOMB: And an additional objection on the
11 grounds that it elicits a legal opinion.

12 THE COURT: You raised that same objection, too,
13 Mr. Hammer?

14 MR. HAMMER: Yes, sir, I do.

15 THE COURT: All right. The objection is noted.
16 You can continue.

17 THE WITNESS: It's my expert opinion that under
18 this agreement in this partnership it would be a
19 breach of fiduciary duty for the general partner or
20 the managing member of the general partner who
21 controlled it as an instrumentality to bring a lawsuit
22 seeking to force a contribution when the agreement
23 unmistakably does not create any such obligation in
24 the limited partners.

25 THE COURT: Nobody has covered that yet.

1 MS. BALLARD: No, sir, there hadn't been any
2 testimony about that yet.

3 THE COURT: All right.

4 MS. BALLARD: Thank you, Dr. Adams. I don't have
5 anything further.

6 THE COURT: Anything else on just that point
7 Mr. Hammer?

8 RECROSS-EXAMINATION:

9 BY MR. HAMMER:

10 Q Are you saying the assessments are not made as a
11 known course in order to keep the assets viable?

12 MS. BALLARD: Your Honor, I object. Is he
13 asking the question about the specific agreement, a
14 factual question? He is asking for a legal opinion?

15 THE COURT: No, he is asking a question that does
16 not specifically refer to this relationship. He's
17 asking him if it's normal for a limited partnership to
18 make assessments.

19 MS. BALLARD: All right.

20 THE COURT: To preserve properly. If you need
21 that restated, you can do it. Otherwise the witness
22 can answer the question if he understands it.

23 THE WITNESS: I understand the question, Your
24 Honor.

25 THE COURT: All right.

1 THE WITNESS: Some limited partnership agreements
2 provide a mechanism or conditions in which an
3 assessment can be made. Most do not because the
4 effect of that is to destroy the limited liability
5 that is the very reason why people form limited
6 partnerships and become limited partners in them. So
7 for example in this one, it requires the unanimous
8 consent of all of the limited partners before an
9 assessment could be levied and that's a pretty typical
10 provision.

11 BY MR. HAMMER:

12 Q But going back to what you said before, you do
13 not know what the impact of the code sections were on
14 that particular issue, do you?

15 A I do not.

16 Q And so the impact of the code sections could
17 completely reverse what you have said, and your
18 testimony is based without full knowledge of all of
19 the pertinent facts, of all of the pertinent
20 provisions of law that are included in the agreement,
21 correct, and full knowledge meaning full knowledge of
22 all the tax codes?

23 A I guess I have to admit that I don't know
24 everything about everything, Mr. Hammer.

25 Q All right.

1 A So that would be correct.

2 Q So that would be a yes.

3 MR. HAMMER: Thank you very much. Nothing
4 further.

5 THE COURT: Ms. Lipscomb?

6 MS. LIPSCOMB: Nothing further.

7 THE COURT: All right. Anything else?

8 MS. BALLARD: Your Honor, I had subpoenaed
9 Dr. Adams, but he had also been subpoenaed by
10 Ms. Lipscomb. Could I ask that he be excused from
11 both of those subpoenas?

12 MS. LIPSCOMB: Yes.

13 MR. HAMMER: Wasn't he supposed to bring some
14 documents with him?

15 MS. LIPSCOMB: Ask him about that.

16 MR. HAMMER: In connection that subpoena, were
17 you not required to bring some documents with you?

18 MS. BALLARD: Your Honor, the examination of this
19 witness is over.

20 THE COURT: Wait, wait, wait. Just a second.
21 Let's just get to the point. Was he supposed to bring
22 some papers with him?

23 MS. LIPSCOMB: There was a subpoena duces tecum.

24 THE COURT: Did you bring some documents?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. There you go.

2 MS. BALLARD: Just for the record, I'd like to
3 note that the subpoena was served about 8:00 p.m. on
4 Sunday night.

5 THE COURT: Well, he brought them.

6 MS. BALLARD: I know he did.

7 THE COURT: What difference does it make?

8 MS. BALLARD: I just wanted the record to reflect
9 that.

10 MS. LIPSCOMB: May I look at them?

11 THE COURT: Sure. He brought them to you. Do
12 you want them, Doctor? Do you want the documents?

13 THE WITNESS: No, sir. I can leave them with
14 Ms. Lipscomb.

15 THE COURT: All right. Do you object to him
16 being released from the subpoena, Mr. Hammer? Well,
17 it's her subpoena, so you don't have any subpoena
18 rights.

19 Ms. Lipscomb, do you agree to release him from
20 your subpoena?

21 MR. HAMMER: Would you give us just a moment to
22 look at the documents, two minutes?

23 (Pause.)

24 THE COURT: All right. Is a subpoena supposed to
25 be served on a Sunday?

1 MR. AIKEN: It can be now, Judge. I believe so.

2 MS. LIPSCOMB: It's just ---

3 THE COURT: I thought they changed the rules.
4 You've can't get them going to and from church.

5 MS. BALLARD: Right. They have changed them.

6 THE COURT: The questioning of the witness has
7 concluded. You can step down now.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: The question is whether or not you
10 may have to come back at a later time.

11 All right. Any objection to him being released,
12 Mr. Hammer?

13 MR. HAMMER: I don't have any objection.

14 THE COURT: All right. Thank you, sir. You can
15 leave if you like.

16 THE WITNESS: Thank you.

17 MS. LIPSCOMB: Thank you.

18 MS. BALLARD: Thank you.

19 THE COURT: Okay. It's ten minutes to one.
20 What's your pleasure, Ms. Lipscomb?

21 MS. LIPSCOMB: We rest our case in chief.

22 THE COURT: All right. Well, Mr. Hammer still
23 has to be ---

24 MS. LIPSCOMB: That's right. That's right.

25 THE COURT: You may have some redirect of him.

1 MS. LIPSCOMB: Yes, sir.

2 THE COURT: Would now be a good time to break for
3 lunch in your judgment?

4 MS. LIPSCOMB: Yes, that would be fine.

5 THE COURT: All right, sir. We'll get back
6 together at the 2:15.

7 MS. BALLARD: All right. Your Honor. Thank you.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: All right. Are we ready to continue,
10 Ms. Lipscomb?

11 MS. LIPSCOMB: Yes, Your Honor.

12 THE COURT: Yes.

13 MR. HAMMER: I have one matter.

14 THE COURT: All right.

15 MR. HAMMER: It's very short. In addition to the
16 reasons that we presented to the court for not
17 permitting Mr. Adams' testimony, I present the further
18 reason after hearing his testimony, and that is that
19 he testified by his own testimony, he said he is not
20 cognizant or familiar with the Internal Revenue code
21 and ---

22 THE COURT: Let me stop you right there. That
23 section of the code that you referred to several
24 times, what does it say?

25 MR. HAMMER: I don't know.

1 THE COURT: Does it have anything to do with the
2 contributions or anything like that?

3 MR. HAMMER: I don't know.

4 THE COURT: All right.

5 MR. HAMMER: My point is this, he didn't know.
6 He could not ---

7 THE COURT: What if you could ask him what the
8 recipe was for such and such and he didn't know?

9 MR. HAMMER: The point was --- with Your Honor's
10 indulgence, and I appreciate Your Honor's question,
11 and I don't mean to be disrespectful, and I hope you
12 don't take it as such. I don't know quite the right
13 words to say this, I don't think that is the question,
14 Your Honor.

15 I think that the point is this, and I understand
16 what Your Honor is saying, but I think the point is
17 this, and would urge that this is the point. What he
18 is saying is that I have given an opinion.
19 Mr. Hammer, now that you point out that there may be
20 some provisions of the code that affect this, whatever
21 those provisions are, I don't know what those
22 provisions are, I don't know how they impact.

23 His last thing was that I can't say, based on the
24 fact that I don't know what those provisions are that
25 the opinion that I originally gave that you could not

1 assess. I don't know if that would hold true anymore,
2 given the fact that I don't know what the code is and
3 given the fact that I don't know the impact of that.

4 THE COURT: All right. Ms. Lipscomb, do you join
5 in that?

6 MS. LIPSCOMB: Yes, Your Honor.

7 THE COURT: The argument about the code?

8 MS. LIPSCOMB: Yes, Your Honor. I think it has
9 some bearing at least as to the weight of his
10 testimony.

11 THE COURT: And he's moving to strike it?

12 MS. LIPSCOMB: Yes, sir.

13 THE COURT: All right. Ms. Ballard, do you know
14 what the pertinent --- excuse me, what the cited
15 section of the code is?

16 MS. BALLARD: We're pulling it up right now,
17 Your Honor.

18 THE COURT: If I exclude his testimony, and I may
19 well do that, because it may have been a legal
20 opinion.

21 MS. BALLARD: What section was that?

22 THE COURT: It would be on the basis that it was
23 a legal opinion, but I'm not constrained to disregard
24 it simply because he doesn't know what is in the
25 provisions of the --- let me finish, please. What's

1 in an I.R.S. coded section that is referred to in a
2 different area of --- or excuse me, in a certain area
3 unless you can tell me and show me that it has
4 something to do with altering the terms of the
5 agreement.

6 MR. HAMMER: And that's where, in all due
7 respect, we would part ways.

8 THE COURT: I understand that, but why don't you
9 go down the path I'm going and explain to me how that
10 particular section of the Internal Revenue code
11 applies to transfers of limited partnership interests
12 or assessing limited partners for repairs and so
13 forth.

14 MR. HAMMER: I don't know that it does, Your
15 Honor, but I say to you that it doesn't make any
16 difference.

17 THE COURT: You've already made that point, but
18 you are saying that you don't know what it says.

19 MR. HAMMER: I do not.

20 THE COURT: The answer to that is you don't.

21 MR. HAMMER: I do not.

22 THE COURT: Okay. Ms. Ballard, what does it say.

23 MS. BALLARD: We're pulling it up right now.

24 THE COURT: I'd like to have a copy of that.

25 MS. BALLARD: Yes, sir, we're pulling it up right

1 now.

2 MR. HAMMER: There are about four sections we
3 referred to, Your Honor.

4 THE COURT: Mr. Hammer, I know that.

5 MR. HAMMER: Okay.

6 (Pause.)

7 THE COURT: I would assume if it had any
8 pertinent application to the matters at hand, you and
9 Ms. Lipscomb would be prepared to argue it as a legal
10 argument, not as a rebuttal or cross-examination tool.

11 MR. HAMMER: Your Honor, may I reply to that?

12 THE COURT: You may.

13 MR. HAMMER: Thank you, sir. As a matter of
14 trial strategy, no, we might not do that. The burden
15 is upon them when they present a witness to show that
16 that witness has the requisite knowledge.

17 THE COURT: If I exclude his testimony, which I
18 may, you better still be prepared to argue how that
19 section of the code impacts this agreement and the
20 matters pertinent to this case. That's what I meant.
21 I assume you will have some argument about what that
22 code section means to the fact finder.

23 MR. HAMMER: And I understand what you're saying.
24 May I again reply or have I replied too much? I don't
25 mean argue with you, Your Honor.

1 THE COURT: Well, that's pretty much what you're
2 doing.

3 MR. HAMMER: Then I'll sit down.

4 THE COURT: I don't take offense at it. I'm just
5 telling you if you are going to make a legal argument
6 concerning the interpretation of that agreement, you
7 better --- you better be prepared to argue the
8 pertinent provisions of the Internal Revenue code.

9 MR. HAMMER: And as I understand what you're
10 saying is Hammer, y'all have said that this agreement
11 means so and so, but has this portion in it. Show us
12 that this portion doesn't change it.

13 THE COURT: Correct.

14 MR. HAMMER: And what my counter to that is that
15 it's not us to show that it doesn't change it. It's
16 for --- this was made in terms of tax provisions that
17 were put in by tax experts who apparently knew what
18 they were doing.

19 THE COURT: And it's not ---

20 MR. HAMMER: Right. It's the same point. I
21 understand.

22 THE COURT: We're not on the same page, but it
23 doesn't matter.

24 MR. HAMMER: You're the judge.

25 THE COURT: I'm the one making the decision. If

1 you don't want to make arguments on things that I
2 don't think are pertinent, then I'll deal with it when
3 I make my ruling.

4 MR. HAMMER: I understand. You're the Judge. I
5 understand that.

6 THE COURT: Are we prepared to go forward with
7 Mr. Hammer's cross?

8 MS. BALLARD: Yes, sir, Your Honor. We have the
9 I.R.S. code if you'd like us to refer to it.

10 THE COURT: I don't want you to refer to it. I'd
11 just like a copy of it.

12 MS. BALLARD: Okay. We'll get a copy of it
13 printed out. We don't have a printer here.

14 THE COURT: It's not going to be pertinent for
15 the next 45 minutes to an hour.

16 MS. LIPSCOMB: Mr. Hammer was going to introduce
17 or testify on his own behalf. Does that come after or
18 when?

19 THE COURT: We haven't gotten his case yet. Who
20 called him?

21 MS. LIPSCOMB: I did.

22 MS. BALLARD: 1634 called him.

23 THE COURT: He is going to be back on the stand,
24 so Ms. Ballard can question him now on cross if she
25 wants.

1 Then he can say, I don't want to say anything
2 else. I don't want to cross-examine myself. I'll
3 wait until I present my case.

4 MS. LIPSCOMB: Thank you.

5 THE COURT: That's pretty much what Aiken did
6 earlier and I certainly find it in the rules.

7 All right. You're still under oath. You can
8 have a seat.

9 MS. LIPSCOMB: Your Honor, I handed your clerk a
10 copy of the exhibits for 1634.

11 THE COURT: I appreciate that. I have one and
12 two.

13 MS. LIPSCOMB: Yes.

14 CROSS-EXAMINATION:

15 BY MS. BALLARD:

16 Q Mr. Hammer, are you in your individual capacity
17 an agent of 1634 L.P.?

18 A Am I in my individual capacity?

19 Q An agent of 1634 L.P.?

20 A Give me a moment to think about that.

21 (Pause.)

22 I don't know the answer to that, because I don't
23 know whether a limited partner becomes an agent of a
24 limited partnership.

25 Q Okay. So in your capacity as the sole owner of

1 SH-5 LLC, you are an agent of 1634 Main L.P.; is that
2 correct?

3 A No.

4 Q You're not an agent? The general partner is not
5 an agent of the limited partnership?

6 A I am an agent of SH-5. SH-5 is the general
7 partner. That does not necessarily make me an agent.
8 Because I am an agent of one corporation does not
9 necessarily make me an agent of some other corporation
10 that the second corporation may be working for.

11 Q All right. Now, let me make sure I understand.
12 You are the sole owner of SH-5; is that correct?

13 A I am the sole member.

14 Q Whatever your distributional share is, is it
15 called a partnership share, membership share?
16 Whatever it is, you are the only one who owns any
17 portion of it; is that correct?

18 A I am the sole member, yes, that's exactly
19 correct.

20 Q And SH-5 is the general partner of 1634 Main
21 L.P.; is that correct?

22 A That's correct.

23 Q So SH-5 is an agent of 1634 Main L.P.; is that
24 correct?

25 A SH-5 is a general partner to the extent that a

1 general partner is an agent, yes, and I don't know the
2 legal answer to that either. I'm not going to make an
3 assumption.

4 Q All right. So as you sit here today, the
5 testimony that you gave in response to Ms. Lipscomb's
6 questions were in your individual capacity as Howard
7 Hammer and not in your capacity as an agent of 1634
8 Main L.P. or in your capacity as sole owner of SH-5 --
9 -

10 A I'm sorry. I don't mean to be rude, but I'd have
11 to --- you'd have to give me specific questions that
12 you're talking about.

13 Q I'd be happy to do that. When you were answering
14 Ms. Lipscomb's questions, were you answering them as
15 an agent of 1634 Main L.P.?

16 A Which question are you particularly talking about
17 in.

18 Q All of them?

19 A I don't know whether the --- I can't answer that.

20 Q When you were answering Ms. Lipscomb's questions,
21 were you answering them in your capacity as the sole
22 owner of SH-5?

23 A She didn't ask me any questions as the sole owner
24 of SH-5 that I recall.

25 Q Okay. So were you answering your questions in

1 your capacity as a representative of the general
2 partner of 1634 Main L.P.?

3 A Was I answering my questions as a representative
4 of the general partner. I'd have to know which
5 question you're talking about.

6 She asked me numerous questions. I'd have to
7 know some of the questions may be a yes, may be a no
8 and some may be I don't know. So I'd have to know
9 which questions you're asking specifically in order to
10 respond to that.

11 Q So the court does not know as we sit here now
12 whether any of the questions that you answered for
13 Ms. Lipscomb were questions that were answered on
14 behalf of the limited partnership, correct?

15 A I don't know which questions you're talking
16 about. Some may have been, some may not have been.
17 You're going to have to be specific as to which
18 questions.

19 Q Well, the only way I can be specific, Mr. Hammer,
20 is to ask you in what capacity you were answering the
21 questions.

22 A Well, Ms. Ballard, the only answer I could give
23 you is there was 20 minutes worth of questions. Some
24 may have been answered in a certain capacity and some
25 may have been answered in another capacity. If you

1 have a specific question to say what was your name and
2 how did you answer that, just as an example, maybe I
3 could say I don't know which capacity that was in or I
4 could say it's in one capacity or the other, but to
5 ask me what 20 minutes of questioning were, 25 or 30
6 or 40 and what all those questions what capacity I was
7 asking them in --- answering them in, they may not
8 have been all in the same capacity.

9 Q So did you change hats while you were answering
10 Ms. Lipscomb's questions?

11 A That's not what I said, no, ma'am.

12 Q So you were not changing hats when you were
13 answering Ms. Lipscomb's questions?

14 A I didn't say either. I can only repeat to you
15 that unless you're more specific, I'm unable to answer
16 your question.

17 Q All right, Mr. Hammer, now, that you're on
18 cross-examination, who are you?

19 A Who am I for what?

20 Q For purposes of cross-examination?

21 A I'm Howard Hammer sitting here right now.

22 Q Okay. And ---

23 A I took an oath. Who are you? My name is Howard
24 Hammer. Where do you live in 1609 Catawba Street.

25 Q So if I ask you a question about the complaint in

1 this matter, this matter being 1634 Main L.P. vs.
2 Shirley Hammer, on whose behalf are you going to be
3 answering it?

4 A It depends on which question your asking me.

5 Q How am I going to know who you are?

6 A You're going to know when you ask me the
7 question, and I'll give you the answer.

8 Q Well, how will the answer tell me which hat
9 you're wearing?

10 THE COURT: Let's move on. This is --- I mean,
11 he ---

12 MS. BALLARD: All right.

13 THE COURT: I've heard enough of that.

14 BY MS. BALLARD:

15 Q Let me show you the complaint in this action,
16 Mr. Hammer, and in whatever capacity you're sitting
17 here, let me refer you to paragraph nine of this
18 action.

19 THE COURT: Is it the original complaint?

20 MS. BALLARD: Yes, sir.

21 THE COURT: There was no amendment; is that
22 right?

23 MS. BALLARD: There was no amendment.

24 MS. LIPSCOMB: There was an amended complaint.

25 THE WITNESS: There is an amended complaint.

1 THE COURT: Wait just a second, Mr. Hammer.

2 MS. LIPSCOMB: Let me show you this.

3 MS. BALLARD: Well, give it to me and let me ask
4 him ---

5 MS. LIPSCOMB: It may be the same thing you have.

6 THE COURT: I've got an amendment to --- give me
7 a second so I can ---

8 MS. BALLARD: What's the clocked date on that?

9 THE COURT: June 9th, 2010.

10 MS. BALLARD: That's a different one. Let me
11 borrow your copy.

12 That probably means that the copy I attached to
13 the pretrial brief it's not a current copy.

14 THE COURT: Okay.

15 MS. LIPSCOMB: Your Honor, do you want a copy of
16 this?

17 THE COURT: If you have one, an extra. I might
18 be able to find it buried here in the clerk's file,
19 but I haven't found it yet.

20 MS. BALLARD: I apologize for that error. I
21 didn't realize there was an amended one or at least I
22 couldn't find it in my documents. Did you want me to
23 proceed?

24 THE COURT: Yes, ma'am, go ahead.

25 MS. BALLARD: Thank you, Your Honor.

1 BY MS. BALLARD:

2 Q Mr. Hammer, I am handing you a complaint in the
3 action of 1634 Main L.P. vs. Shirley Hammer, which is
4 case number 2010-CP-40-2889, a complaint clocked in on
5 June 9th, 2010, and I would ask you to refer to
6 paragraph 9.

7 A Yes, ma'am.

8 (Pause.)

9 Q You've read that?

10 A Yes, ma'am.

11 Q All right.

12 A May I keep it in front of me?

13 Q Not while I'm asking you a question, no, sir.

14 Paragraph 9 of the complaint that I just
15 identified for the record says that the general
16 partner has in accordance with the partnership
17 agreement executed an amendment to said agreement
18 prohibiting the sale or transfer of any portion of
19 limited partner's interest when such limited partner
20 has not complied with any reasonable request for
21 payment for repairs, reserve account or any other
22 types of payment permitted under the partnership
23 agreement.

24 Did the limited partner in fact do that?

25 A Who is that? Who signed that document, please,

1 ma'am.

2 Q Well, you just read it. It appears to be signed
3 by the lawyer for 1634.

4 A If you're asking me what the lawyer meant, you
5 would have to ask the lawyer.

6 Q You are the sole member of SH-5 LLC; is that
7 correct it?

8 A That's SH-5 LLC.

9 Q And SH-5 LLC is the general partner of 1634 Main
10 L.P., correct?

11 A That's correct.

12 Q So has the general partner in accordance with the
13 partnership agreement executed an amendment as
14 referred to in paragraph nine of the complaint which
15 you identified for the record? An amendment to the
16 partnership agreement prohibiting the sale or transfer
17 of any portion of any limited partner's interest when
18 such limited partner has not complied with any
19 reasonable request for payment for repairs, reserve
20 account or any other types of payment permitted under
21 the partnership agreement?

22 A I'm having a little trouble with the wording.

23 THE COURT: So the question is ---

24 THE WITNESS: And you used the word executed
25 amendment. I don't know what Ms. Lipscomb had in mind

1 when she put that in.

2 I considered --- I understood that to be a part
3 of the original agreement.

4 THE COURT: All right, sir. The question is
5 this. Did SH-5 LLC execute an amendment to the
6 partnership agreement? That's the question.

7 THE WITNESS: No, and let me explain if I may.

8 THE COURT: All right.

9 THE WITNESS: There was no amendment executed.
10 The agreement itself, as I think I testified before,
11 provided for that.

12 BY MS. BALLARD:

13 Q Now, who answered that question? Was that SH-5?
14 Was that Howard Hammer or was that somebody else?
15 Whose answer was that?

16 A Howard Hammer sitting here on the stand.

17 Q Okay. That was not an answer on behalf of SH-5?

18 A From a legal standpoint, I don't know whether it
19 was or it wasn't.

20 Q Was it an answer on behalf of 1634 Main L.P.?

21 A You're asking me as a limited partner?

22 Q I'm asking what hat you were wearing when you
23 answered that question.

24 A You know, I don't know. Legally, I don't know
25 the legal answer to that. If you want me to give you

1 the --- give you what I think, I'm glad to do that.

2 Q I think you've had your opportunity, Mr. Hammer.

3 THE COURT: Let's not deal with the asides and
4 comments. Your role, Ms. Ballard, is to ask
5 questions.

6 MS. BALLARD: Yes, sir.

7 THE COURT: So don't make comments about that.

8 MS. BALLARD: So ---

9 THE COURT: The question is --- and I don't know
10 how it's relevant.

11 MS. BALLARD: Yes, sir.

12 THE COURT: How he has answered a question. He's
13 sworn in as Howard Hammer to tell the truth. Now,
14 upon whom his answers may be binding I think is a
15 legal question, and that would be for me to decide.

16 MS. BALLARD: Okay.

17 THE COURT: Okay.

18 BY MS. BALLARD:

19 Q Mr. Hammer, you cannot produce any amendments to
20 the partnership agreement that's referred to in
21 paragraph nine of this complaint, can you?

22 A Ms. Ballard, I just told you that there was no
23 amendment. That that --- may I explain my answer
24 again? Apparently it was not --- I didn't make myself
25 clear before. I said I don't know why that was put

1 in. I did not put it in. I said that it was part of
2 the original agreement and was not necessary. It was
3 not necessary for there to be an amendment.

4 THE COURT: I think the logical question would
5 be, Ms. Ballard, if I may ask it, is where is it in
6 the agreement. So somebody ask that question, please.

7 MS. BALLARD: All right.

8 THE COURT: I hate to be ---

9 THE WITNESS: Your Honor, I have no problem. I
10 have ---

11 THE COURT: Mr. Hammer, don't interrupt me.

12 THE WITNESS: I'm sorry.

13 THE COURT: Okay. I hate to be pushy, but most
14 questions have answers. There is a lot of effort on
15 the part of some to determine the purpose behind the
16 question. You answer the question. So, there is no
17 amendment. Is that correct, sir? Is there an
18 amendment?.

19 THE WITNESS: I am aware of no amendment.

20 THE COURT: Okay. The answer you gave is that
21 the provisions allowing something to be done were in
22 the agreement itself. The next logical question would
23 be where. So somebody ask that at some point. Not
24 right now.

25 MS. BALLARD: All right, sir.

1 THE COURT: But every time Ms. Ballard is asking
2 Mr. Hammer a question, it becomes a personal battle.
3 I don't want that anymore, okay. You ask the
4 questions. When he answers it, you may not argue with
5 him. That's called being argumentative.

6 MS. BALLARD: I did not know I was. I'm sorry.

7 THE COURT: And when you receive a question, you
8 answer it, period. If you don't know the answer, you
9 say, I don't know. So let's go from there, because
10 it's in the middle of the afternoon on the second day,
11 and this is getting to be tiresome.

12 Okay. Go ahead.

13 BY MS. BALLARD:

14 Q Is Danville Business Advisors an agent of 1634
15 Main Street L.P.?

16 A I don't know. I don't know the legal answer to
17 that question, either.

18 Q All right. Let me show you the document that's
19 been introduced into evidence as 1634 Main Exhibit No.
20 2 and ask if you can look at that?

21 A Yes, ma'am.

22 Q Does that document refer to Danville Business
23 Advisors as an agent of 1634 Main L.P.?

24 A May I ask you to help me? Which portion are you
25 referring to? I don't want us to have to go through

1 and read the whole document. If you would point out
2 the portion that you have in mind that you believe
3 that that is the case.

4 Q I'm just asking if this document refers to ---

5 A I wouldn't know.

6 Q --- Danville Business Advisors?

7 A I don't know without reading the whole document.
8 I can't tell you. I haven't memorized it. I don't
9 know without reading the whole document. If you would
10 point to the portion that ---

11 THE COURT: Your question again, please?

12 MS. BALLARD: My question is: does that
13 agreement, that 1634 L.P. introduced into evidence,
14 does it refer to Danville Business Advisors as an
15 agency of 1634 L.P.?

16 THE WITNESS: It refers to Danville as a leasing
17 agency. I see that. If there's anything else, if
18 want me to read through the entire document, I'll be
19 glad to do so, if the judge will allow us time to do
20 that. If you can point me to something.

21 THE COURT: Paragraph 1 says, "Owner hereby
22 appoints agent as the sole and exclusive managing and
23 leasing agent of the owner's premises. Danville
24 Business Advisors, herein after as agent and 1634 Main
25 L.P. is herein after owner." So you can read the

1 document, Mr. Hammer.

2 THE WITNESS: Sole and exclusive ---

3 THE COURT: We'll take five minutes. You can
4 read the entire document.

5 MS. BALLARD: Thank you, Your Honor.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: Okay. You can continue.

8 THE WITNESS: Thank you, Your Honor. May I ---

9 THE COURT: No. You can restate the question and
10 go from there.

11 BY MS. BALLARD:

12 Q Referring to Exhibit No. 2, introduced into
13 evidence by 1634 Main L.P., is Danville Business
14 Advisors LLC an agent of 1634 Main L.P.?

15 A For the limited purposes expressed in the
16 agreement, that is, as a sole and exclusive managing
17 and leasing agent and the duties set forth under that,
18 they would --- I assume under the law, would be
19 considered an agent for those purposes and those
20 purposes only. The agreement is entitled an
21 executive --- exclusive leasing and management
22 agreement, although it's listed as agent, but an agent
23 is defined as the sole and exclusive managing and
24 leasing agent, so for the purposes of managing and
25 leasing, they are an agent for those purposes and the

1 definition of managing and leasing is contained in the
2 agreement. Does that answer your question?

3 THE COURT: Next question.

4 BY MS. BALLARD:

5 Q And Paragraph 5 of 1634 L.P.'s Exhibit 2 gives
6 the agent, Danville Business Advisors, general
7 authority and powers that may be necessary; is that
8 correct?

9 THE COURT: To carry out the intent of the
10 agreement.

11 MS.. BALLARD: Yes, sir.

12 BY MS. BALLARD:

13 Q Yes, to carry out the intent of the agreement.

14 A To carry out the intent of the agreement and the
15 intent of that would be to give him powers as agent,
16 which is limited by the type of agency that he ---
17 that --- the type of agent that he is, and that is the
18 sole and exclusive managing and leasing agent, just as
19 a truck driver has a right, as an agent to drive your
20 truck, he doesn't have a right to commit to make a
21 contract for you or to bind you by his statement in
22 connection with the driving of his truck.

23 Q And did SH-5 LLC hire Danville Business
24 Associates?

25 A There is an error in this document, and I don't

1 know whether it makes the document --- negates the
2 legality of the document completely. I'm glad you
3 pointed it out to me.

4 Q My question is ---

5 A SH-5 did not --- and apparently it is not a ---
6 technically, therefore the agreement is between --- it
7 says managing partner Howard Hammer, Howard Hammer is
8 only the managing tax partner. He's not the managing
9 partner, and it was signed by Howard Hammer. To the
10 extent that you consider that signature SH-5 and
11 that's what was intended between the parties, then the
12 agreement is valid.

13 To the extent that's not, this is an invalid
14 agreement.

15 THE COURT: And what was the question again?

16 MS. BALLARD: My question was: was this
17 agreement --- was Danville Business Advisors hired by
18 SH-5?

19 THE WITNESS: No.

20 THE COURT: Answer that question.

21 THE WITNESS: The answer --- according to the
22 agreement, it does not have SH-5 on it.

23 BY MS. BALLARD:

24 Q I wasn't asking about the agreement. I was
25 asking if SH-5 had hired Danville Business Advisors to

1 perform any services on behalf of 1634 Main L.P.?

2 A There is no agreement between SH-5 and Danville
3 Business Associates according --- and the reason I say
4 that is looking at the signature. SH-5 didn't sign
5 it, so SH-5 did not technically have an agreement with
6 them.

7 Q In fact, Mr. Hammer, you act as the general
8 partner on behalf of 1634 Main L.P. on a regular
9 basis, do you not?

10 A SH-5 acts as the general partner. I am the sole
11 member of SH-5. There is a distinction.

12 Q Well, you don't recognize that distinction, do
13 you?

14 A I'm not sure whether you mean whether I
15 understand it or what.

16 THE COURT: It doesn't matter what you think she
17 means. You may answer the question. Do you ignore
18 that distinction, yes or no or you don't know.

19 BY MS. BALLARD:

20 Q Do ---

21 A No, I don't ignore that distinction.

22 Q Well, for purposes of dealing with the money that
23 is held by 1634 Main L.P., you don't make a
24 distinction, do you?

25 A For purposes of dealing with the money, do I make

1 a distinction between myself and SH-5?

2 Q No. I said you don't, do you?

3 A Yes, I do. Any of the money that's being held is
4 not my money. It's the --- it's SH-5. It's the
5 L.P.'s money, which is being held by the L.P. through
6 SH-5 or whoever SH-5 delegates it appropriately to and
7 whether they have to have a written contract to do
8 that or not, I'm not sure.

9 Q And let me show you Defendant's Exhibit No. 27,
10 Mr. Hammer.

11 THE COURT: Is this Shirley Hammer's exhibit?

12 MS. BALLARD: Yes, sir.

13 THE COURT: Okay.

14 BY MS. BALLARD:

15 Q That, in fact, is a collection of checks drawn on
16 the account of 1634 Main L.P., signed by Howard
17 Hammer, not by SH-5; is that correct?

18 A I don't recognize this first check as a signature
19 by Howard Hammer.

20 Q You deny that's your signature on check number
21 1864 contained within Defendant's Exhibit No. 27?

22 A Yes, that's not my signature.

23 Q Okay. What about the check number 1890, which is
24 page two of Exhibit 27? Is that not your signature?

25 A That's not my signature.

1 Q The back of the check is your signature, is it
2 not?

3 A The back of the check is my signature.

4 Q Okay. And the back of the check of the prior
5 check, check number 1864, that's your handwriting on
6 the back of it, is it not?

7 A No. It's not.

8 Q The account number that's there is actually an
9 account that is held by you individually, is it not?

10 A No, not that I recognize. I think it was an
11 account held by me and Shirley at one time.

12 Q That was a personal account, correct, for the
13 maintenance and management of 320 St. James?

14 A That was an account that Shirley and I had for
15 320 St. James, I believe.

16 Q Okay.

17 A It was in both of our names, a joint account.

18 Q All right. So check number 1572 that's written
19 to Howard Hammer from 1634 Main L.P. is signed by who?
20 That's the third page of Exhibit No. 27.

21 A Something --- I don't --- I can't read the
22 signature. Something with middle initial O.

23 Q You don't know who that is?

24 A I do not know whose signature that is, no, ma'am.

25 Q Did you receive those funds \$59,062.50 on check

1 number 1572, drawn on the checking account of 1634
2 Main L.P. on or about December 28th, 2005?

3 A Do you have the endorsement to that check?

4 Q I asked if you received the funds that were
5 represented?

6 A I don't recall. That's why I'm asking whether
7 you have the endorsement.

8 Q Do you deny having received the funds that are
9 reflected in check number 1572?

10 A I ---

11 Q Dated 12/28/05 payable to Howard Hammer on the
12 account of 1634 Main?

13 A I can neither confirm nor deny. I don't recall.
14 If you had the enforcement, I would be able to
15 probably tell you, just as I've told you on the other
16 one. I have no recollection of whether I received
17 them or I didn't receive them. I do not recognize the
18 handwriting, and I cannot tell you.

19 Q And, in fact, the fourth page of Exhibit No. 27
20 actually shows a cashier's check payable to Howard
21 Hammer, correct?

22 A That's correct.

23 Q And that is drawn on the 1634 Main account, or
24 was it paid for with the 1634 funds from the 1634 Main
25 account?

1 A Could you help me and direct me to where it might
2 show where it was?

3 Q I'm just asking you a question, Mr. Hammer.

4 A I don't see anything that says 1634 Main. I may
5 be missing something looking over it, so I don't know.

6 Q Okay. Let me show you Defendant's Exhibit No.
7 28, which are two promissory notes that Howard Hammer
8 executed in favor of 1634 Main L.P. Do you recognize
9 those?

10 A Yes, I do recognize that.

11 Q And that first one, page one is a note executed
12 by Howard Hammer, individually, borrowing \$20,000 from
13 1634 Main L.P. with the approval of Howard Hammer as
14 managing member; is that correct?

15 A It says managing member. It should --- that's
16 incorrect, but that's an in --- it's what it says,
17 yes, ma'am. That is a ministerial error on the part
18 of where it was put or what was put there.

19 Q Whose error is it?

20 A Whoever typed this up and my error in not
21 catching it.

22 Q All right. Let's ask the same question about
23 page two of Exhibit 28, which is a note dated October
24 30th, 2009, where you, Howard Hammer individually,
25 borrowed the amount of \$7,500 from 1634 Main and

1 signed as managing member of 1634 Main; is that
2 correct?

3 A Again, that's correct, but it was a ministerial
4 error, and I didn't catch it.

5 Q Okay. And you would agree with me, would you
6 not, that it's a breach of fiduciary duty for the
7 managing member to loan money to a limited partner
8 without advising all the other limited partners that
9 it's being done?

10 A I don't know what that is or is not. I have
11 spoken with the accountant about that. If you'd like
12 an explanation, I'd be glad to discuss it with you.

13 MS. LIPSCOMB: Excuse me, I'd object just prior
14 to his answer in that there is no breach of fiduciary
15 duty cause of auction, and again, we would object on
16 that basis.

17 MS. BALLARD: And my question, Your Honor, is
18 that it relates to the abuse of process.

19 THE COURT: Objection is overruled.

20 MS. BALLARD: Thank you, Your Honor.

21 BY MS. BALLARD:

22 Q So you don't know the answer to that question;
23 is that right?

24 A I know based on my discussions with my accountant
25 that it was not.

1 Q Okay. Now, the limited partnership agreement
2 makes you, Howard Hammer individually, the tax
3 partner, does it not?

4 A It does. I believe it says managing tax partner,
5 and I believe that's where some confusion has come in.

6 Q It's called, if you look at paragraph 16.2 of
7 Exhibit No. 11, you were called the tax matters
8 partner, you, Howard Hammer, correct?

9 A Tax matters partner, yes.

10 Q But the tax matters partner is you individually
11 or you in your capacity as a limited partner in 1634
12 Main?

13 A It says Howard Hammer, a limited partner.

14 Q All right. So Howard Hammer in his individual
15 capacity is not the tax matters partner of 1634 Main;
16 is that correct?

17 A According to this agreement.

18 Q According to this agreement, correct?

19 A It's Howard Hammer limited --- as a limited
20 partner. Whether a limited partner acts in an
21 individual capacity separate from his capacity as a
22 limited partner, I do not know the legal answer to
23 that. I think it's --- I don't know.

24 Q Mr. Hammer, you've loaned yourself money from a
25 limited partnership, haven't you?

1 A You have two notes that show that I did.

2 Q Okay.

3 A Excuse me, not that I did myself. It shows that
4 the partnership loaned me those monies.

5 Q With you acting as general partner?

6 A The notes show otherwise, but I was acting as
7 general partner. The notes are inaccurate and
8 incorrect.

9 Q Now, Mr. Hammer, you maintain an office at a
10 premises of 1634 Main, do you not?

11 A I maintain a small office there. I don't use the
12 entire portion of the space that is there anymore.

13 Q And you have, in fact, maintained an office at
14 1634 Main since --- on an uninterrupted basis, since
15 at least 2005, correct?

16 A In --- to various degrees, yes.

17 Q In fact, a number of those years, you have paid
18 zero rent to the limited partnership for your
19 occupancy at those premises; is that correct?

20 A I don't know whether that's correct or not.

21 Q And who is the tenant of 1634 Main L.P.? Is that
22 Howard Hammer individually, Howard Hammer in his
23 capacity as a limited partnership or as a limited
24 partner or Howard Hammer as sole member of SH-5 LLC?

25 A Who is the tenant of 1634 Main?

1 Q That's what I'm asking.

2 A It is a --- initially, the agreement was between
3 Howard Hammer PA, Attorney at Law, a professional
4 association and the --- and 1634 Main. That occurred
5 before Mr. Turbeville became involved.

6 Q All right. You've answered the question of who
7 was the initial tenant. My question is who has the
8 tenant been that's been occupying the space that you
9 said you were occupying since 2005 forward?

10 A Well, maybe I misspoke when I said I was
11 occupying it. I personally am --- as a person am in
12 there. In terms of the legal occupancy, I don't know
13 there's been any other lease except the lease between
14 Howard Hammer, Attorney at Law PA, and the 1634 Main.
15 That's the only lease that I'm aware of. Whether
16 that --- what the terms of that lease are and when
17 that lease expired, I don't know.

18 Q If, in fact, the records of Danville Business
19 Advisors concerning the rent that's been paid to 1634
20 Main L.P. reflects the Hammer law firm as the tenant,
21 would you disagree with that?

22 A There is no such thing as the Hammer law firm.

23 Q So you would disagree with the accuracy of the
24 documents provided by Danville Business Advisors on
25 behalf of 1634 Main L.P.?

1 A I would disagree with the categorization that
2 it's Hammer law firm.

3 Q Okay. Who owes the money for the occupancy that
4 you the person have made of that building since 2005?

5 A Ultimately, as a legal matter, I would say Howard
6 Hammer, Attorney at Law owes it. Ultimately, I would
7 say that Howard Hammer for whatever portion that he
8 would have rented would owe it to Howard Hammer,
9 Attorney at Law P.A., who would then owe it to the
10 L.P.

11 Q So, in fact, the ultimate responsibility for the
12 rent that has not been paid to 1634 Main for whatever
13 period of time that it has not been paid rests with
14 you, correct?

15 A Not legally.

16 Q You're not legally responsible for paying the
17 rent on the facility that you occupy at 1634 Main?

18 A Howard Hammer --- from a legal standpoint and I'm
19 talking purely legal standpoint and I think that's
20 what you're asking me, the contract is between Howard
21 Hammer, Attorney at Law, P.A. and the 1634 Main, so
22 from the legal standpoint, it would be Howard Hammer,
23 Attorney at Law, P.A. would be the entity that would
24 have to be, I assume, brought into court in order to
25 obtain any rents that may be due.

1 Q All right. Let me let you look at Exhibit No.
2 26 that's already been introduced into evidence.

3 THE COURT: Just to be clear, this is Shirley
4 Hammer's exhibit?

5 MS. BALLARD: I'm sorry, Shirley's Exhibit No.
6 26.

7 BY MS. BALLARD:

8 Q Can you tell me or can you show me anywhere in
9 Shirley's Exhibit No. 26 whether you in your
10 individual capacity or you in your capacity as a
11 limited partner of 1634 Main L.P. or you in your
12 capacity as a sole member of SH-5 have paid any funds
13 to the L.P. for the occupancy of the building at 1634
14 Main Street?

15 MS. LIPSCOMB: Your Honor, I object. I believe
16 this may have be referencing the wrong exhibit. This
17 is just a check register. I don't think it shows ---

18 THE COURT: These are payments out, it doesn't
19 show payments in, does it, Ms. Ballard?

20 MS. BALLARD: The first page shows rental income
21 for 2005.

22 THE COURT: Well, that's not what mine shows.

23 MS. BALLARD: Yours doesn't have that?

24 THE COURT: No.

25 MS. LIPSCOMB: Nor mine.

1 THE WITNESS: Nor mine.

2 MS. BALLARD: We'll mark it as 26-B.

3 THE COURT: Show that to the witness and to
4 Ms. Lipscomb and can some foundation be laid at least
5 for me as to who prepared all this?

6 MS. BALLARD: Yes, sir.

7 BY MS. BALLARD:

8 Q Do you recognize this document, Mr. Hammer? The
9 document I've marked as 26-B?

10 THE WITNESS: Before answering that, Your Honor,
11 in my capacity as pro se attorney, I am objecting to
12 this document.

13 THE COURT: The basis?

14 THE WITNESS: It hasn't been identified and it
15 hasn't been properly identified.

16 THE COURT: Identified by who?

17 THE WITNESS: By whoever prepared it.

18 MS. BALLARD: Your Honor, I'm asking him to
19 identify it.

20 THE COURT: All right. You may answer that
21 particular question, Mr. Hammer. Can you identify the
22 document?

23 THE WITNESS: I've seen the document before. I
24 think I saw it at Mr. --- at Mr. Ackerman's
25 deposition. I believe I objected to it for the same

1 reason that I'm objecting to it now.

2 BY MS. BALLARD:

3 Q You recognize this document as one that was
4 prepared by Marion Turbeville in his capacity as an
5 agent of Danville Business Advisors in their capacity
6 as leasing agent for 1634 Main L.P., correct?

7 A Would you restate that?

8 Q You recognize this, do you not, as a document
9 prepared by Marion Turbeville in his capacity as an
10 agent of Danville Business Advisors in its capacity as
11 leasing agent for 1634 Main L.P.?

12 A I can't answer that yes because I don't --- you
13 say Marion Turbeville. I have no personal knowledge
14 that Marion prepared this by himself or who prepared
15 this.

16 Q Do you deny that this is an official business
17 record of 1634 Main L.P.?

18 A I denied it at the deposition, that I considered
19 this to be an official record of 1634 Main L.P. and
20 objected to it on that ground because its had not been
21 properly identified.

22 Q That was not my question, Mr. Hammer. My
23 question was do you deny that the document that I have
24 marked as 26-B is an official record of transactions
25 on behalf of 1634 Main L.P.?

1 A I have no way to affirm it, so I guess I would
2 have to deny it. I don't know the information that's
3 in here so I have no way to affirm the accuracy of it.
4 It goes back to 2005. I would have no recollection
5 and so therefore, I'm sorry, I would have to deny it.

6 Q Okay. But you won't deny that you, Howard
7 Hammer, have not paid any rent to 1634 for the last
8 several years, correct?

9 A No, that's ---

10 MS. BALLARD: Let me have that back since I
11 haven't introduced it.

12 THE COURT: 26-B is still for ID at this time?

13 MS. BALLARD: Yes, sir. He did not identify it.

14 THE COURT: Go ahead, Mr. Hammer.

15 MS. BALLARD: She's marking it, Your Honor.

16 (WHEREUPON, Defendant's Exhibit No. 26-B was
17 marked for identification only.)

18 BY MS. BALLARD:

19 Q Do you deny, Mr. Hammer, that you have not paid
20 any rent to 1634 Main L.P. for the last several years?

21 A 1634 --- Howard Hammer, Attorney at Law, has paid
22 rent to 1634 Main L.P.

23 Q When?

24 A I can't give you the exact date.

25 Q Well, you agree that you testified under oath in

1 family court that you Howard Hammer, individually, owe
2 \$50,000 to 1634 Main for unpaid rent, correct?

3 A I don't recall what the testimony was. Do you
4 have a copy of that testimony?

5 Q Do you deny that you testified in family court
6 that you, Howard Hammer, owed the limited partnership
7 \$50,000 for unpaid rental?

8 A Ms. Ballard, I don't recall what I testified to.

9 THE COURT: All right.

10 THE WITNESS: Or how the question was asked.

11 THE COURT: You can --- next question.

12 MS. BALLARD: Thank you, Your Honor.

13 BY MS. BALLARD:

14 Q Now, Mr. Hammer, you talked about this series of
15 transactions that somehow occurred in the year 2005
16 whereby Shirley Hammerer's 52.75 interest in the dirt
17 at 1634 Main Street somehow became a partnership
18 interest in 1634 Main L.P. Do you recall that
19 testimony?

20 A Yes. But it wasn't somehow. I gave an explicit
21 explanation of how.

22 Q And you have zero documents to support your
23 testimony; is that correct?

24 A No, I have documents from the accountant to
25 support the testimony and Mrs. Hammer's

1 acknowledgment.

2 Q And, in fact, Mr. Ackerman testified that he had
3 no source documents whatsoever. He testified that he
4 took your word for every number that was on the tax
5 returns for 1634 Main L.P., correct?

6 A No, that's not correct. Mr. Ackerman testified
7 that he showed the documents to Mrs. Hammer. Mrs.
8 Hammer saw the documents, both of them, that Mrs.
9 Hammer had signed a document under oath that she read
10 the tax returns, which showed that she owed
11 56.8 percent and that she verified it, by her
12 signature, that the amount shown in the tax returns at
13 56.8 percent was accurate, correct. Under penalty of
14 perjury she did that.

15 Q And I appreciate that, Mr. Hammer. That he was
16 helpful, but that wasn't my question. You, in fact,
17 recall that Mr. Ackerman testified that the numbers
18 that appear on the tax returns for 1634 Main L.P., he
19 has no source documents for whatsoever. That he
20 simply put down the numbers that you, Howard Hammer,
21 gave to him?

22 A No, I don't recall that as his testimony. If I
23 stand to be corrected --- no, but I don't recall that
24 as the whole of his testimony.

25 I recall it quite differently. I recall that he

1 had gotten some back ups. I recall that he had
2 conversations with a tax attorney. I recall that he
3 had gotten information from me additionally. I think
4 I recall that he said he --- that some of the
5 information may have come from me and some of it may
6 have come from Mr. Turbeville.

7 Q You'll defer to the transcript, will you not?

8 A Ma'am?

9 Q You'll defer to the accuracy of his testimony
10 based on the transcript?

11 A Of course. That's what I'm saying, but I don't
12 recall what was in the testimony.

13 Q Thank you, Mr. Hammer. So I was right. There
14 are no documents that exist that reflect a change in
15 ownership interest occurring other than the tax
16 returns that you say evidenced something that has
17 occurred during the year 2005. You don't have any
18 documents that show it occurring, do you?

19 A That's incorrect. Mrs. Hammer signed the
20 documents in which she acknowledged and verified that
21 it had occurred. She signed it under oath.

22 Q Have you produced that document to me in
23 discovery, Mr. Hammer?

24 A That document was produced by the accountant at
25 his deposition. I didn't have that document.

1 Q The document you're referring to refers to Mrs.
2 Hammer's personal tax returns. Those are not part of
3 this record. I asked you ---

4 A Excuse me, ma'am. They don't refer to her
5 personal tax returns. They refer to our joint tax
6 returns to which was attached the K-1 forms or the ---
7 I don't remember what he called it, but he explained
8 that it was the calculation for what Mrs. Hammer had,
9 the 56.8 percent.

10 Q All right. So ---

11 A And again, I defer to his testimony. I believe
12 you'll find it in the cross-examination of my ---
13 of my --- in my cross-examination, and I went through
14 it several times because I didn't quite understand it.
15 I believe he said over and over again that she had
16 signed two documents in two separate years indicating
17 --- stating that under penalty of perjury, she had
18 recognized --- she had read the tax returns, that she
19 had recognized that the 56.8 percent was hers and
20 verified that by her signature under oath on the
21 document that was attached to the Ackerman deposition.

22 Q There is no deed from Shirley Hammer deeding her
23 52.75 interest in the dirt at 1634 Main into 1634 Main
24 L.P., is there?

25 A No, Mrs. Hammer has not completed --- I said that

1 before. Mrs. Hammer has not completed her portion of
2 the obligation. She ---

3 Q But you instructed ---

4 A She is in breach --- she is in breach of her
5 portion obligation, if that's what you're asking.

6 Q But you've instructed ---

7 THE COURT: Wait just a second. Last time. Let
8 him finish.

9 MS. BALLARD: Yes, sir.

10 THE COURT: And the answer to the question is,
11 there is no deed, correct?

12 MS. BALLARD: Correct.

13 THE WITNESS: There is no deed, correct.

14 THE COURT: Next question.

15 BY MS. BALLARD:

16 Q In fact, despite that you instructed Mr. Ackerman
17 to indicate on the 2005 tax returns for 1634 Main that
18 Mrs. Hammer's interest in 1634 Main had changed from
19 8 percent to 56.8 percent, correct?

20 A Not despite that, no. May I explain?

21 You used the word despite that. Despite is not
22 the correct description. We had an understanding as
23 to what would happen. Mrs. Hammer and I were married
24 at the time.

25 I didn't go about cross-examining her and asking

1 her whether she had gotten Allen Medlin or whoever was
2 supposed to do that for her whether that was done. I
3 came to learn that, I think at the time of her
4 deposition that it hadn't been done.

5 It dawned on me that it hadn't been done. I
6 didn't go down to the courthouse to check it out. I
7 had always understood that she would have --- that she
8 would have gone --- that she would have gone about her
9 obligation, and have now learned that she has not.

10 Now, some action will have to be taken in order
11 to get her to do that.

12 Q And, in fact, Mr. Hammer, you never bothered to
13 look because you knew the deed did not exist, did you?

14 A No, that's absolutely not true because she was my
15 wife and because I loved her and because I trusted
16 her, I didn't bother to look, and there was no need to
17 look.

18 Q So in fact, when you and Mrs. Hammer got divorced
19 in 2008 or 2009, whichever it was, I don't recall.
20 When you got divorced, there would have been no reason
21 to transfer any ownership referenced to 1634 Main, the
22 dirt, or 1634 Main L.P. because it had already been
23 established by the tax returns that she owned a 56.8 #
24 percent interest, correct?

25 A No. That would have been --- it would have been

1 her obligation to --- a contract, as you know, has two
2 obligations --- has two sides to it. One party
3 performs. The other party would perform, so no, the
4 answer is she had not performed and she still would
5 have had an obligation to do so.

6 Q Let's go through Exhibit No. 15, if we could,
7 Mr. Hammer?

8 THE COURT: Shirley's Exhibit 15?

9 MS. BALLARD: Yes, Shirley's Exhibit No. 15. I
10 believe there's just No. 1 and 2 are the exhibits that
11 have been introduced into evidence for 1634.

12 THE COURT: Sixteen --- excuse me?

13 MS. BALLARD: Exhibit No. 15.

14 THE COURT: Mr. Hammer, do you have Exhibit No.
15 15?

16 MS. BALLARD: Yes, sir.

17 THE WITNESS: I am holding it right now, yes.

18 THE COURT: With the civil action cover sheet,
19 and motion cover sheet?

20 THE WITNESS: On mine it says Shirley Hammer vs.
21 Howard Hammer motion and order.

22 THE COURT: That's it.

23 MS. BALLARD: The first document is ---

24 MS. LIPSCOMB: I'm looking for No. 15?

25 MS. BALLARD: I gave it to you.

1 MS. LIPSCOMB: I'm sure you did, I'm just ---

2 MS. BALLARD: Okay.

3 May I proceed, Your Honor?

4 THE COURT: Do you have it Ms. Lipscomb?

5 MS. LIPSCOMB: No, but I'll find it.

6 BY MS. BALLARD:

7 Q All right. The first order that is contained in
8 Exhibit 15, which was introduced without objection is
9 an order clocked in on September 29th, 2010, in Hammer
10 vs. Hammer in the family court matter. Do you see
11 that, Mr. Hammer?

12 A I surely do.

13 Q If you will, look with me on page 8 of that
14 order, Paragraph 3.

15 This is an order that in part requires the party
16 to consummate an earlier agreement whereby, among
17 other things, Mrs. Hammer transferred her individual
18 interest in the dirt located at 1634 Main L.P. to you,
19 correct?

20 A Mrs. Hammer never transferred her interest in the
21 dirt to me.

22 Q That wasn't my question, Mr. Hammer.

23 A That's what you said, whereby Mrs. Hammer ---
24 this was in agreement whereby Mrs. Hammer affirmed
25 that Mrs. Hammer transferred the dirt to you.

1 Q Do you see Paragraph 3? For some reason there is
2 no paragraph two. Do you see Paragraph 3 on page 8?

3 A I sure do.

4 Q Okay. It says on the one, two, three, fourth
5 line that Ms. Hammer is ordered to transfer, Mrs.
6 Hammer as the plaintiff, you're the defendant, in your
7 individual capacity. Mrs. Hammer is supposed to
8 transfer her interest in the law office building and
9 related entity to you, correct?

10 A That's what it says.

11 Q Okay. This order was filed in 2010, correct?

12 A That is correct.

13 Q So if, in fact, the magic that you talked about
14 earlier actually occurred in 2005, Mrs. Hammer would
15 not own any interest in the dirt because it would have
16 already been transferred to the partnership in 2005,
17 correct?

18 A It was for her to transfer her interest in the
19 law building and related entity. I understood that to
20 be the L.P., which is what I understood at the time we
21 entered into the original agreement that this refers
22 to, and I believe if you go back and look at the
23 original agreement, this does not state --- this is a
24 --- there was an original order. It was a partial
25 settlement of outstanding matters, I believe is the

1 way it's listed, and this document is --- does not
2 contain the same language as the partial settlement of
3 outstanding matters and it has been our --- my
4 lawyer's position has been when she filed the appeal
5 was that one judge could not ---

6 Q Mr. Hammer, I'm not interested in what your
7 lawyer's position was. I asked you a question about
8 what Paragraph 3 on page 8 said and you have not
9 answered that question.

10 A May I explain it please, ma'am? It was my
11 lawyer's position that this was not a legal and
12 legitimate paragraph because this paragraph tried to
13 change a previous order of a previous judge.

14 Q Well, let's look at a previous order of a
15 previous judge, also included in Exhibit 18, the next
16 order which is called the divorce decree dated
17 May 12th, 2008, in the same case signed by Dorothy
18 Mobley Jones filed March 12th, 2008?

19 THE COURT: May 12th.

20 MS. BALLARD: I'm sorry, May 12th, 2008. Do you
21 see that, Mr. Hammer?

22 A Yes.

23 Q You see the order behind that also clocked in
24 May 12th, 2008, which among other things approves a
25 settlement agreement entered into between Shirley

1 Hammer and Howard Hammer. Do you see that?

2 A Yes, those are two separate matters which I think
3 I discussed with you. The divorce decree is separate
4 than the --- than the settlement than the order
5 approving the settlement agreement.

6 Q And behind the third order is the settlement
7 agreement you were referring to, is it not?

8 THE COURT: I'm lost.

9 MS. BALLARD: I'm sorry. There's three orders
10 behind tab 15, Your Honor.

11 THE COURT: I have the order that was clocked in
12 September 29 of 2010.

13 MS. BALLARD: Correct.

14 THE COURT: I have the divorce decree clocked in
15 May 12, 2008.

16 MS. BALLARD: And the one behind that.

17 THE COURT: And I have the order clocked in May
18 12, 2008.

19 MS. BALLARD: And attached to the order that is
20 clocked in May 12, 2008, is a settlement agreement.
21 That is the settlement agreement that Mr. Hammer was
22 referring to.

23 THE COURT: You can continue. I'm with you.

24 MS. BALLARD: Thank you, Your Honor.

25 BY MS. BALLARD:

1 Q The settlement agreement you referred to earlier
2 is, in fact, contained within Exhibit 15, is it not?

3 A The settlement agreement is there, yes, ma'am.

4 Q And, in fact, if you'll look with me on page
5 three of the settlement agreement, which again is part
6 of Exhibit No. 15, you were required as part of the
7 agreement that you entered into to receive from
8 Shirley any interest in the office building which
9 houses Howard Hammer's law office and the accompanying
10 parking lot. I'm reading from Paragraph D(a) and in
11 any business entity related to the building subject to
12 any debt, lean encumbrance, et cetera, et cetera. Do
13 you see that in that agreement?

14 A I certainly do.

15 Q And you entered into an agreement as part of your
16 divorce proceeding that Mrs. Hammer had to transfer to
17 you her interest in the office building that housed
18 your law firm, correct?

19 A First, it was not part of the divorce. It was a
20 separate, complete separate and distinct property
21 settlement agreement. A --- B, it was any interest of
22 either party --- of either parties in the building ---
23 in the office building which houses Howard Hammer's
24 law office and the accompanying parking lot.

25 THE COURT: Is that --- is the office building

1 which houses Howard ---

2 THE WITNESS: 1634.

3 THE COURT: --- is that 1634 Main?

4 MR. HAMMER: 1634 Main, yes, sir.

5 MS. BALLARD: Yes.

6 THE COURT: Okay.

7 THE WITNESS: And any interest of either party in
8 the office building which houses Howard Hammer's law
9 office and the accompanying parking and in any
10 business entity related to this building.

11 At the time that I signed this, it was my
12 understanding that she had --- that neither she nor I
13 had --- it said any interest. She nor I had any
14 interest and the only thing that she was transferring
15 to me was the business entity, that is the 58 percent
16 that she had. I had --- to my knowledge, the --- and
17 this was not my language.

18 Her lawyer put this language in. No one
19 consulted me about it. I read it. It said any
20 interest of either party, knowing that she did not
21 have that interest at the time because I knew that I
22 had given --- that the consideration that she had
23 agreed to had been passed over to her.

24 Knowing that that had been done, I was under the
25 distinct mindset that she had passed her interest over

1 in accord with the agreement and with the contract or
2 with the --- with the agreement that she do that, with
3 the plan, and I'm calling the plan that the tax
4 attorney had, I'm calling it an agreement now for our
5 purposes, so when I read that, in my mind it was,
6 okay, she doesn't have any interest in it. She is
7 giving me her business entity, which is the L.P.

8 THE COURT: So you thought she was giving you the
9 56.8 percent.

10 THE WITNESS: Precisely.

11 THE COURT: All right. That's --- you can
12 continue, Ms. Ballard.

13 MS. BALLARD: Thank you, Your Honor.

14 BY MS. BALLARD:

15 Q All right. You had counsel representing you at
16 that time as it's indicated on page 9, did you not,
17 Hyman Rubin and C. Dixon Lee; is that correct?

18 A No, that's not correct.

19 THE COURT: McLaren.

20 THE WITNESS: Jim McLaren.

21 THE COURT: Not Hyman Rubin.

22 MS. BALLARD: I'm sorry. I'm looking at page
23 nine of the agreement ---

24 BY MS. BALLARD:

25 Q The witnesses, I'm sorry. The witnesses to your

1 signature are Hyman Rubin and Dixon Lee; is that
2 correct.

3 A If that's what it says then that's correct.

4 Q Would you deny that's who witnessed it?

5 A No. I'm not denying that. I don't --- if that's
6 what it says, that's correct.

7 Q And you were represented by Jim McLaren at that
8 time and Dixon Lee; is that correct?

9 A I understood I was being represented by Jim
10 McLaren. Dixon Lee was a partner of his. I guess he
11 came up that day to sign this or he --- this was
12 signed on March 9th, so this was signed --- this
13 agreement was entered into Friday before the divorce
14 hearing.

15 Q Okay. It's your position that there was no
16 reason to enter into an agreement for her to transfer
17 to dirt to you because she supposedly had already done
18 that, correct?

19 A It's my position that my state of mind, based on
20 the information that I had --- unless we had a mutual
21 mistake of fact was that the dirt had already been
22 transferred to the L.P. and that the only thing left
23 for her to transfer to me was the interest that I knew
24 that she had and that she had signed off that she had
25 in the L.P., and she has not done that to this day

1 notwithstanding numerous requests.

2 Q Mr. Hammer, look at Exhibit No. 16. Do you
3 recognize that?

4 A Yes, I do recognize that.

5 Q And that, in fact, is a quitclaim deed executed
6 by Shirley Hammer in favor of Howard Hammer of her
7 interest, which happened to be 52.75 percent interest
8 in dirt located at 1634 Main Street, correct?

9 A That's correct. It's one half of the equation,
10 though. My attorney sent it back saying that this is
11 incorrect; that she was transferring the wrong thing.
12 It twice. McLaren sent it back once and I think
13 Ms. Lipscomb sent it back once.

14 Q Well, let me ask you if Exhibit No. 17 is the
15 document you referred to where your lawyer refused the
16 tender of the deed and partnership interest?

17 MS. LIPSCOMB: May I ask the date?

18 MS. BALLARD: It is December 1, 2010.

19 MS. LIPSCOMB: Thank you.

20 THE COURT: So Ms. Lipscomb at that time was
21 Mr. Hammer's lawyer?

22 MS. BALLARD: Yes, sir.

23 THE COURT: Okay.

24 BY MS. BALLARD:

25 Q Is this the letter you're referring to,

1 Mr. Hammer?

2 A If you give me a chance to read it --- if you
3 would just give me a moment.

4 (Pause.)

5 Yes. That's one of the letters I'm referring to.

6 Q And, in fact, ---

7 A Excuse me. May I finish my answer?

8 Q I thought yes was the answer.

9 A I said --- no. It's not. Excuse me. I'm sorry.
10 I didn't make that clear. This was one of the letters
11 I was referring to.

12 THE COURT: All right, sir. If this is going to
13 be a conversation between the two of you, you can have
14 it somewhere else. This is a question and answer
15 session.

16 MS. BALLARD: Yes, sir.

17 THE COURT: Ms. Ballard, do not comment on his
18 answers.

19 MS. BALLARD: Yes, sir.

20 THE COURT: The answer to the question is yes and
21 you may explain.

22 THE WITNESS: Thank you. Yes. This is one of
23 the letters that was referred to.

24 In connection with this there were several
25 letters. I say several, because I believe Mr. McLaren

1 wrote a letter to the same effect saying that this was
2 improperly done. She refers to in this letter that
3 she has brought a lawsuit to ensure that the
4 requirements of the limited partnership are fully
5 complied with. That was the reason that she brought
6 the lawsuit.

7 Not under any abuse by me. It was to see that
8 that was done and that was a legal --- a legal
9 determination that was made.

10 This letter also refers to other letters having
11 to do with us, a global settlement. In those letters
12 having to do with the global settlement, I offered or
13 my attorney offered for me to withdraw and to drop all
14 of the lawsuits. The lawsuit here in this court. I
15 don't know whether Mrs. Hammer has ever seen this, but
16 the lawsuit in this court, the lawsuit --- the 1634
17 lawsuit, the declaratory judgment action lawsuit, all
18 of the appeals, if Mrs. Hammer would comply with her
19 portion and the question that we had about the custody
20 agreement because of the --- and the judge brought it
21 up. He didn't understand that there were two
22 agreements.

23 You had asked about rescinding an agreement. The
24 rescission was for a custody agreement, not for the
25 1634. There were two agreements. One custody, one

1 1634, the rescission had to do with the 1634, and I
2 believe that we had confused the judge yesterday about
3 that, but I had offered to drop all of those lawsuits
4 if Mrs. Hammer would comply with her obligations under
5 the original proposal even though the original
6 proposal had been pointed out to me as being one that
7 was invalid because of it being against public policy.

8 THE COURT: All right, sir. That's --- you're
9 getting to be not responsive.

10 MS. BALLARD: Thank you, Your Honor.

11 THE COURT: Next question.

12 BY MS. BALLARD:

13 Q Did you authorize Ms. Lipscomb to send a letter
14 that's been introduced into evidence as Shirley
15 Hammer's Exhibit No. 17 on your behalf?

16 A I don't know whether I authorized all the wording
17 in the letter. I authorized her to say that the deed
18 was not sent. Ms. Lipscomb, I guess, explained to him
19 that it was a legitimate lawsuit, and Ms. Lipscomb
20 explained to him, as I see it --- I don't --- this
21 doesn't sound like anything that I would have said or
22 told her, but she said that Mr. Hammer's feelings of
23 concern and/or affection --- may I use this to explain
24 it?

25 Q Mr. Hammer, I don't want you to read the letter

1 into the record. My question was did you authorize
2 Ms. Lipscomb to send this letter?

3 THE COURT: The better question is was
4 Ms. Lipscomb his attorney at the time the letter was
5 sent.

6 MS. BALLARD: All right, sir.

7 BY MS. BALLARD:

8 Q Was Ms. Lipscomb your attorney at the time
9 Shirley Hammer's letter in Exhibit No. 17 was sent?

10 A That's correct.

11 Q Okay. And did you authorize her to send this
12 letter on your behalf?

13 A As far as the deed is concerned, she and I
14 discussed that. I recall, and she sent that back. I
15 do recall a discussion about a global settlement, and
16 I'm sure that I would have asked her to please discuss
17 the global settlement. I'm sure we would have
18 discussed other portions of it. She didn't ask for my
19 authorization on other parts of it. It wasn't deeded.
20 She felt she could get me to agree to whatever the
21 counter --- whatever it was, and I was generally
22 amenable to listening to Ms. Lipscomb, so I guess she
23 was my lawyer, and she was authorized to act for me.
24 Did I authorize every word of that? No, some of it
25 was hers, some of it was things that I had told her.

1 The main thing was to please send the deed back and
2 make these other things clear as to my feelings toward
3 Mrs. Hammer and ---

4 THE COURT: Okay. Next question.

5 BY MS. BALLARD:

6 Q So you refused to accept the deed that was
7 tendered with Shirley Hammer's Exhibits No. 17; is
8 that correct?

9 A It was an improper deed. I couldn't accept
10 something that didn't belong to me.

11 Q So the answer is yes.

12 A The answering is yes, I didn't accept something,
13 a deed that was improper and didn't belong to me.

14 Q Okay. You made reference just a little while ago
15 to your pro se motion that you said we had confused
16 the judge with yesterday. Let me show you a document
17 that's not yet been introduced into evidence and ask
18 if you can identify that?

19 THE COURT: Mark it for ID, please.

20 MS. BALLARD: Would you'll hand it to the court
21 reporter please so she can mark it for ID.

22 (WHEREUPON, Defendant's Exhibit No. 30 was marked
23 for identification only.)

24 THE COURT: By the way, Ms. Lipscomb, the two
25 documents you gave me are mine?

1 MS. LIPSCOMB: Yes, they are, Your Honor.

2 THE COURT: This is number ---

3 MS. BALLARD: Yes, sir. Number 30, yes.

4 THE WITNESS: Is this being marked for ID or is
5 this being marked for ---

6 THE COURT: It's marked for ID. She is asking if
7 you can identify it.

8 THE WITNESS: I can identify it as a court order.
9 Yes, yes, ma'am, I can. I would object to the entry
10 of this court order into the ---

11 THE COURT: That's not the question. The
12 question is whether or not she can identify it.

13 THE WITNESS: Right. Now, acting as attorney, I
14 objects to the introduction of this into the evidence
15 as it has no relevancy at all to the lawsuit.

16 THE COURT: All right, sir.

17 Relevance? Relevance, ma'am?

18 MS. BALLARD: Your Honor, he made reference just
19 a few moments ago to a discussion we had yesterday
20 that he thought had confused Your Honor, so I wanted
21 to introduce the evidence that he opened the door for.

22 THE COURT: Ms. Lipscomb, do you have any
23 objection to this document? I don't remember if I was
24 confused. I know I'm confused about many things in
25 this case, some relevant and some not, but do you have

1 any objection to this? Is this part of a family court
2 proceeding that somebody asked me to take judicial
3 notice of?

4 MS. BALLARD: It is, Your Honor, and I was going
5 to go through that at the end when we present our
6 case.

7 THE COURT: Ms. Lipscomb?

8 MS. LIPSCOMB: My recollection from yesterday is,
9 Your Honor asked Ms. Ballard if the order that they
10 were talking about, and it was my recollection, was
11 the May 8th order. No ---

12 THE COURT: May 12th ---

13 MS. LIPSCOMB: May 8th agreement approving by
14 order dated May 12th, if that was in evidence.
15 Ms. Ballard told you no, and then this morning she
16 recalled it was in that stack of documents, in fact,
17 in evidence.

18 MR. AIKEN: I believe that's Exhibit 18, Judge.
19 I'm sorry, I ---

20 MS. BALLARD: It's Exhibit 15, Your Honor.

21 THE COURT: That's fine. We can find that order.

22 MS. BALLARD: So ---

23 MS. LIPSCOMB: So the objection is as to
24 relevance. Your Honor, I object on relevance. It has
25 nothing to do with this case.

1 THE COURT: Okay. You'll have to build your
2 record so you can question him about it, and I'll have
3 to determine whether or not I'm going to let it come
4 in.

5 Go ahead, Ms. Ballard.

6 BY MS. BALLARD:

7 Q Mr. Hammer, referring to the document that's been
8 marked for identification only as Shirley Hammer's
9 Exhibit No. 30, you said you have seen this before?

10 A Yes.

11 Q And you will agree with me this is a copy of the
12 family court order that was issued in the domestic
13 case between you and Shirley Hammer?

14 A It was a custody --- it is a document relating to
15 a custody matter, which is not --- as I understand it,
16 an issue here.

17 Q And attached to this is a motion filed by you, a
18 one page motion filed by you that says notice of
19 withdrawal, rescission and repudiation of agreement
20 executed on or about June 23rd, 2009; is that correct?

21 A It's a very poorly written, and I apologize for
22 that. I don't know who wrote it. I signed it, but it
23 was a document --- the order had not been --- the
24 custody order had not been signed and entered, and it
25 was my understanding that until an order is signed and

1 entered, a judge could --- a judge --- it is not an
2 order of the court, and so I was repudiating and
3 rescinding my agreement because between the time of
4 June 23rd when we had sat down to try to work out the
5 agreement and late August, Mrs. Hammer had done
6 something in connection with the children or she had
7 expressed to me a different interpretation of the
8 summer visitation than I had on the matter.

9 Q And part of the grounds for your motion, this one
10 page motion that you said was inartfully drafted. I
11 think is that what you said?

12 A It was very inartfully drafted. The only real
13 ground was we did not have a meeting of the minds.
14 Someone added in all types of stuff that I should have
15 caught and should have withdrawn. I didn't mean ---
16 there was no evidence ever presented on any of the
17 other grounds except a meeting of the minds.

18 Q And the order that you're referring to, which is
19 attached two pages later is an order approving
20 settlement agreement entered into evidence --- or
21 clocked in in the family court matter on August 19th
22 2009; is that correct?

23 A Yes, and this was clocked in, I might point out,
24 after the order ending the action had been clocked in.
25 In other words, this action is action --- it says 78,

1 but that's the wrong number.

2 Ms. Lipscomb will have to help me with that
3 number. I believe it's 2871. 2871 was entered.
4 There was an order ending that action. It was over
5 with. It was ended and subsequent to the ending of
6 that action, this order was clocked in.

7 Q And, in fact, the order approving settlement
8 agreement that was clocked in on August 19th, 2009, in
9 fact makes reference to the May 9th, 2008, settlement
10 regarding partial settlement of outstanding issues
11 which had to do with the property settlement
12 agreement, correct?

13 A Could you tell me where it makes reference to it?

14 Q I'll be happy to.

15 A Help me look at that.

16 Q Would you hand it to me? I don't want to lean
17 over you.

18 A You're welcome to lean over. You and I are
19 friends, and you can do that.

20 Q The order dated August --- clocked in
21 August 19th, 2009, on the last paragraph makes
22 reference to the property settlement agreement,
23 correct?

24 A Only to the extent of saying there was one and
25 the issues regarding custody and visitation were to be

1 determined later on.

2 Unfortunately there was also another order that I
3 believe you're aware of that was entered in between
4 this time that said if the matters were not decided by
5 July 30th of 2008, a new action was ordered to be
6 instituted. That new action did not happen.

7 In any event it came about that during a --- for
8 an action to show cause why Mrs. Hammer had not
9 allowed me to see the children for four months. She
10 and her attorneys suggested to try to work this out,
11 and I was amenable to do that because I didn't want to
12 put her through a --- I didn't think a show of cause
13 was good for anybody, let me put it that way.

14 We worked out what I thought was a meeting of the
15 minds on the custody agreement on June 23rd. It was
16 supposed to have been taken --- to have been signed as
17 you know within 30 days --- under the family court
18 order they are supposed to have been signed within 30
19 days. There were things that were supposed to have
20 been done in a subsequent order that was signed on the
21 next day having to do with financial matters within 30
22 days. Those things didn't occur.

23 When the --- after the 30 days passed, Mrs.
24 Hammer and I had a discussion about the meaning of the
25 custody agreement, and it was clear that she had one

1 understand and I had another understanding and that we
2 had not had a meeting of the minds at all and
3 therefore I moved to rescind.

4 MS. BALLARD: Your Honor, based on his answer
5 authenticating the agreement and indicating its
6 relevance, I would offer it into evidence as
7 Defendant's Exhibit 30.

8 THE COURT: Well, he has authenticated it, but I
9 don't know if it's relevant or not. I'll decide
10 later. Does this have anything to do with 1634 L.P.?

11 MS. BALLARD: It does insofar as it refers to the
12 finality of the May 2008 ---

13 THE COURT: All right. I'll consider it, if at
14 all, totally for that reason.

15 MS. LIPSCOMB: Your Honor, just to make sure that
16 I have my objection on the record, I still can't find
17 what page it is that she states that the order
18 mentions of the May --- of the finality.

19 THE COURT: She can find it, I'd like to see it,
20 too, but as far as I'm concerned, I haven't seen any
21 evidence that the 2008 order is not final.

22 Is that an issue before me?

23 THE WITNESS: Yes, sir.

24 MS. BALLARD: I don't think it is, Your Honor.

25 THE COURT: All right. Mr. Hammer, excuse me,

1 Ms. Ballard, is it in the document here, 30 for ID
2 that the order is final?

3 MS. BALLARD: Just the paragraph I referred to
4 that talks about a prior order.

5 THE COURT: Where is it?

6 MS. BALLARD: If you will hand me your copy, I'll
7 show you the language I was referring to.

8 MS. LIPSCOMB: I would like to address it after
9 she does, Your Honor.

10 THE COURT: Yes, ma'am.

11 THE WITNESS: Would Your Honor like for me ---

12 THE COURT: No, sir. I don't want to hear
13 anything right now.

14 THE WITNESS: All right, sir.

15 THE COURT: And I say it --- I say that to keep
16 the record straight because ---

17 THE WITNESS: I understand. Thank you, sir.

18 THE COURT: We're going in a logical order as the
19 rules require.

20 MS. BALLARD: I have folded down the two pages
21 where it makes reference to the May 2008 order and
22 Mr. Hammer's efforts to set that aside, which have
23 been overruled.

24 MS. LIPSCOMB: Now, I object to Ms. ---

25 THE COURT: Now, I don't see ---

1 MS. BALLARD: The first page that's folded down
2 to the footnote.

3 THE COURT: Footnote. Okay.

4 MS. LIPSCOMB: May I see ---

5 MS. BALLARD: And the next is two or three ---

6 THE COURT: Okay. It just says that he --- he
7 alleges the filing by him of an action in the circuit
8 court prior to the entry of the August 19th, 2009
9 order, family court order, in which he challenges the
10 validity of the May 12th, 2008 order in the same way
11 of this court and subject matter jurisdiction. That
12 doesn't reflect that it's a final order. I can make
13 my own mind up about that.

14 MS. BALLARD: Yes, sir. Thank you, Your Honor.

15 THE COURT: Okay.

16 You wanted to say something, sir?

17 THE WITNESS: Would you like for me to stand when
18 I'm addressing the court?

19 THE COURT: You can sit.

20 THE WITNESS: Thank you, sir.

21 THE COURT: However you are more comfortable.

22 THE WITNESS: Whatever is --- I'm comfortable
23 sitting, but I wanted to show the appropriate respect
24 to the court.

25 THE COURT: Sitting is fine.

1 THE WITNESS: Thank you. Thank you, sir.

2 THE COURT: In case the appellate court wonders
3 about that, you're in the witness chair. Of course,
4 you're required by the rules to stand as an attorney,
5 but I'll let you sit because you're a witness right
6 now and I don't want there to be a lot of getting up
7 and down. Go ahead.

8 THE WITNESS: I appreciate that. I guess, maybe
9 Your Honor's last statement has answered it, but
10 again, I'm --- out of an abundance of caution, I ---
11 she said that the order itself related that it was
12 final or whatever it is. I don't see that. All I see
13 on page one is it talks about the order and it sets
14 out that there was an order. It doesn't say anything
15 about the order --- it doesn't characterize the order.
16 It doesn't discuss the order.

17 I'm looking on page one of the order approving
18 settlement agreement dated August 19th at ---

19 THE COURT: I see. These --- 30 for
20 identification doesn't say anything about any family
21 court judge's observation or conclusion that the May
22 12th, 2008 order is final.

23 MS. LIPSCOMB: And, Your Honor, I just wanted to
24 point out that on page two.

25 THE COURT: Which one?

1 MS. LIPSCOMB: Of that same order.

2 THE COURT: Which same order?

3 MS. LIPSCOMB: Wait a minute. On page three of
4 the order approving settlement agreement dated --- I
5 mean, filed August 19th, 2009.

6 THE COURT: Yes, ma'am.

7 MS. LIPSCOMB: On page three, Paragraph 7 talks
8 about --- says I find there remain pending before the
9 court certain other rules to show cause and motions
10 and --- concerning child support and other financial
11 matters, which are not addressed or resolved by this
12 particular agreement.

13 THE COURT: All right. I think that everybody is
14 fighting over a point that doesn't need to be fought
15 over. I'll make the determination of that, but none
16 of this stuff with these family court judges says that
17 anything is filed.

18 MS. BALLARD: Thank you, Your Honor.

19 BY MS. BALLARD:

20 Q Let me refer you back, Mr. Hammer, to Exhibit No.
21 11 and ask if you would refer to paragraph 7.2. That
22 is the limited partnership agreement.

23 THE COURT: Exhibit what?

24 MS. BALLARD: Eleven.

25 MS. LIPSCOMB: Thank you.

1 THE WITNESS: What page is that, please, ma'am?

2 BY MS. BALLARD:

3 Q I don't know what page it is. It's section 7.2.

4 A I'm sorry. I was looking at page numbers. Yes,
5 ma'am.

6 Q You've had occasion to read that before, have you
7 not?

8 A I think I cross-examined Mr. Adams about that.

9 Q Okay. Paragraph 7.2 in fact says that a limited
10 partner is not liable for additional contribution
11 costs, does it's not?

12 A It says additional capital contributions to the
13 capital of the partnership.

14 Q Okay. Let's look at this Paragraph 20.6 of this
15 same agreement. That's on page 17?

16 A And may I explain? We did not consider this to
17 be a capital contribution.

18 Q Let's look at this section 20.6 on page 17 of
19 Exhibit No. 11.

20 A Page 17, 20.6. Okay.

21 Q Doesn't that section say that limited partners
22 have no liability to the partnership, to the other
23 partners or to the creditors of the partnership on
24 account of any deficit balance in the limited
25 partner's capital accounts?

1 A It does, but may I explain that? The intent and
2 the purpose of that had to do with the capital
3 account, which is different than the assessment. The
4 capital account is figured in --- as Mr. Ackerman
5 explained in different ways and it doesn't always
6 include money. Sometimes it includes --- I think he
7 said --- realignment of interest or something of that
8 nature, I believe he said.

9 Q Are you done?

10 A Ma'am?

11 Q Refer to ---

12 A Ma'am, I'm sorry, I didn't hear that. I didn't
13 hear your last question.

14 Q I said, are you done. I didn't want to interrupt
15 you.

16 A Yes, ma'am. Oh, yes, ma'am.

17 Q Let's look at Paragraph 10 then on page five.
18 Are you familiar with that?

19 A Yes. I'm familiar with that.

20 Q All right. And that says that no limited partner
21 shall be required to make any contribution of the
22 capital partnership except to as set forth in this
23 agreement and then it goes on, correct?

24 A Well, if you don't mind reading the whole thing
25 because that --- that so far is correct. Again, that

1 is the capital contribution, which I have related to
2 you on several --- at several points that it's a
3 little different and --- than the assessment.

4 It also goes on to say nor shall any limited
5 partner in his capacity as such be bound by or
6 personally liable for any expense, loss, liability or
7 obligation of the partnership except to the extent of
8 his interest in the partnership.

9 Q And that in fact says that the partnership cannot
10 sue a limited partner for additional funds for any
11 purpose, does it not?

12 A In that paragraph?

13 Q Yes, sir.

14 A Except to the extent of his interest in the
15 partnership and the obligation to return distributions
16 made by him under certain circumstances as required by
17 the act.

18 I'm not sure what you're referring to, where in
19 that limited --- on page 5 that ---

20 Q Doesn't ---

21 A Where on the page five --- that it says anything
22 about lawsuits?

23 Q Doesn't that say that the limited partners
24 obligation for any debts of the partnership is limited
25 to the money that that limited partner has already

1 contributed, if any, to the partnership and therefore
2 they are not liable for any additional payment of
3 funds unless voluntary to the limited partnership?

4 A I'm sorry. You and I must be reading a different
5 paragraph.

6 Q Okay.

7 A The paragraph that I read, limited liability page
8 five; is that correct?

9 Q Yes, sir.

10 A I didn't see it --- mine says no limited partner
11 shall be required to make any contribution to the
12 capital of the partnership, and I explained the
13 capital contribution has a different meaning than
14 assessment and that was the intent of those who
15 entered into the agreement, and I was one of those who
16 entered into the agreement, so I know what the intent
17 was.

18 Q And ---

19 A And --- and --- and it further says --- it
20 further says except as set forth in this agreement nor
21 shall any limited partner in its capacity as such be
22 bound by or personally liable for any expense, loss,
23 liability, or obligation of the partnership, and then
24 it says except to the extent of his interest in the
25 partnership. So in this case, it would be except to

1 the extent of the 56.8 percent for the assessment.

2 Q All right. Is that the same 56.8 percent that
3 Ms. Lipscomb rejected in Exhibit No. 17?

4 A She didn't reject the 56.8 percent. Mrs. Hammer
5 did not make the --- Mrs. Hammer never agreed to send
6 the 56.8 notice to me, to whom it was supposed to be
7 made. Mrs. Hammer sent a deed and an assignment of
8 8 percent.

9 Q Am I correct that 1634 Main L.P. has not brought
10 a lawsuit against Howard Hammer in his capacity as a
11 limited partner?

12 A And that has been explained earlier.

13 Q Am I correct?

14 A Yes, you're correct, and may I explain that?
15 That has been explained earlier. Howard Hammer has
16 agreed to a confession of judgment, and why that
17 hasn't been entered you will have to ask Ms. Lipscomb.

18 Q And, in fact, the limited partnership has not
19 brought suit against David Hammer, has it?

20 A No, and may I explain? He is a child, and I
21 didn't think --- or I don't think Ms. Lipscomb
22 thought, frankly, that it was a good idea do that when
23 the time came for his little 4 percent, whatever his
24 \$6,000 or \$8,000 would be, I would have asked my
25 mother to pay that just as I did when there was a tax

1 burden due to him on account of another piece of
2 property that he had that I went and paid for him.

3 Q And, in fact, you have no documents of any type
4 whatsoever to suggest that you ever made an offer ---
5 an offer of a confession of judgment to the limited
6 partnership, do you?

7 A Only my word to Ms. Lipscomb and Ms. Lipscomb's
8 word to you that that has happened if you want to get
9 that from her.

10 MS. BALLARD: Thank you Mr. Hammer. That's all I
11 have.

12 THE COURT: All right. Do you have any redirect
13 at this time?

14 MS. LIPSCOMB: Yes, sir.

15 THE COURT: May I ask a question ---

16 MS. LIPSCOMB: Yes, sir.

17 THE COURT: --- of the witness? Do you object?

18 MS. BALLARD: I have no objection.

19 MS. LIPSCOMB: Sure.

20 THE COURT: Have you continued to receive
21 distribution since you offered the confession of
22 judgment?

23 THE WITNESS: No, sir. I don't believe I have.

24 THE COURT: You don't believe you have?

25 THE WITNESS: I don't recall receiving any

1 distribution since then. I did receive it --- to make
2 it --- I'm not sure of the date, but I did receive a
3 loan.

4 I was going to explain that in ---

5 THE COURT: It's okay. I just asked a question
6 about distribution. Okay.

7 Go ahead, Ms. Lipscomb.

8 MS. LIPSCOMB: One moment, please.

9 THE COURT: All right.

10 MS. LIPSCOMB: I did not have copies of these ---
11 (Pause.)

12 THE COURT: You're here offering statements he
13 said he couldn't identify earlier?

14 MS. LIPSCOMB: Maybe he can't, but these are
15 different. Maybe he can't. Make he can.

16 THE COURT: All right, sir. Mark them for ID,
17 please. Any objection?

18 MS. BALLARD: I have no objection.

19 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked
20 for identification only.)

21 REDIRECT EXAMINATION:

22 BY MS. LIPSCOMB:

23 Q Your --- Mr. Hammer, would you look at what's
24 been marked as Exhibit 3 for identification and tell
25 me if you recognize those.

1 A If you'll continue with the promotion that you
2 started to give me to Your Honor, I can recognize
3 anything.

4 A This top one appears to me to be the same thing.
5 Do I recognize them?

6 Q Yes.

7 A Yes, I've seen them before.

8 Q Did you prepare them?

9 A No, I didn't prepare them.

10 Q When have you seen them; in what context have you
11 seen them?

12 A I saw them at Mr. Ackerman's deposition, as I
13 recall.

14 Q Okay. Does --- is there anything on that
15 document that would refresh your recollection as to
16 whether or not you have paid rent or rent has been
17 paid for your space at 1634 Main?

18 A According to ---

19 MS. BALLARD: Your Honor, if he can't identify
20 them as being authentic ---

21 THE COURT: If he can't identify it as being
22 authentic, in other words, his answer for 26-B, to me,
23 cannot be credibly different from his answer for this,
24 so I would assume that a witness who can somehow
25 identify an identical document for a different year

1 when he couldn't identify an identical document for
2 another year may have some issues with regard to that,
3 but if he says he can identify it ---

4 MS. LIPSCOMB: All right.

5 THE COURT: --- then the witness can testify.

6 MS. LIPSCOMB: Is that as to 26-B?

7 THE COURT: Yes, ma'am, he said he couldn't
8 identify it at all.

9 MS. LIPSCOMB: All right.

10 THE COURT: He said he had seen it, but he didn't
11 know what it was.

12 THE WITNESS: I'm sorry, Your Honor. I didn't
13 say that. I said I could not identify --- what I said
14 --- if I'm ---

15 THE COURT: Okay.

16 THE WITNESS: I did not define. I could not say
17 that I had prepared it, that I could identify it, that
18 I could verify it. I took identification to mean
19 that. Had I ---

20 THE COURT: All right and you objected to the
21 admissibility.

22 THE WITNESS: I did.

23 THE COURT: And you object to the admissibility
24 of the one handed to you by Ms. Lipscomb?

25 THE WITNESS: I do --- I mean, I --- well, I ---

1 THE COURT: Okay. Then don't discuss it with the
2 witness.

3 MS. LIPSCOMB: Okay. Thank you.

4 THE COURT REPORTER: Are you withdrawing it for
5 the record?

6 MS. LIPSCOMB: I am withdrawing it.

7 THE COURT: 26-B is not in at this time.

8 MS. BALLARD: Correct, 26-B is not in and ---

9 THE COURT: No admission of that until it's
10 authenticated by the appropriate witness, if any
11 exists.

12 MS. BALLARD: Correct.

13 MS. LIPSCOMB: Nothing further, Your Honor.

14 THE COURT: All right. Mr. Hammer, do you have
15 any ---

16 THE WITNESS: Questions of myself?

17 THE COURT: Yes, sir, at this time?

18 THE WITNESS: Yes, sir.

19 THE COURT: So you would like to do that now?

20 THE WITNESS: If I may.

21 THE COURT: All right. I thought that you would
22 want to do that during your case, but ---

23 THE WITNESS: I'm going to do ---

24 THE COURT: That's fine.

25 THE WITNESS: I'm going to do it during my case

1 and now. I would like to relate --- there are two
2 different cases, so I'd like to do it then and now so
3 as to be able to get them in in order and to not
4 forget.

5 THE COURT: All right. Go ahead.

6 And this is 1634 vs. Shirley Hammer.

7 MR. HAMMER: Yes, sir, with me as the cross
8 defendant.

9 MR. HAMMER: The question was asked whether I can
10 identify that. I can't identify it. I can testify
11 that rents were paid. I can testify that rents were
12 paid, I thought in the amount of something like 50
13 some odd thousand dollars a year. I don't know the
14 exact amount, but they were paid by, I thought, Howard
15 Hammer, Attorney at Law P.A. In fact, I am virtually
16 certain they were paid by Howard Hammer, Attorney at
17 Law P. A.

18 Howard Hammer, Attorney at Law P.A. stopped
19 practicing law in June of 2008. I --- Darryl Hawkins
20 shared offices from the --- he was of counsel, and I
21 was not allowed to practice after that point.

22 There were 15 or 20 or maybe more people in the
23 office. Mr. Hawkins took over the operation of the
24 office.

25 I was under the impression that Mr. Hawkins was

1 paying rent. It has come to my attention that
2 Mr. Hawkins did not pay the rent during the --- for
3 2008, 2009, 2010 when he was there.

4 I've had some discussions with Mr. Hawkins.
5 Mr. Hawkins is a friend of mine and because of
6 personal reasons, Mr. Hawkins --- it would be
7 difficult --- I don't think Mr. Hawkins would be able
8 to pay the money at this time, and so --- I don't
9 think it would be collectible, and so for the time
10 that it wasn't paid there has been no action that I
11 have asked anyone to do.

12 Now, this would be something that would be my
13 responsibility --- or not my responsibility, SH-5's
14 responsibility to go ahead and do that or to ask Mr.
15 Turbeville look into it, but I haven't because of
16 certain things that I had understood about
17 Mr. Hawkins. Whether they are true or not, I don't
18 know. He is a friend.

19 I didn't believe it would be well for me to do
20 that. I measured my fiduciary duty against my
21 friendship and my ultimate belief based on the
22 information that I had, which may not be correct, that
23 it would not be collected and did not bring that
24 action against him.

25 THE COURT: All right.

1 MR. HAMMER: So --- and now, let me additionally
2 say that in one of those years, there was a \$13,000
3 payment or something of that sort made, and that was
4 made --- I don't know whether that was made by the
5 P.A. I believe that was made by the P.A. for the
6 small portion of what the P.A. had calculated it would
7 be --- would be due because of my use of the building,
8 of the area in the building.

9 Additionally, as regards the loans, I think that
10 I need to explain that, because it's come up, and I
11 now would like to explain that.

12 I have been involved in this building since we
13 originally leased it in 1990 and through the 1990s it
14 was leased from the Edens Avant company. Starting in
15 1998 or 1999, I began discussing with them purchase
16 and spent a huge amount of time doing that. I finally
17 negotiated because --- I don't know whether you've
18 heard of Edens Avant or not, but I'm sure you have.

19 During that period of time they got bought out by
20 some --- there was some large transaction with the
21 Michigan Reserve Fund and they had huge amounts and
22 they did not want --- they wanted to get off of their
23 books the smaller properties, and so we finally came
24 to terms very, very favorable terms on the ---

25 MS. BALLARD: Your Honor, I object as to how he

1 came to originally acquire the building. I don't
2 think that's relevant.

3 THE COURT: Overruled.

4 MS. BALLARD: Thank you, Your Honor.

5 THE COURT: Go ahead.

6 MR. HAMMER: So the building was bought. It was
7 a family sort of thing. My father had bought it. The
8 idea was to give it to the children, and then Shirley
9 and I got married. Then the idea was to go ahead and
10 instead of passing it to my brothers that I would give
11 something else to my brothers and Shirley and I would
12 have it and it would go to our children.

13 THE COURT: I understand.

14 MR. HAMMER: That's just kind of an overall ---
15 an overview. Not every "i" was dotted and not every
16 "t" was crossed. You're dealing with a father and a
17 son in a family matter and a very loving wife. We had
18 a very nice relationship, I thought.

19 THE COURT: That's not relevant.

20 MR. HAMMER: So the agreement did provide for ---
21 that --- the management company would --- and I don't
22 know exactly where it is. I could be misstating this.
23 I'm going over what Mr. Ackerman and I had gone
24 through, but the management company, the general
25 partner, was entitled to a fee.

1 I hadn't taken a nickel from the time the
2 building was bought in 2000 and all --- the first
3 couple of years, there was no management company.
4 There was Edens Avant and there was me personally just
5 working to kind of keep the building up. It is a
6 12,000 square foot building. I went about getting
7 rentals. I went around having people leave.

8 I took care of everything during the first early
9 years. I have worked with Mr. Turbeville to an
10 extent. There are problems that come up that I have
11 to call him about. There are problems that I
12 sometimes have to deal with on the spot with the
13 tenant, but I haven't gotten money in all those years,
14 but the accountant, although he hadn't done so, has
15 indicated it's time to make an accounting on that.

16 I think he's going over what would be a
17 reasonable amount and the reasonable numbers and has
18 left the first impression that the amounts that I
19 bought ---

20 THE COURT: That's hearsay.

21 MR. HAMMER: All right. Without saying what he
22 said, I am under the impression that the --- that
23 the --- that the L.P. would owe the --- would owe the
24 general partner more than the amounts that were
25 borrowed.

1 However, the L.P. right now is --- there is a
2 foreclosure for it. The taxes were not paid last year
3 in the amount of \$30,000. There is \$17,000, I think,
4 that has been --- or some amount that has been ---
5 \$12,000 that has been raised, and I have asked
6 Mr. Turbeville to look into that, to try to put off
7 some bills that can be delayed so that monies that are
8 coming in can be used to pay the taxes.

9 The tax bill has gone to Mrs. Hammer. It says
10 Mrs. Hammer and 1634 Main L.P. because there has not
11 been a change, so I leave that with Your Honor as an
12 explanation for the borrowing.

13 There was a borrowing, but the fact of the matter
14 is, it actually will be an offset and probably less
15 than an offset of what would have been owed by the ---
16 to the general --- to the SH-5 LLC.

17 THE COURT: Okay.

18 MR. HAMMER: I hope that explains it along with
19 the caveat that again, because this was a family
20 partnership, there were agreements, there were
21 understandings that were done that may be --- may be
22 everything --- once something was signed, Howard
23 Hammer, managing partner, rather than some lawyer
24 standing over him saying sign it correctly, but there
25 is one thing that I do need to clear up.

1 I had asked Mr. Adams about it. What was the
2 intent of the --- of the --- when there was --- when
3 there were needs of the building ---

4 MS. BALLARD: Your Honor, I object.

5 THE COURT: Yes.

6 MS. BALLARD: To the --- the document is ---

7 THE COURT: Well, he has already --- you've
8 already testified about what your intent was about
9 this. There was no objection then, so we'll go right
10 ahead. The objection is overruled.

11 MS. BALLARD: All right.

12 MR. HAMMER: The intent --- when the agreement
13 was made to the extent there is any ambiguity and I
14 didn't believe there was any ambiguity until ---
15 apparently someone else thought there was. The intent
16 was that there would be assessments. The intent was
17 that was what the general partner would look and see
18 and see what needed to be done, and there wouldn't
19 be --- because the capital contribution and the
20 distributions were a tax matter that had to be ---
21 that you really don't want to --- as I understand,
22 want to start messing with, and monkeying with and
23 trying to fiddle with.

24 It would be a separate outside matter, a simple
25 clean matter. An assessment would be made and the

1 general partners would make payment on any assessment
2 that would be made.

3 THE COURT: Limited partner.

4 MR. HAMMER: Limited partner would make the
5 assessments in a fair ratio.

6 THE COURT: All right.

7 MR. HAMMER: And I might add one other thing.
8 Because it was a family partnership, while that was
9 the understanding, we also understood that if one of
10 the limited partners could not make it, that we would
11 all sit down and discuss it and figure out a fair and
12 equitable way to do that. We didn't put that in the
13 agreement, but that was the understanding that we
14 would do that.

15 Here, you had this obligation. This is what your
16 obligation was. The choice is to pay the obligation
17 or to come and say I can't pay the obligation because
18 of this or that or whatnot, and the family is going to
19 sit down and when my brothers were there and saying
20 when Shirley and I were married it wasn't going to
21 be --- well, this was your obligation. We're going to
22 tie you to, you know, we're going to take you out to
23 the public square and whip you if you don't pay it.
24 We're going to sit down and try to figure out a way to
25 do it. What else do you have; how can we do it,

1 things of that sort, but it would ultimately be paid.

2 So I add that as a caveat. From a legal
3 standpoint, it was an obligation.

4 THE COURT: Okay. All right. Anything else at
5 this time, Mr. Hammer?

6 MR. HAMMER: Yes, sir.

7 THE COURT: Okay.

8 MR. HAMMER: And I believe this is the
9 appropriate time to discuss it.

10 THE COURT: What are you referring to?

11 MR. HAMMER: You know, I've taken up a lot of
12 time. Maybe I can discuss --- it's the --- it's the
13 partial settlement agreement.

14 THE COURT: If you'd like to do it now, that's
15 fine.

16 MR. HAMMER: I'd like to wait and do it later on
17 if I could.

18 THE COURT: All right. Any objection to that,
19 Ms. Ballard?

20 MS. BALLARD: No, sir.

21 THE COURT: Ms. Lipscomb?

22 MS. LIPSCOMB: No, Your Honor.

23 MS. BALLARD: I do have a follow-up question if
24 he is finished.

25 THE COURT: All right. Thank you.

1 MS. BALLARD: Mr. Hammer, you testified that you
2 made the decision not sue Darryl Hawkins. In what
3 capacity did you make that decision, Howard Hammer
4 individually, Howard Hammer as a limited partner of
5 1634 Main L.P., in your capacity as sole owner of SH-5
6 LLC or in your capacity as general partner of 1634
7 Main L.P.?

8 MR. HAMMER: In that case, it was made as general
9 partner of 1634 L.P. I thought I had that authority
10 as the general --- that SH-5 had the authority, so it
11 would be --- SH-5 would have made it and in my
12 capacity as SH-5.

13 MS. BALLARD: Thank you.

14 THE COURT: Ms. Lipscomb.

15 MS. LIPSCOMB: Nothing further, Your Honor.

16 THE COURT: Thank you, sir.

17 MR. HAMMER: Thank you very much for indulging
18 me.

19 THE COURT: Is there any other witness to call
20 this afternoon?

21 MS. LIPSCOMB: No, Your Honor. We rest. The
22 plaintiff rests, excuse me.

23 THE COURT: Ms. Ballard, do you have any motions?

24 MS. BALLARD: Yes, Your Honor. I have a number
25 of motions. Would you like me to proceed?

1 THE COURT: I'm talking about dispositive.

2 MS. BALLARD: Dispositive, yes, sir.

3 THE COURT: All right.

4 MS. BALLARD: Yes, sir, I have several
5 dispositive motions, Your Honor.

6 With reference to --- let me get to it, I'm
7 sorry. With reference to the primary action brought
8 by 1634 Main L.P. against Shirley Hammer for
9 contributions, we believe the only evidence that's
10 been introduced into the record is that limited
11 partners are not liable for contributions of any kind,
12 capital contributions or otherwise, and that as a
13 matter of law that the lawsuit brought by 1634 Main
14 L.P. should be dismissed.

15 THE COURT: Are you talking about just from the
16 four corners of that document that their assessments
17 aren't permitted?

18 MS. BALLARD: Correct.

19 THE COURT: Okay. Where is it in the document
20 that says they're not?

21 MS. BALLARD: Where it says in the document is
22 the several sections I went through with Mr. Hammer,
23 section 10 which says that no additional contributions
24 shall be made.

25 THE COURT: Isn't there a difference between a

1 capital contribution and an assessment?

2 MS. BALLARD: Assessments are not provided for in
3 the limited partnership agreement, Your Honor. Mr.
4 Hammer testified that may be his intent, but it's not
5 provided for in the partnership agreement. Mr. Adams
6 has testified that the partnership agreement was
7 unambiguous and therefore the rights of the parties
8 should be determined in accordance with the terms of
9 the partnership.

10 What subsection 10 on page five says is --- it
11 goes beyond capital contributions. It says
12 specifically that no limited partner shall be
13 personally liable for any expense, loss, liability or
14 obligation of the partnership, except to the extent of
15 his interest in the partnership.

16 THE COURT: Which is in this case is either eight
17 or a 56.8.

18 MS. BALLARD: Correct.

19 THE COURT: Okay.

20 MS. BALLARD: So the prayer for money damages
21 against Shirley Hammer in her individual capacity
22 fails as a matter of law, because as a matter of law,
23 there ---

24 THE COURT: What percent is that prayer based on?
25 56.8 or 8.

1 MS. BALLARD: According to the complaint, it is
2 based on 56.8 percent interest in the limited
3 partnership, and I believe we've established as a
4 matter of law that she does not own 56.8 percent in
5 the limited partnership. We've established that she
6 did own 8 percent in the limited partnership, but she
7 tendered that interest in the limited partnership back
8 to Mr. Hammer in accordance with the family court
9 settlement.

10 THE COURT: To the extent it makes any
11 difference, I've got two questions.

12 MS. BALLARD: Yes, sir.

13 THE COURT: Has she tendered the 8 percent ---

14 MS. BALLARD: Yes, sir.

15 THE COURT: --- that would be owed. And number
16 two ---

17 MS. LIPSCOMB: Objection. She answered you
18 before you finished your question, so I think ---

19 THE COURT: Well, I had a second question.

20 MS. LIPSCOMB: Okay. But I thought she said
21 she ---

22 THE COURT: Did she tender the assessment she
23 would owe if she was an 8 percent owner?

24 MS. BALLARD: No, sir. She tendered in
25 accordance with the family court order, as shown by

1 Exhibit No. 16. She tendered her 8 percent interest
2 in the limited partnership to Howard Hammer as she was
3 required to do by the family court order.

4 THE COURT: All right. Next question and I may
5 have already forgotten it. Well, I forgot it.

6 So you say since she tendered it to him --- well,
7 I know what the other question was. To the extent it
8 makes any difference, when was the demand made in
9 comparison to the family court order approving the
10 agreement?

11 MS. BALLARD: I'm sorry, what demand?

12 THE COURT: When was the tender? Excuse me, when
13 did 1634 --- I know it's in one of these exhibits.

14 MS. BALLARD: Yes, sir.

15 THE COURT: I can't remember which one it is.

16 MS. BALLARD: Yes, sir.

17 THE COURT: When was that demand for payment
18 made?

19 MS. BALLARD: Mr. Hammer did not testify when
20 that demand was made.

21 THE COURT: No, but it was in a documents
22 somewhere.

23 MS. BALLARD: It was November 2009.

24 MS. LIPSCOMB: November 12, 2009. I'll give you
25 the document number if you want me to.

1 THE COURT: Okay.

2 MS. BALLARD: He testified he mailed that to her.

3 THE COURT: I don't remember that. And when was
4 the order approving the settlement and ordering the
5 parties to comply?

6 MS. BALLARD: August 2009. Excuse me, May 2008
7 was the property settlement agreement. The custody
8 agreement was August 2009.

9 MS. LIPSCOMB: Then there was a subsequent
10 August 19th order approving a June 24th agreement ---
11 June 24th, 2009, dealing with the property, as well.

12 Your Honor, this is the document that ---

13 THE COURT: Just give me the number on it.

14 MS. LIPSCOMB: I'm trying to ---

15 THE COURT: I remember the little cover sheet on
16 it that said C.C. to about four people and he says he
17 mailed it.

18 MS. BALLARD: It was one of 1634's two exhibits.
19 They have yellow stickers on them.

20 MS. LIPSCOMB: No, it wasn't.

21 THE COURT: Okay. Let's --- we'll find it.

22 MS. LIPSCOMB: This is what it looked like. I'll
23 find the number.

24 THE COURT: Okay. So one of the questions I'm
25 going to have for Ms. Lipscomb is, beginning with what

1 Howard Hammer says about anything, what is 1634's
2 position on how --- okay, it's number 23. How a
3 demand for payment of this assessment can be --- can
4 mean anything if the person who holds that interest
5 has tried to tender her interest in accordance to the
6 court order. It's a question for Ms. Lipscomb. This
7 is your claim.

8 MS. LIPSCOMB: Yes, sir. Your Honor, ---

9 THE COURT: The evidence is that Mrs. Hammer was
10 under a court order to give this property whatever
11 form it was.

12 MS. LIPSCOMB: Yes, sir.

13 THE COURT: Real estate or a partnership interest
14 to Mr. Hammer because paragraph D(a) of that agreement
15 says Howard shall receive any interest of either party
16 in the office building which houses Howard Hammer's
17 law office, accompanying parking lot and any business
18 entity related to this building.

19 That would be either the deed to the reality
20 and/or an assignment of the partnership interest.

21 MS. LIPSCOMB: And, Your Honor, what was
22 tendered, to the best of my recollection, was an
23 8 percent interest in her --- her assignment of the
24 8 percent interest in the L.P. when, in fact ---

25 THE COURT: All right. Let's find that document

1 because its doesn't say 8 percent. It says any and
2 all.

3 MS. LIPSCOMB: Find the document tendering it?

4 THE COURT: Yes, ma'am. It says any and all.
5 When you were talking about 8 percent, I started
6 looking for it.

7 MS. LIPSCOMB: Your Honor, I don't think that is
8 in the record. I can ---

9 MS. BALLARD: That is Exhibit 16 in Shirley
10 Hammer's exhibits, Your Honor.

11 THE COURT: All right, just so we can all be
12 correct on the record.

13 MS. BALLARD: It's the last page of Exhibit 16.

14 THE COURT: I've got it. So the court reporter
15 won't be confused, it's the last page of Exhibits 16.

16 MS. BALLARD: Yes, sir.

17 THE COURT: Says the assignor does hereby assign
18 and transfer to assignee any or all the of her right,
19 title and interest in a limited partnership in 1634
20 Main, limited partnership.

21 MS. BALLARD: Yes, sir.

22 THE COURT: So what she --- she tendered that
23 November 5, 2010, which I guess is --- is that after
24 you asked for the money?

25 MS. LIPSCOMB: Yes, Your Honor.

1 THE COURT: All right. So we have a year gap
2 there.

3 THE COURT: And let me ask Ms. Ballard another
4 question.

5 MS. BALLARD: Yes, sir.

6 THE COURT: And I'll ask all of you this
7 question.

8 MS. BALLARD: Yes, sir.

9 THE COURT: Ya'll are the smarts ones. I'm just
10 kind of bumbling along. Going back to Paragraph B in
11 that property settlement agreement.

12 MS. BALLARD: Yes, sir.

13 THE COURT: Howard shall receive any interest of
14 either party in the office building which houses
15 Howard Hammer's law office and the accompanying
16 parking lot and in any business entity related to this
17 building, and here is what I'm going to ask you about,
18 subject to any debt, lien or encumbrance associated
19 with this property.

20 MS. BALLARD: Correct. This was signed in
21 May 2008.

22 THE COURT: Does that have any bearing on this
23 \$88,000 demand?

24 MS. BALLARD: No, sir, because at the time this
25 order or this settlement agreement was approved in

1 May 2008, that debt did not exist.

2 THE COURT: Okay. All right.

3 Are you --- have you concluded with your motion
4 for a non-suit on the --- you said the evidence is the
5 partnership agreement which does not allow for
6 assessments?

7 MS. BALLARD: It does not allow for assessments.
8 Secondly, Your Honor, it's clear that Mrs. Hammer had
9 tendered any interest that she had in the partnership
10 and ---

11 THE COURT: When?

12 MS. BALLARD: In exhibit number.

13 THE COURT: Twenty-three?

14 MS. BALLARD: No, sir, 16.

15 THE COURT: She didn't do that until
16 November 2010.

17 MS. BALLARD: Correct.

18 THE COURT: And this suit was filed in ---

19 MS. BALLARD: November --- this suit was filed
20 November 19th, 2010.

21 THE COURT: So after you made that tender?

22 MS. BALLARD: Yes, sir, and the point I was
23 trying to make was that there was no requirement under
24 the law that this be accepted. The execution of the
25 document created the transfer of this. The document

1 did not have to be recorded anywhere. It did not have
2 to be accepted by anyone on November 10th, 2010, when
3 Mr. Madden sent the quitclaim deed and the assignment
4 of partnership interest. The transfer occurred on
5 that day, at that time. It's not like a deed that has
6 to be recorded. It's a partnership interest that,
7 whatever it was, it no longer belonged to Shirley
8 Hammer as of that date.

9 Ms. Lipscomb's letter that was introduced into
10 evidence as number 17, just sends it back, but there's
11 no legal grounds for rejecting it. It is an operative
12 legal document, so Mrs. Hammer does not own any
13 interest in 1634 at the time the lawsuit was filed.

14 THE COURT: All right. I'm just curious. Why
15 did it take so long to tender it?

16 MS. BALLARD: That was in family court and I
17 don't know. What I did show you earlier is the
18 subsequent order behind tab 15, the very first order.

19 THE COURT: Okay.

20 MS. BALLARD: On page --- I believe it was page
21 seven. Okay. No, it was eight, Paragraph 3. This
22 was an order dated September 24th, 2010. The parties
23 were obviously fighting about something. Do you have
24 it in front of you, Your Honor.

25 THE COURT: I've got the order, but not the ---

1 the first order that I don't have any numbered
2 paragraphs.

3 MS. BALLARD: Yes, sir, the order ---

4 THE COURT: All right. The order and rule to
5 show cause?

6 MS. BALLARD: Order addressing order and rule to
7 show cause, yes, sir. On page nine --- I'm sorry,
8 page eight.

9 THE COURT: Okay.

10 MS. BALLARD: Paragraph three, clearly the
11 parties were still in litigation about this transfer.

12 THE COURT: No later than October 23, 2010, the
13 parties shall each sign the documents and do things
14 necessary to comply with the provisions in the
15 May 12th order. Why did you wait until November?

16 MS. BALLARD: There is no evidence in the record
17 as to why there was a delay until November, Your
18 Honor.

19 THE COURT: Either party may notify the
20 undersigned, meaning the Court, of the failure of the
21 other party to comply, so the clerk may be notified by
22 the undersigned of the specific action to be taken.
23 All right. Okay.

24 MS. BALLARD: So my position is, Your Honor, that
25 the transfer had already occurred before the amended

1 complaint in this action was filed.

2 THE COURT: So Ms. Lipscomb was Mr. Hammer's
3 counsel at that time.

4 MS. BALLARD: Yes, she was.

5 THE COURT: All right.

6 Ms. Lipscomb, your response to that argument
7 about the two things I think she brought up were that
8 the limited partnership agreement doesn't provide for
9 an assessment and when the assessment demand was made,
10 the tender of the subject property, if you will, be it
11 an ownership interest in real estate or in a
12 partnership had been tendered.

13 MS. LIPSCOMB: What was the date of the tender
14 again?

15 THE COURT: November 10, 2010.

16 MS. BALLARD: November 10, 2010.

17 Your Honor, I misspoke. The original lawsuit was
18 filed in June 2010, but again, the tender occurred in
19 November 2010, so the transfer of the interest
20 occurred after this lawsuit was brought.

21 MS. LIPSCOMB: What is the date? May I ask what
22 is the date of the order you were referencing?

23 MS. BALLARD: The date of that order is
24 September 24th, 2010, in the family court matter.

25 MS. LIPSCOMB: Okay. First, as to the limited

1 partnership, Your Honor, the provisions that
2 Ms. Ballard is pointing out in the limited partnership
3 that require --- that state that there are no
4 additional capital contributions or there would be ---
5 or with regard to no liability as to claims, is number
6 one, this wasn't a capital contribution that was being
7 requested in November 12, 2009, and number two, this
8 is not a claim of a third party.

9 The purpose of the --- the purpose of the limited
10 partnership as stated in paragraph number four says
11 the purpose and business of the partnership shall be
12 to acquire, buy, develop, own, invest in, hold,
13 manage, exchange, operate, lease, whether as lessor or
14 lessee, sublease whether it's sublessor, sublessee,
15 refinance, sell and transfer any real or personal
16 property or another partnership assets and to engage
17 in any and all activities in general or related to the
18 foregoing and in all respects as owner of real and
19 personal property.

20 THE COURT: All right. It ---

21 MS. LIPSCOMB: In any and all activities.

22 THE COURT: Ms. Lipscomb, do you need to consult
23 with Mr. Hammer a little bit? He's --- it's a little
24 bit ---

25 MS. LIPSCOMB: It's a little distracting.

1 THE COURT: It's distracting for me to listen to
2 you when he is writing things and whispering in your
3 ear, so just --- it would help me if you just made
4 your motion.

5 MS. LIPSCOMB: Yes, Your Honor. In response to
6 Ms. Ballard, with regard to the purpose, it says
7 engage any and all activities incidental thereto to
8 act as owner, and repair and maintenance is a part of
9 owning improved real property.

10 With regard to --- as I said, 7.2, this is not,
11 it was not a request for capital contributions.
12 Mr. Ackerman in his testimony said that it was not
13 unusual to have reserve accounts and it was not
14 unusual to make assessments.

15 THE COURT: All right, let me ask you this. A
16 capital contribution is obviously a term of art that
17 accountants know about.

18 MS. LIPSCOMB: Yes, sir.

19 THE COURT: You've got 7.2 that says there shall
20 be no additional capital contributions to the capital
21 of the partnership, right?

22 MS. LIPSCOMB: Yes, Your Honor.

23 THE COURT: Unless agreed to by all of the
24 parties. Of course, you say that what they ask for
25 was not a capital contribution, but rather an

1 assessment to make some repairs. So number ten, no
2 limited partner shall be required to make any
3 contribution to the capital of the partnership except
4 to the extent of his interest. Is that consistent
5 with 7.2 which requires the consent of all the
6 partners?

7 MS. LIPSCOMB: Yes. No limited partner shall be
8 required to make any contributions to the capital of
9 the partnership except as set forth in this agreement.

10 THE COURT: I know, but 7.2 says there are no
11 additional capital contributions unless agreed to by
12 all the partners.

13 MS. LIPSCOMB: But that --- and again, they're
14 talking about capital contributions. The ---

15 THE COURT: So if this assessment were a capital
16 contribution, you would have a problem.

17 MS. LIPSCOMB: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. LIPSCOMB: If you'll look at paragraph --- I
20 think it's 17. It specifically provides for reserves
21 and shows the intent of the partnership --- that the
22 partnership would cause the property to be maintained.
23 Otherwise the property ceases to have any kind of
24 value.

25 This says the general partner may cause the

1 partnership to create a reserve account to be used for
2 operations, maintenance and repair of partnership
3 assets and for other matters deemed necessary by the
4 general partner.

5 The general partner shall, in its reasonable
6 discretion, determine the amount of payments to such a
7 reserve account.

8 THE COURT: That doesn't say that it comes from
9 the limited partners.

10 MS. LIPSCOMB: No, sir.

11 THE COURT: What it contemplates is a pool of
12 money that --- of income that the partnership is
13 making, say off rent in this case, and this general
14 partner determines how much goes to a reserve account
15 to pay for repairs. That paragraph in and of itself
16 does not contemplate assessment.

17 MS. LIPSCOMB: I understand, but I am showing
18 that it is consistent with the purpose.

19 THE COURT: All right.

20 MS. LIPSCOMB: Which was that there would be
21 repair and maintenance for the ---

22 THE COURT: Exactly.

23 MS. LIPSCOMB: --- for things, and just as a
24 matter of course, Your Honor, I submit that
25 partnerships have to be able to assess their partners

1 to maintain the subject of the partnership.

2 THE COURT: What's the advantage of being a
3 limited partner?

4 MS. LIPSCOMB: Because you are not liable to
5 third parties for any debt.

6 THE COURT: Okay. So in other words, the general
7 partner can assess the limited partners --- all the
8 general partner wants to at any given time? Pretty
9 much?

10 MS. LIPSCOMB: No. I think it has to be
11 reasonable. In this case, the general partner sought
12 what needed to be done, sought information about what
13 needed to be done and through the managing agent
14 sought information about what the cost was of it and
15 then sent out the request for the money.

16 THE COURT: Okay.

17 MS. LIPSCOMB: And the tender was on
18 November 30th, 2009. The complaint ---

19 THE COURT: Wait, wait. I think I misspoke. The
20 tender was actually in 2010.

21 MS. BALLARD: Correct.

22 MS. LIPSCOMB: I'm sorry.

23 THE COURT: The demand for --- the assessment
24 demand was made a year before.

25 MS. LIPSCOMB: It was made ---

1 THE COURT: I was thinking it was all from
2 November 10, but I was wrong about that.

3 MS. LIPSCOMB: That's right. The assessment was
4 November 12, 2009.

5 THE COURT: So there was no overlap. All right.

6 MS. LIPSCOMB: The tender was in October 2010.

7 MS. BALLARD: November 10.

8 MS. LIPSCOMB: November 10, 2010. The lawsuit
9 was brought prior --- I don't have the exact date of
10 the original complaint, but the amended complaint was
11 June 2010, so the lawsuit was prior to the tender.

12 THE COURT: Okay.

13 MS. LIPSCOMB: And after the assessment.

14 THE COURT: So this Paragraph 9 in your amended
15 complaint, the general partner has executed an
16 amendment of the partnership agreement. Is there one?

17 MS. BALLARD: Mr. Hammer testified there was not.

18 MS. LIPSCOMB: I don't think there is one. I've
19 not seen one. I don't know why I put that in there
20 unless I was just doing some ---

21 THE COURT: Okay. Any other argument at this
22 time, Ms. Lipscomb?

23 MS. LIPSCOMB: Yes, Your Honor. One moment.

24 (Pause.)

25 MS. LIPSCOMB: Your Honor, just for purposes of

1 this motion, I would just like to argue that any
2 inferences, reasonable inferences, are to be in favor
3 of the non-moving parties. The only evidence in this
4 case was that set forth in the limited partnership
5 that if the limited partnership is ambiguous, then any
6 ambiguity --- then you would look to the intent and
7 the only evidence was Mr. Hammer's testimony
8 concerning the intent of the parties. Thank you.

9 THE COURT: Thank you.

10 MS. BALLARD: May I reply to that?

11 THE COURT: Yes.

12 MS. BALLARD: The portion of the limited
13 partnership agreement that you and Ms. Lipscomb were
14 reading on subsection ten on page five, I think the
15 operative portion of that for purposes of my motion,
16 is the latter portion of that, which says nor shall
17 any limited partner in his capacity as such be bound
18 by or personally liable for any expense, loss,
19 liability or obligation of the partnership except to
20 the extent of his interest in the partnership.

21 Mrs. Hammer conveyed her interest in the
22 partnership, any and all in November 2010 when
23 Mr. Madden sent this letter.

24 THE COURT: After this litigation started.

25 MS. BALLARD: After this litigation started, but

1 the prayer in this complaint was for money damages,
2 and the limited liability partnership --- excuse me,
3 the limited partnership agreement does not provide for
4 any assessments under any circumstances. It's not
5 ambiguous.

6 THE COURT: Well, how is the limited partnership
7 supposed to get money if it needs it to survive?

8 MS. BALLARD: Well, actually what it says and
9 Professor Adams pointed that out, is in 8.3(c) on page
10 four where it talks about net losses basically are the
11 problem of the general partner.

12 THE COURT: Okay. Well, the net loss is not an
13 assessment.

14 MS. BALLARD: I understand, but there's no
15 provision for identify assessments in here. There is
16 no provision whatsoever for an assessment, but if
17 there were, if there were, the assessment is limited
18 by subsection ten of the partnership agreement to Mrs.
19 Hammer's partnership interest, which she no longer
20 holds. It's already been conveyed to Mr. Hammer.
21 Mr. Hammer is the one who now owns whatever interest
22 in the limited partnership that Mrs. Hammer used to
23 own.

24 THE COURT: That's probably part of your third
25 party action.

1 MS. BALLARD: Yes, sir.

2 THE COURT: But we haven't gotten there yet.

3 MS. BALLARD: No, sir. My motion is to, as a
4 matter of law, dismiss 1634 Main's L.P.'s action
5 against Shirley Hammer. One, because there is no
6 legal authority to make assessments, but two, even if
7 there were, the assessment is limited to her interest
8 in the partnership which has already been conveyed to
9 Howard Hammer, so if anybody owes any money to ---

10 THE COURT: Tendered to Howard Hammer.

11 MS. BALLARD: Yes, sir, it was tendered to
12 Howard Hammer, and the law of delivery, the only law I
13 can find applicable was delivery of a deed, which
14 basically says they can't just give it back to you.
15 It's still operative. The deed has to be recorded, of
16 course, for public notice for third parties.

17 THE COURT: Well, the delivery --- if I have
18 ownership in a business that had nothing but debt and
19 liability, I couldn't just tender it to you and say
20 hey, I tendered it to you.

21 MS. BALLARD: Probably not.

22 THE COURT: You walk up to a man on the street
23 and say, here is an assignment and what's your name
24 and just fill it in and say, okay, this business is
25 yours and you can tell the person who is coming after

1 me, I don't own it anymore. Is that ---

2 MS. BALLARD: Probably not, but she did it
3 pursuant to court order to which Mr. Hammer agreed.

4 THE COURT: Okay.

5 MS. BALLARD: My position is twofold. There is
6 no authority to make assessments, but if there were
7 and if an assessment were made and if Mr. Hammer made
8 the demand to Mrs. Hammer, she has complied by
9 tendering her interest to Ms. Lipscomb Mr. Madden as
10 records in Exhibit No. 16.

11 THE COURT: Okay.

12 MS. BALLARD: Thank you, Your Honor.

13 THE COURT: Anything else on that?

14 MS. LIPSCOMB: Yes, Your Honor, and there is a
15 question as to whether that order is valid in that it
16 has or is void as against public policy.

17 THE COURT: All right. Talk to me about that,
18 because I remember Mr. Hammer going on and on and on
19 about that. I want you to tell me why that order is
20 void. Show me something in the agreement that would
21 make it void, if I can even go there.

22 MR. HAMMER: May I get the agreement, Your Honor?

23 THE COURT: No, sir. It's --- you all have it,
24 don't you? You can get it from the court reporter.

25 MR. HAMMER: I was going to get it ---

1 MS. BALLARD: It's Exhibit 15, Your Honor.

2 THE COURT: You can get it from the court
3 reporter. Then as soon as Ms. Ballard has the last
4 word, we'll be concluded for the day.

5 MS. BALLARD: Your Honor, since the witnesses are
6 finished testifying, Mr. Medlin is in the hall, could
7 I allow him to come back in?

8 THE COURT: Yes.

9 MS. BALLARD: Please tell him to come back in.
10 And while we've been talking, Your Honor, a copy of
11 this I.R.S. section has been brought in by someone.
12 I'm not sure who.

13 THE COURT: Okay.

14 MS. BALLARD: Someone connected with my office,
15 but I don't know who.

16 THE COURT: All right, sir. Ms. Lipscomb.

17 MS. LIPSCOMB: All right. Your Honor, Shirley
18 Hammer's Defendant's Exhibit No. 15, the partial
19 settlement of outstanding issues provides on --- in
20 the attachment, which is referenced in the partial
21 settlement, Exhibit (A) agreement and release of
22 claims.

23 THE COURT: All right. Let me find it. Okay.
24 I've got it.

25 MS. LIPSCOMB: And, Your Honor, in the release of

1 claims you will see the second sentence provides ---
2 well, the claims released in this agreement include
3 any claims under any local, state or federal
4 constitution, laws, statutes ---

5 THE COURT: Where is it?

6 MS. LIPSCOMB: It's under agreement, attachment
7 (A) --- Exhibit (A) agreement, paragraph number two.

8 THE COURT: Okay.

9 MS. LIPSCOMB: I'll just get to the meat of it.
10 It says the parties agree not to file any lawsuits,
11 complaints or grievances against the other or any
12 agents assigned of the other with respect to any claim
13 one might have against the other except for the
14 obligations created by the settlement agreement
15 referenced herein and the argument below was that's
16 void as against public policy because you cannot
17 release grievances. It would be voided against public
18 policy because part of the consideration would be that
19 you could not release grievances.

20 THE COURT: What is a grievance?

21 MS. LIPSCOMB: A grievance is from the O.D.C.,
22 against a lawyer.

23 THE COURT: So is it your position that the
24 property settlement is not valid as to 1634, it's not
25 valid because of that?

1 MS. LIPSCOMB: Yes, Your Honor, and this
2 agreement, which

3 THE COURT: Which quite ironically would be to
4 the benefit of Mr. Hammer.

5 MS. LIPSCOMB: Or Mrs. Hammer's lawyers.

6 THE COURT: Is she a lawyer?

7 Oh, you're talking about lawyers to the
8 litigation?

9 MS. LIPSCOMB: Yes, Your Honor.

10 MS. BALLARD: Your Honor, could I just point
11 something out?

12 THE COURT: No, you may not.

13 MS. BALLARD: Okay.

14 THE COURT: You will get the last word, and
15 again, it will be the last word.

16 MS. BALLARD: Thank you, Your Honor.

17 THE COURT: Ms. Lipscomb, has that ever been
18 ruled on by any appellate court in this case?

19 MS. LIPSCOMB: Your Honor, there was a Rule 50
20 motion made as to ---

21 THE COURT: I'm talking about in general.

22 MS. LIPSCOMB: Yes, sir, it's on appeal.

23 THE COURT: I'm talking about in general is there
24 any authority for the proposition that that was void?

25 MS. LIPSCOMB: Yes.

1 THE COURT: Mr. Hammer, I don't need you nodding
2 because I'm not asking you the questions.

3 MS. LIPSCOMB: Yes, Your Honor. There's ---

4 THE COURT: Give me the name of the case and cite
5 and look it up. You can do it in the morning.

6 MS. LIPSCOMB: I'll do it in the morning.

7 THE COURT: You can do it in the morning. I
8 didn't mean to put you on the spot.

9 MS. LIPSCOMB: I've got it in a brief. In
10 addition, Your Honor, in the June 24th order that was
11 --- I'm sorry, the August 19th order that resulted
12 from the June 24th, 2009 order --- remember, there was
13 one on June 23, 2009, that's been put into evidence
14 and that related to child custody and visitation.

15 THE COURT: All right.

16 MS. LIPSCOMB: Then there was one on June 24,
17 2009.

18 THE COURT: You objected to all of that, so I
19 haven't considered it.

20 MS. LIPSCOMB: Yes, Your Honor, but I was just
21 responding to whether or not --- I thought you asked
22 whether it was on appeal or not.

23 THE COURT: No, I asked if there was any
24 authority.

25 MS. LIPSCOMB: Okay. I'll get you the authority

1 tomorrow morning.

2 THE COURT: Okay.

3 MS. BALLARD: Your Honor, if I could, just by way
4 of the last word.

5 THE COURT: Yes.

6 MS. BALLARD: As we've handed up and the court
7 has already reviewed Exhibit 18, the issue of whether
8 or not this court has jurisdiction to decide the
9 public policy issue has already been determined by the
10 Court of Appeals. Judge Manning ruled there is no
11 jurisdiction in the circuit court.

12 THE COURT: So I'm chasing my tail.

13 MS. BALLARD: Yes, sir. There is no jurisdiction
14 in the circuit court for this court to determine
15 whether that agreement is void against public policy.
16 That issue is being litigated in the family court now.
17 It's on appeal.

18 THE COURT: Okay.

19 MS. BALLARD: So the law of this case is that
20 Your Honor, can't consider whether it's void against
21 public policy or not.

22 THE COURT: All right. We'll begin tomorrow
23 morning with --- you rested, right?

24 MS. LIPSCOMB: Yes, Your Honor, and I only have
25 one matter of --- to take up with --- in five minutes

1 or less.

2 THE COURT: Are you okay?

3 THE COURT REPORTER: Yes.

4 THE COURT: Okay.

5 MS. LIPSCOMB: I have rested my case. I have
6 provided copies of this to --- this deals with the
7 issue of answers to interrogatories by Mr. Hammer in
8 1634, and I just wanted to show Your Honor that I
9 filed the original first supplemental responses by
10 1634. They were served by e-mail and hand delivered
11 on October 25th. They are ---

12 THE COURT: This year?

13 MS. LIPSCOMB: Yes, sir, but they are almost
14 identical to those answers --- plaintiff's answers in
15 the Howard vs. Shirley case.

16 THE COURT: Uh-huh.

17 MS. LIPSCOMB: That were served on January 29th,
18 2010.

19 THE COURT: Okay.

20 MS. LIPSCOMB: And here is a copy of those in the
21 Howard vs. Shirley.

22 THE COURT: All right.

23 MS. LIPSCOMB: So they actually had all the
24 information, although perhaps not in one of the cases.

25 THE COURT: All right. I don't really need to

1 hear about this.

2 MS. BALLARD: No, sir, but I did have one
3 question though.

4 THE COURT: Okay.

5 MS. BALLARD: Just so I can decide whether or not
6 I need to have a witness here in the morning, I
7 understand I'm beginning my case in the morning?

8 THE COURT: Yes, ma'am.

9 MS. BALLARD: My first witness was going to be or
10 is going to be Marion Turbeville, who is an agent of
11 1634.

12 THE COURT: Right.

13 MS. BALLARD: And I would like to just hand in
14 his testimony, his deposition, as the testimony of a
15 party rather than calling him personally and having to
16 go through the whole thing again. I went ad nauseam
17 through, with Mr. Hammer, of whether Mr. Turbeville is
18 an agent of 1634 to establish that he had the right to
19 in fact speak on behalf of 1634. I think, as
20 laborious as it was, I think we established that. My
21 question is, do I needed to bring Mr. Turbeville live
22 in person or can I just simply hand up his deposition?

23 MS. LIPSCOMB: Your Honor, I object to the
24 deposition come in to --- that is not a proper use of
25 the deposition. He is available to testify.

1 THE COURT: Mr. Hammer?

2 MR. HAMMER: Your Honor, I don't have the rule
3 with me right now, but he is not an agent for purposes
4 of testimony. He might be an agent ---

5 THE COURT: Well, he --- it sure would help me if
6 he was here live.

7 MS. BALLARD: Then I'll bring him. Thank you,
8 Your Honor.

9 THE COURT: It's a lot easier for me to get an
10 idea of things if I can watch somebody.

11 MS. BALLARD: Yes, sir. I'll be happy to bring
12 him.

13 THE COURT: Reading Mr. Ackerman's was hard
14 enough.

15 MS. BALLARD: I'm sure.

16 THE COURT: I sure wouldn't want to read another.
17 Not only do you have the burden of proof, but you also
18 have the burden of persuasion.

19 MS. BALLARD: Yes, sir. Thank you.

20 THE COURT: We're off the record now.

21 (WHEREUPON, there was an off-the-record
22 discussion.)

23 (WHEREUPON, court was adjourned for the day and
24 there was an overnight recess.)

25 THE COURT: All right. Is everybody here? Are we

1 ready to start?

2 MS. LIPSCOMB: No, sir. I don't believe Mr.
3 Hammer is here yet.

4 THE COURT: Is he just not in the courtroom, or
5 you haven't seen him at all?

6 MS. LIPSCOMB: I haven't seen him, Your Honor.

7 THE COURT: Okay, well, we will take a short
8 break then.

9 (WHEREUPON, a short break was taken.)

10 THE COURT: Mr. Hammer, did you have a traffic
11 problem this morning?

12 MR. HAMMER: Yes, sir, and I also had a gasoline
13 problem.

14 THE COURT: All right.

15 MR. HAMMER: But, Your Honor, again the
16 sequestering.

17 THE COURT: I'll take care of that.

18 MR. HAMMER: Thank you, Your Honor.

19 THE COURT: All right. Witnesses?

20 MS. BALLARD: Your Honor, last night after we
21 adjourned court, the court reporter and I and
22 Ms. Lipscomb were going through the exhibits and we
23 were missing Exhibit 16, so just for the record, I
24 wanted to clarify what we had done and make sure there
25 was no objection to it. We took another copy of

1 Exhibit No. 16 and I think Susan was still in here
2 when we did it. We substituted a new Exhibit 16, and
3 I, just for purposes of the record, wanted to make
4 sure there's no objection to our substitution of that
5 exhibit.

6 MS. LIPSCOMB: Well, and I must confess, I was
7 working last night and found it in my notebook and
8 gave it to the court reporter this morning
9 unadulterated.

10 THE COURT: Anybody who has never done that has
11 never tried a case.

12 MS. LIPSCOMB: And I apologize. I thought I had
13 looked everywhere last night.

14 THE COURT: Okay. That's fine. So that's taken
15 care of.

16 All right. Witnesses who are present? Professor
17 Medlin and the gentleman behind you?

18 MS. BALLARD: Yes, sir. Yesterday the question
19 had arisen about the delay in the transfer of Mrs.
20 Hammer's 52.75 percent interest in the dirt and the
21 delay in her transfer of whatever interest she had in
22 limited partnership. And I have Mr. Madden here this
23 morning who originally had been listed as one of our
24 witnesses. We had withdrawn him, but in light of the
25 fact that that question came up, I like to offer him

1 briefly before Mr. Turbeville to answer that question
2 if that's all right.

3 THE COURT: Okay. All right. Yes, sir,
4 Mr. Hammer.

5 MR. HAMMER: Your Honor, she withdrew the
6 witness. We did not take his deposition. We have not
7 brought any other documents and other correspondence
8 from him. We think it would be highly prejudicial for
9 him to be able to testify now. She is the one that
10 entered that document. You can't set up the Trojan
11 horse. She entered the document, and now she wants to
12 call somebody else based on a document that she
13 entered. If she hadn't entered that document, we
14 wouldn't even be in this situation at all.

15 THE COURT: Well, also, you have to keep in mind
16 that y'all never took any deposition until beginning
17 this Friday anyway.

18 MR. HAMMER: That's correct.

19 THE COURT: And the cases have been pending for
20 three years and two years, respectively.

21 MR. HAMMER: That's correct. I did not get into
22 the case until Friday because ---

23 THE COURT: And you represented yourself on the
24 other one.

25 MR. HAMMER: No, sir. I represented myself for

1 one month on the other one until --- I represented
2 just for the purpose of filing the action, just --- I
3 would like to make that clear.

4 THE COURT: Yes, sir.

5 MR. HAMMER: The action had to be filed, and I
6 filed the action. I immediately spoke with
7 Ms. Lipscomb about it. Ms. Lipscomb agreed to get
8 into it. For whatever reason, it was put off, and she
9 filed the --- she ended up --- there were discussions,
10 whatever was going on, but she didn't file the action
11 until later. I filed the action. I immediately spoke
12 with Ms. Lipscomb. I probably spoke with Ms. Lipscomb
13 before I filed the action. We had it --- for one
14 reason or another, I had to file it in order to meet a
15 time limit. I don't recall what the reason was.

16 THE COURT: All right.

17 MR. HAMMER: But I immediately got out of it.
18 When I got in this Friday, I would have noticed his
19 deposition for Monday morning.

20 THE COURT: All right. Ms. Lipscomb.

21 MS. LIPSCOMB: And I will say, Your Honor, that
22 Judge Barber ordered that we be allowed to take his
23 deposition on Saturday morning, and that of
24 Mr. Medlin, Professor Medlin, and Ms. Ballard said,
25 no, we'll withdraw them as witnesses so those did not

1 go forward.

2 THE COURT: All right. Okay. Anything else,
3 Ms. Ballard?

4 MS. BALLARD: The only last point would be that I
5 just checked and 1634 listed him as a witness on
6 10/25/2012, which I think was last Friday, Susan did.

7 MS. LIPSCOMB: When we thought we were taking his
8 deposition.

9 THE COURT: Anything else, Mr. Hammer?

10 MR. HAMMER: No, sir. I think that covers it.

11 THE COURT: What I have to do is examine the ---
12 I guess what could be called the totality of the
13 circumstances of whether or not Mr. Hammer was or was
14 not his own lawyer. Howard Hammer has been a party in
15 both of these cases for three years and two years.

16 Add to that the fact that apparently Mr. Hammer,
17 through whatever lawyer, himself or another lawyer has
18 never answered any interrogatories until a very late
19 date.

20 Taking all that into account and the fact that
21 more than likely everybody pretty much knows what
22 Mr. Medlin may have to say, I'm going to allow him to
23 testify. All right. And that would be over your
24 objection, Ms. Lipscomb and over your objection Mr.
25 Hammer.

1 Yes, ma'am.

2 MS. LIPSCOMB: I just wanted to point out that in
3 the Howard versus Shirley case, discovery was answered
4 in January.

5 THE COURT: Okay. Was Mr. Madden listed as a
6 witness by ---

7 MS. LIPSCOMB: I don't recall.

8 THE COURT: By Ms. Ballard or Shirley Hammer or
9 by --- excuse me, well, by Shirley Hammer at any time?

10 MS. BALLARD: Your Honor, as I said, we didn't
11 have any discovery served on us, so we didn't list him
12 until we did our pretrial brief which we provided to
13 you last Thursday.

14 THE COURT: And interrogatories were served on
15 October 1 of this year?

16 MS. BALLARD: No, sir, interrogatories --- oh,
17 served on us, yes, sir.

18 THE COURT: Was he identified as a witness?

19 MS. BALLARD: I'm --- not until our pretrial
20 brief, which we sent you last Thursday.

21 THE COURT: Which was within the 30 days?

22 MS. BALLARD: Yes, sir; yes, sir.

23 THE COURT: I've taken all of that into account.
24 I just can't imagine that there is any prejudice that
25 the others have not pretty much brought on themselves.

1 I'm going to allow him to testify.

2 MS. BALLARD: Thank you, Your Honor. I did have
3 Mr. Turbeville here as your first witness. I
4 understand, Your Honor, has an order of sequestration.
5 I'm going to ask him to step out.

6 THE COURT: Mr. Turbeville, I know you've been on
7 a trolley in and out of here, but I would ask you to
8 step outside again.

9 MS. LIPSCOMB: Your Honor, may I step outside and
10 call my office and ask them to bring my correspondence
11 file and that would include the correspondence of ---

12 THE COURT: That would be fine.

13 MR. HAMMER: Your Honor, I have a motion while we
14 are at it, and I ---

15 THE COURT: Yes, sir.

16 MR. HAMMER: In addition, you had never ruled ---
17 or maybe I misunderstood you. I had raised issues
18 during that cross-examination of Mr. Adams.

19 THE COURT: On excluding his testimony?

20 MR. HAMMER: Yes, sir.

21 THE COURT: Frankly, I'm inclined to exclude it,
22 at least those parts that I treated as a legal
23 opinion, but I haven't really made my mind up because
24 I've been involved in cases like that before where the
25 witness refers to statutes and what the statutes,

1 along with a reading of the agreement, would do.
2 Sometimes they are blurred, but I'm inclined to
3 exclude his testimony at this point.

4 MR. HAMMER: And the reason that I bring that up
5 is because it would impact on our --- since it was one
6 of their witnesses, it would impact on their motions
7 for a directed verdict.

8 THE COURT: It certainly will, but to the extent
9 he offered legal opinions, if those are matters of
10 law, that's a part of non-suit analysis that I would
11 have to employ is matters of law.

12 So whether or not his testimony is or is not
13 right, as far as his expert opinion, it really won't
14 have anything to do with what I rule as far as
15 directed verdict motions are concerned. Is that what
16 you --- are you getting that?

17 MR. HAMMER: I'm getting that, and I think I also
18 in connection with that is the question of the
19 interpretation, because he was giving an
20 interpretation to some extent of the agreement, and
21 there was some --- he agreed --- to the extent that he
22 was talking as a factual witness, he agreed there was
23 some possibility of different interpretations, is what
24 I understood.

25 THE COURT: He said was that he would agree

1 sometimes parties have an intent that is not expressed
2 in the agreement, but that is pretty much irrelevant
3 in the eyes of the law because if it's unambiguous,
4 whatever you intended on the side doesn't make any
5 difference.

6 MR. HAMMER: I understand, Your Honor. I guess
7 what I was getting at is the --- what the agreement
8 says in that first --- the first paragraph.

9 THE COURT: Right.

10 MR. HAMMER: Would be --- we would urge, would
11 contain an ambiguity under all the circumstances, the
12 totality of the circumstances.

13 THE COURT: Which would have to be construed
14 against 1634.

15 MR. HAMMER: Except for the fact that the
16 ambiguity was explained by the intent of one of the
17 parties to the agreement, which was me, and I
18 explained.

19 THE COURT: Are you a party to the agreement
20 individually?

21 MR. HAMMER: Yes, sir.

22 THE COURT: I thought we spent about an hour on
23 that about who you were speaking for yesterday.

24 MR. HAMMER: But that was at the present.

25 THE COURT: SH-5 LLC and the persons listed as

1 limited partners, you are one of those limited
2 partners.

3 MR. HAMMER: There were three people listed who I
4 believe signed backing --- signed the original.

5 THE COURT: All right. I see.

6 MR. HAMMER: And whether --- I think SH-5 was ---
7 signed the original agreement.

8 THE COURT: Well, what you're doing now is you're
9 making a jury argument.

10 MR. HAMMER: Oh, I'm sorry.

11 THE COURT: Or a closing argument. That's not
12 what I'm looking for.

13 MR. HAMMER: I'm sorry.

14 THE COURT: If you have some more rebuttal to her
15 motion for a non-suit, we're going to have more time
16 on that. I'm not inclined to grant anybody's non-suit
17 motion.

18 MR. HAMMER: All right. I apologize. I thought
19 I was making a legal --- it was my --- in my mind, it
20 was legal argument as to intent, but I see what you're
21 saying. Thank you, Your Honor. I apologize.

22 THE COURT: I appreciate your bringing that to my
23 intention.

24 MR. HAMMER: Thank you.

25 THE COURT: Ms. Lipscomb, are you ready?

1 MS. LIPSCOMB: Yes, Your Honor. I'm ready.
2 Somebody may interrupt and hand me a notebook.

3 THE COURT: All right. That's fine.

4 Mr. Turbeville, see you in a few minutes.

5 MS. BALLARD: I'm going to put him up very
6 briefly.

7 THE COURT: Come up, Mr. Madden. Put your left
8 hand on the Bible, raise your right hand. Be sure to
9 state your full name for the court reporter.

10 THE WITNESS: Tim Madden.

11 TIM MADDEN,
12 after being duly sworn, testified as follows:

13 THE COURT: Have a seat, state your full name.
14 It's M-A-D-D-E-N, correct?

15 THE WITNESS: Yes, it's Timothy Eugene Madden,
16 M-A-D-D-E-N.

17 THE COURT: Okay.

18 DIRECT EXAMINATION:

19 BY MS. BALLARD:

20 Q Mr. Madden, what is your occupation?

21 A I'm a lawyer.

22 Q With whom do you practice?

23 A Nelson, Mullens, Riley and Scarborough.

24 Q How long have you been a member of the South
25 Carolina Bar?

1 A Twenty-four years.

2 Q What is the focus of your practice?

3 A Family law.

4 Q Has that been the focus of your practice for the
5 majority of your admission to the bar?

6 A It has.

7 Q Approximately when --- do you represent Shirley
8 Hammer in the domestic matter?

9 A I do.

10 Q Approximately when did you begin representing
11 her?

12 A It was either 2006 or 2007. I'm not sure exactly
13 when.

14 Q And have you been her lawyer on an uninterrupted
15 basis in family court since that time?

16 A I have.

17 Q Let me show you Exhibit No. 15 that's already
18 been introduced into evidence. It contains a number
19 of documents. Please use your own discretion in
20 determining what those documents are, but what I
21 wanted to ask you about was the settlement agreement
22 regarding the property settlement that occurred in
23 2008. It's toward the back of those documents.
24 They're not numbered, unfortunately.

25 A Okay.

1 Q The document that I'm referring to is entitled
2 partial settlement of outstanding issues. Do you have
3 that?

4 A I do.

5 Q Were you a party to negotiating and reaching that
6 agreement?

7 A Yes. This agreement was reached as a result of
8 negotiations between the parties through some of their
9 friends and family members and the lawyers ultimately
10 became involved in the capacity of scribes and kind
11 of polishing up some of the details.

12 Q With reference to page three of that document,
13 subparagraph D(a) on page three. Do you see it?

14 A I do.

15 Q What discussions were had in the course of
16 reaching that agreement about the ownership of 1634
17 Main Street, the dirt, the property itself and any
18 interest by limited partners in the limited
19 partnership?

20 MR. HAMMER: Your Honor, I object to that. If I
21 understood his testimony, he said he was partly
22 involved. Unless he was actually involved in the
23 negotiation of those discussions and in all of the
24 discussions, I would object to his testimony. His
25 testimony would be partial. It's hearsay.

1 THE COURT: All right. I ---

2 MR. HAMMER: And may I voir dire him on that?

3 THE COURT: Voir dire him on --- well, if I
4 sustain your objection, she'll have to lay a
5 foundation for it. That will accomplish it. You
6 cannot voir dire the witness.

7 MR. HAMMER: At this junction, okay.

8 THE COURT: At this juncture, no sir.

9 You may restate it and lay a foundation that may
10 perhaps satisfy Mr. Hammer's objection, concerns. If
11 it does not, Mr. Hammer, simply stand and restate your
12 objection.

13 MR. HAMMER: Thank you, sir.

14 BY MS. BALLARD:

15 Q Mr. Madden, would you identify for us what the
16 document partial settlement of outstanding issues is?

17 A This document is the settlement reached between
18 the Hammers as to the issues addressed in it, which as
19 I recall, resolved the economic issues between the
20 parties leaving their child custody, child visitation
21 issues for further litigation and adjudication.

22 Q All right. In your capacity as Shirley Hammer's
23 lawyer, did you have occasion to represent to the
24 court your understanding of the terms of this
25 settlement agreement?

1 A Yes. In the sense that this agreement was
2 presented as the economic agreement between the
3 parties to resolve that litigation.

4 Q And ---

5 A That part of the litigation.

6 Q This settlement agreement was approved by the
7 court, adopted and incorporated into a court order?

8 A It was. Judge Jones, I believe, approved this
9 agreement after taking testimony on it and made it the
10 order of the court on May 12th, 2008.

11 Q What were the property issues in dispute between
12 Mr. and Mrs. Hammer that were resolved with reference
13 to the ownership of the real estate located at 1634
14 Main, as well as the limited partnership issues
15 between the parties?

16 MR. HAMMER: Objection, Your Honor. The
17 agreement would speak for itself.

18 THE COURT: All right. That objection is
19 overruled, but I don't know whether this document has
20 a merger clause in it or not, but you asked him about
21 negotiations leading up to the agreement.

22 I don't think any of the that is relevant.

23 MS. BALLARD: Okay. I was trying to lay a
24 foundation, Your Honor.

25 THE COURT: Okay.

1 MS. BALLARD: Thank you.

2 THE COURT: So, Mr. Hammer, your particular
3 objection is overruled. It does speak for itself, but
4 I don't think this is going to add or subtract
5 anything from my consideration, so I'll allow the
6 witness to lay some groundwork for how they got to
7 where this document is without going into any give and
8 take on negotiation. Of course, Mr. Hammer wanted
9 this and then she wanted this and he wanted this. All
10 of that is really irrelevant.

11 MS. BALLARD: Okay.

12 MR. HAMMER: Your Honor, may I ask a question,
13 sir? You said something about a merger clause and I
14 didn't quite understand that.

15 THE COURT: Well, where the document typically
16 has a statement saying all prior and contemporaneous
17 negotiations between the parties are merged into this
18 instrument. That's my interpretation of what a merger
19 clause is. I don't know whether this has one. I don't
20 think it does, but ---

21 MR. HAMMER: No, it does not.

22 THE COURT: I'm kind of surprised it doesn't, but
23 it does not.

24 MR. HAMMER: No, sir. It does not.

25 THE COURT: Okay, go ahead, Ms. Ballard.

1 BY MS. BALLARD:

2 Q Okay. After this settlement agreement, partial
3 settlement of outstanding issues, was presented to the
4 court, was it made an order of the court?

5 A It was. Judge Jones made this the order of the
6 court on May 12th as ---

7 Q 2008?

8 A Yes, as of 2008, as would be typical when you
9 resolve issues between the parties.

10 MR. HAMMER: Objection, Your Honor. Objection
11 again as to him --- as to explain what would be
12 typical or what would not be typical. What would be
13 typical, what would not be typical would be something
14 that Your Honor would have to determine based upon
15 issues of the law and our interpretation and our
16 arguments on the law, particular the Mosier case in
17 this instance, which we haven't argued, but which I
18 referred to earlier.

19 THE COURT: Overruled.

20 BY MS. BALLARD:

21 Q Go ahead, Mr. Madden.

22 A I think what you were asking me is what happened
23 with the agreement. The agreement got presented to
24 the court.

25 Q Yes.

1 A The court issued an order adopting and approving
2 the agreement dated May 12, 2008, as a resolution of
3 the issues stated in it. Shirley had an equitable
4 enforcement claims in connection with the underlying
5 separate maintenance litigation and those equitable
6 apportionment claims were resolved by this agreement
7 and then the court adopted, approved and blessed that
8 resolution.

9 Q Mr. Madden, we have introduced into evidence
10 already. I am going to show you Exhibit No. 16, which
11 is a letter from you to Ms. Lipscomb enclosing a deed
12 to Mrs. Hammer's interest in the dirt at 1634, as well
13 as any and all interest that she might have in the
14 limited partnership agreement and that's not
15 transmitted until sometime in 2010; is that correct?

16 A That's correct.

17 Q Can you explain to the court why there was a
18 delay between the execution of the order by Judge
19 Jones in 2008 and your transmission of Exhibit No. 16?

20 A I can try.

21 Q Please.

22 A In 2008, this agreement, which was part of
23 Defendant's Exhibit 15, was made Judge Jones' order.
24 The parties --- as that order reflects, the parties
25 continued to have issues related to their children and

1 things that needed to be resolved, and the lawyers for
2 the parties continued to work on those issues from May
3 of 2008 up until June of 2009.

4 During that period of time, Mr. Hammer through
5 his counsel, filed a motion to --- I'm not sure
6 exactly how it was captioned, but basically to get out
7 of this deal, to get out of the May 12th order, to ask
8 Judge Jones to rescind or vacate that order and to go
9 back on the approval of it.

10 Alleged in that motion, in effect, that he was
11 either not in the appropriate state of mind or
12 something that would have been one of the many things
13 that you could allege in trying to undo an order.

14 Judge Jones had a hearing on that sometime in
15 that May of 2009 timeframe. At the time of that
16 hearing, we also had hearings set up for June 23rd and
17 24th of 2009, to resolve the custody and visitation
18 issues and to resolve various contempt actions that
19 had been brought in the underlying family court
20 action.

21 When Judge Jones heard that matter on
22 Mr. Hammer's motion and heard arguments from his
23 counsel and us about it, she, from the bench, refused
24 to ---

25 MR. HAMMER: Your Honor, I believe anything that

1 he would have to say about whatever the judge had to
2 say from the bench would be hearsay.

3 THE COURT: Ms. Ballard?

4 MS. BALLARD: Your Honor, Mr. Hammer would have
5 been present. I'll lay that foundation.

6 THE COURT: Well, the fact that he was present
7 doesn't make it any less hearsay.

8 Did she rule on it, Mr. Madden?

9 THE WITNESS: She did.

10 THE COURT: Okay. Wouldn't that ---

11 MS. BALLARD: Let me rephrase the question.

12 BY MS. BALLARD:

13 Q What did Judge Mobley-Jones rule as to how
14 Mr. Hammer's attempt to set aside the agreement?

15 A Well, she denied the motion.

16 THE COURT: Wait. Go ahead, Mr. Hammer.

17 MR. HAMMER: Your Honor, the ruling would speak
18 for itself. He has now --- you asked whether he
19 ruled, and I believe he is talking about what she
20 ruled from the bench. She never issued a written
21 order from that hearing, from that particular hearing,
22 and as to that particular hearing only.

23 THE COURT: Well, let me ask you this,
24 Mr. Hammer. Did you make a motion to have that
25 agreement rescinded or vacated or however it was put?

1 MR. HAMMER: My counsel made some order.

2 THE COURT: Well, did you, through your lawyer,
3 make a motion to have it rescinded?

4 MS. LIPSCOMB: I wasn't counsel at the time.

5 THE COURT: Okay. I'm just asking Mr. Hammer.

6 MS. LIPSCOMB: He may. I'm just...

7 THE COURT: All right. Thank you.

8 MR. HAMMER: He did make a 50, 52, 59, 60 motion.

9 THE COURT: You did.

10 MS. LIPSCOMB: Through his counsel.

11 THE COURT: Through your lawyer.

12 MR. HAMMER: Mr. McLaren made a motion on that
13 for a new trial.

14 THE COURT: Was it granted?

15 MR. HAMMER: It was never ruled upon.

16 THE WITNESS: Yes, it was.

17 THE COURT: Is that right, Mr. Madden?

18 THE WITNESS: No, sir.

19 THE COURT: All right. He will --- yes, ma'am,
20 Ms. Lipscomb.

21 MS. LIPSCOMB: Just to clarify. I think what
22 Mr. Hammer is trying to say is it was ruled on from
23 the bench. It was never made in a writing. Correct
24 me if I'm wrong, because I wasn't counsel, but it was
25 never made a writing, a written order, and then

1 ultimately it was discussed in the June 24th hearing
2 that resulted in an August 19th order relating to the
3 June 24th hearing that dealt with financial issues.

4 MR. HAMMER: And in September, based upon a
5 secondary agreement where essentially these were
6 withdrawn, she ruled based on that, but that was not a
7 direct ruling on the issues themselves. That was a
8 ruling confirming the withdrawal at that time.

9 THE COURT: Okay. Let's deal with the objection.
10 Your objection is overruled.

11 MR. HAMMER: Thank you, Your Honor.

12 MS. BALLARD: Thank you, Your Honor.

13 THE COURT: You may continue.

14 THE WITNESS: You had asked me Ms. Ballard to
15 talk about why we got November 10 from May 2008.

16 BY MS. BALLARD:

17 Q Yes, why was there a delay?

18 A The point where I was in that chronology was this
19 hearing before Judge Jones upon Mr. Hammer's motion.
20 Judge Jones, from the bench, denied Mr. Hammer's
21 motion and that left the agreement, the May of 2008
22 order and agreement intact.

23 Q That's the one regarding the transfer?

24 A That's correct, what you called the partial
25 settlement. The one where he gets the building and

1 Shirley gives her interest up to him.

2 Q Correct.

3 A In June we had these hearings. When we came for
4 these hearings in June, we spent two days in this
5 courthouse negotiating. On day one, we negotiated
6 child related issues. That resulted in the issuance
7 of one order which approved the custody and visitation
8 arrangement.

9 On day two, which was June 24th as I recall, we
10 reached a resolution of all the rest of the things
11 these folks were arguing about, including their
12 economic issues and the enforcement of and execution
13 of certain elements of the May of 2008 agreement, and
14 that resulted in a separate order.

15 Both of those orders were issued on August 19th,
16 2009 by Judge Rucker. He held two separate hearings,
17 though. One was on June 23rd to deal with the child
18 related stuff. The other was on June 24th, which
19 dealt with everything else.

20 One of the matters in controversy was getting the
21 building out of Shirley's hands and name or out of her
22 name and into Mr. Hammer's name. That was part of the
23 discussions that were ongoing during this year period
24 of time and during this period of time leading up to
25 the June 24th settlement.

1 Q That's in '09?

2 A 2009, yes. As part of the June 24, 2009
3 settlement, there are some provisions in that order,
4 and I don't remember the specifics, concerning the
5 logistics of getting the building transferred from
6 Shirley over to Mr. Hammer.

7 So when Judge Rucker issued that order in August
8 of 2009, approving that June 24th settlement, he
9 approved the settlement which provided for the
10 mechanics of how that was going to go about.

11 Q And what was the delay after his August 19th,
12 2009 order?

13 A When Judge Rucker issued the August 19th, 2009
14 order, Mr. Hammer filed various motions to challenge
15 that order or those orders and to rescind them.

16 Q Let me show you what we've already introduced
17 into evidence as Mrs. Hammers' Exhibit No. 30 and ask
18 if you can identify that.

19 A Yes, ma'am. I'm pretty familiar with that the.

20 MS. BALLARD: Your Honor.

21 MS. LIPSCOMB: Your Honor, I thought 30 was
22 submitted for identification, but not admitted.

23 MS. BALLARD: No, 26-B was different.

24 THE COURT: No, 30 is also for ID at this point.

25 MS. BALLARD: I thought it had been admitted. I

1 apologize, Your Honor.

2 THE COURT: I don't think I made a decision on
3 that, but ---

4 MS. BALLARD: Okay.

5 THE COURT: I don't remember why. I think it was
6 because their position was that it had nothing to do
7 with this case.

8 MS. BALLARD: Okay.

9 MS. LIPSCOMB: That's correct, because it refers
10 to the child custody matter and --- which is on
11 June 23, not the financial matters which were
12 addressed on June 24th, '09.

13 THE COURT: All right. Let me just ask the
14 witness a question.

15 Mr. Madden, how many August 19th orders are
16 there?

17 THE WITNESS: Two.

18 THE COURT: Okay, and one of those deals with
19 child custody and one deals with what?

20 THE WITNESS: One deals with the approval of the
21 child custody agreement and the other deals with the
22 approval of the party's agreement regarding a
23 resolution of contempt actions and financial issues.

24 THE COURT: Okay. All right. You can lay any
25 foundation with the Exhibit 30 for ID, and then if you

1 want to move it into evidence, I'll make my decision
2 at that time.

3 MS. BALLARD: Yes, sir.

4 BY MS. BALLARD:

5 Q Mr. Madden, you were explaining --- you were
6 answering my question about why there was a delay
7 after the August 19th, 2009 order, and I believe you
8 said that a motion was filed?

9 A There were multiple motions filed. There were
10 motions.

11 Q By whom?

12 A By Mr. Hammer.

13 Q Okay.

14 A Or by Mr. Hammer's counsel on behalf of
15 Mr. Hammer. The motions were --- I would divide them
16 into two categories. One was the attack on the
17 custody and visitation agreement, the approval of the
18 June 23rd hearing, and then the other was on the money
19 stuff.

20 As I recall, Mr. Hammer filed a pro se motion
21 effectively seeking to withdraw his consent or to
22 recognize the withdrawal of his consent to the child
23 custody agreement.

24 Then his lawyer filed, under his lawyer's
25 signature, the motions with respect to the money

1 issues and the clarification of some of the money
2 issues and everything that was resolved from the
3 June 24th hearing.

4 We had a hearing on those motions. The hearing
5 for all motions was held in October, I think. October
6 of 2009.

7 At that hearing --- yeah, it was. October 27th,
8 three years ago.

9 Q And you're referring to what's been marked for
10 identification as Shirley's Exhibit No. 30?

11 A Yes. This order was issued --- the Defendant's
12 Exhibit 30 for identification is the order which Judge
13 Rucker issued addressing Mr. Hammer's pro se motion
14 seeking to withdraw his consent to the August 19th,
15 2009 order, which approved the custody and visitation
16 agreement from the hearing held June 23rd, 2009.

17 Q Okay.

18 A That's what Defendant's Exhibit 30 is.

19 Q Okay.

20 A And there's a separate order from the
21 October 27th, 2009 hearing, which addresses or maybe
22 multiple orders, which addresses the other issues that
23 were presented that day which were the various motions
24 and challenges targeted toward the August 19th, 2009
25 order which related to the June 24th, 2009 hearing.

1 Q We apparently have not marked that particular
2 order for identification.

3 A Okay.

4 MS. BALLARD: Your Honor, I'll withdraw the
5 tender of Exhibit No. 30, since Mr. Madden explained
6 that relates solely to child custody.

7 THE COURT: All right. How about the attachments
8 of that? That will be made attachments to any other
9 proposed exhibit?

10 MS. BALLARD: Let me look at it.

11 THE COURT: We have Mr. Hammer's pro se motion,
12 the August 19th order approving the settlement and
13 the ---

14 MS. BALLARD: The order I would withdraw. I
15 would continue to offer into evidence as Exhibit No.
16 30, Mr. Hammer's pro se motions that are filed on
17 August 19th, 2009. The significance of that, of
18 course, is the date on which those motions were filed.

19 THE COURT: All right.

20 MS. LIPSCOMB: Your Honor, I object to that, as
21 well, because that specifically refers only to a
22 withdrawal as to the June 23rd, 2009 order, which
23 relates solely to custody.

24 THE COURT: All right. Well, let's --- yes, sir
25 Mr. Hammer, you join in that?

1 MR. HAMMER: Yes, sir, I do.

2 THE COURT: All right. Just to get right to the
3 point, if what you want to offer is something
4 different from what you have, I don't know if anybody
5 has a copy of it, but if the purpose of all this is to
6 have an exhibit in evidence that establishes some type
7 of timeline, we can certainly have the witness
8 identify those documents, and then I can make my
9 decision then.

10 Does any --- do you have that?

11 MS. BALLARD: I don't have a hard copy of that
12 one, Your Honor.

13 THE COURT: That is part of a family court
14 record?

15 MS. BALLARD: Yes, sir. It's part of the family
16 court record that, as part of my case in this 1634
17 case, I was going to ask you to take judicial notice
18 of that entire family court record.

19 THE COURT: All right. Then I can make my
20 decision based on that, but the timeline testimony
21 is --- I've overruled their objections to his timeline
22 testimony.

23 MS. BALLARD: Okay.

24 THE COURT: If it a document or a series of
25 documents you want me to consider as exhibits, we can

1 deal with that later.

2 MS. BALLARD: Okay. Thank you very much, Your
3 Honor.

4 MR. HAMMER: I'm sorry, Your Honor. She was
5 standing between us, and I am a little hard of
6 hearing.

7 THE COURT: Well, no. You were talking to
8 Ms. Lipscomb.

9 MR. HAMMER: I was doing that, too, but ---

10 THE COURT: You were talking to Ms. Lipscomb is
11 why you've didn't hear what I was saying.

12 MR. HAMMER: I heard most of what you said. I
13 didn't hear the latter part of what was said.

14 THE COURT: Overruled. She has withdrawn Exhibit
15 30.

16 MR. HAMMER: The only thing I didn't hear was
17 whether or not you were taking judicial notice.

18 THE COURT: She has withdrawn Exhibit 30 as an
19 offered exhibit.

20 MR. HAMMER: I understood that part.

21 THE COURT: She wants to perhaps offer at some
22 other point as Exhibit 30 or 31 or whatever it might
23 be, the correct order from the October 27th, 2009
24 hearing addressing the judge's resolution of financial
25 issues as opposed to custody issues.

1 She also indicated she still wants me to take
2 judicial notice of the family court file. I said that
3 I have not made a decision on that ---

4 MR. HAMMER: Okay.

5 THE COURT: --- but that the witness's testimony
6 as to the timeline was not objectionable.

7 MR. HAMMER: The only thing I did not hear you
8 say is that you have not made a decision on that.

9 THE COURT: I have not made a decision.

10 MR. HAMMER: That's the part I didn't hear. I'm
11 sorry. That's all I have.

12 THE COURT: So I can put 30 for ID aside; is that
13 correct?

14 MS. BALLARD: Yes, sir, you can.

15 BY MS. BALLARD:

16 Q Mr. Madden, the issue --- the order that was
17 issued in August of 2009, addressing the property
18 issues that we don't have in front of us at the
19 moment, after that order was issued, was there another
20 delay in the transfer by Mrs. Hammer of her interest
21 in the 1634 Main property and in the interest that she
22 had in the limited partnership?

23 A There was. Here is what happened. When we were
24 at the courthouse on October 27th of 2009, for that
25 hearing on that collection of challenges by Mr. Hammer

1 to the August 19th, 2009 orders, Mrs. Hammer, in my
2 presence, signed this deed, which is Defendant's
3 Exhibit 16. This is the quitclaim deed, and you'll
4 see that I'm a witness to that and it was notarized by
5 me originally on the 27th day of October, 2009.

6 Q I see.

7 A Now, I've stricken through, and I initialed that,
8 so on that day when we were at the courthouse, she
9 signed that deed.

10 Q I see.

11 A Judge Rucker issued his orders from that hearing.
12 After the issuance of those orders from that hearing,
13 Mr. Hammer filed motions to reconsider those orders.
14 There was a hearing held in January of 2010 on those
15 motions to reconsider.

16 Q Okay.

17 A And throughout most of 2010, we were in and out
18 of the family court in dealing with various motions or
19 motions or follow-up motions related to all those
20 challenges. So there's this time period between when
21 we were in court on October 27th of 2009, up until the
22 fall of 2010.

23 At some point in that process after Judge Rucker
24 had consistently upheld the validity of the agreement
25 whereby Shirley transferred to Mr. Hammer the property

1 at 1634, at some point in that process, we transmitted
2 this deed over to Ms. Lipscomb, and that's Defendant's
3 Exhibit 16 and the date of this letter is November 10,
4 2010, and you'll notice that the date of the deed has
5 been re-dated, so apparently Mrs. Hammer and I got
6 together and changed the date. I initialed those
7 changes, I changed the date on my notary subscription,
8 and then it was sent over to Ms. Lipscomb in
9 furtherance of the settlement.

10 So that --- I can't today recall exactly how many
11 hearings we had in 2010, but I know we were in court
12 in January. I know we were in court in May, and I
13 know that there were some issues related to an appeal
14 filed by Mr. Hammer and whether that appeal was or was
15 not staying Judge Rucker's ability to move forward in
16 2009.

17 So if you said summarize it, what happened
18 between August of --- October of 2009 and November
19 of 2010, I would say there were a bunch of hearings
20 and there was a fair amount of controversy being
21 raised and having to be dealt with and as a result of
22 that, it was November of 2010 before this letter went
23 out the door, and this deed went with it.

24 Q All right. And the last order or the first
25 order, Exhibit No. 15, references a hearing that was

1 held on August 26th, 2010. That is Exhibit No. 15. I
2 believe that's the one you were referring to in the
3 fall of 2010?

4 A Yes.

5 Q Is --- in that order, the order in which filed
6 September 29th, 2010, does it contain any rulings
7 relating to the transfer by Mrs. Hammer of her
8 interest in the real estate and her interest in the
9 limited partnership?

10 A It does. This was the order --- yes, it does,
11 because part of what was going on in 2010 in addition
12 to those challenges, were enforcement mechanisms by
13 Mrs. Hammer to try to enforce the deal that she had
14 struck. To try to get the benefit of her bargain.
15 There was a deal about an IRA and some money being
16 transferred there. This order from the August 26th,
17 2010 hearing and September 8th, 2010 hearing addressed
18 all of that and contains the provisions for the ---
19 basically sign the documents and send them over on the
20 building, and this order is dated September 24th,
21 2010, issued September 29th. That makes sense that
22 would have been processed and that would have led to
23 the November 10, 2010 transmittal of the deed by me to
24 Ms. Lipscomb.

25 Q Which was Exhibit 16?

1 A Yes, ma'am.

2 Q All right. Let me just ask you, after you
3 transmitted Exhibit No. 16, did you receive Exhibit 17
4 from Ms. Lipscomb returning the deed and the tender of
5 the partnership interest?

6 A I received this letter, yes.

7 Q With the enclosures that are referenced?

8 A Yes.

9 MS. LIPSCOMB: What number is that? I'm sorry.

10 MS. BALLARD: That's number 17.

11 BY MS. BALLARD:

12 Q So has the transfer of Mrs. Hammer's partnership
13 interest in 1634 limited partnership, 1634 Main
14 Limited Partnership and her interest in the dirt
15 located at 1634 Main Street in Columbia, since been
16 addressed by the family court after Ms. Lipscomb sent
17 the deed and transfer back to you?

18 A Not that I remember, but we have continued to
19 have hearings in the family court and there have been
20 issues, but I can't specifically recall anything
21 regarding that because this lawsuit --- I don't know
22 which lawsuit you guys are in today, but what I would
23 call the 1634 lawsuit got started somewhere around
24 this time.

25 Q All right, sir, so the family court has not made

1 a ruling as to whether or not the transfer has
2 occurred or has not occurred?

3 A That's correct. What the family court has said
4 is that Mr. Hammer gets that asset and that Shirley
5 needs to sign the documents, and Shirley has signed
6 the documents. We have sent the documents to
7 Ms. Lipscomb and they have not been accepted.

8 MS. BALLARD: Okay. That's all I've got. Thank
9 you, Mr. Madden.

10 THE COURT: All right. Ms. Lipscomb.

11 MR. HAMMER: Thank you, Your Honor.

12 THE COURT: Or Mr. Hammer, whoever would like to
13 go first.

14 MS. LIPSCOMB: I'll go first.

15 THE COURT: That's fine.

16 CROSS-EXAMINATION:

17 BY MS. LIPSCOMB:

18 Q Mr. Madden, would you look again at Exhibit 15.
19 Do you have it in front of you?

20 A I don't. Ms. Ballard took it away.

21 MS. BALLARD: I did.

22 THE WITNESS: I have 16.

23 BY MS. LIPSCOMB:

24 Q Would you look, please, at the order dated
25 September 29th or filed September 29th, 2010?

1 A Okay.

2 Q And that's the order you say dealt with the
3 building and confirming the building. Would you tell
4 me where in that order it deals with the building?

5 A Yes, ma'am. If you look on page five of the
6 order, there is a finding by Judge Rucker in the
7 second paragraph --- or in the first paragraph, which
8 references the order ending action and talks about the
9 simultaneous transfer of the IRA and the interest held
10 in the building.

11 In the next paragraph there is a finding by Judge
12 Rucker that says to implement the IRA and building
13 transfer, the court issued the order dated
14 August 19th, 2009, and then it goes on and in that
15 third paragraph it says there is no question that the
16 documents evidencing the transfer of the
17 building/entity from plaintiff to defendant have not
18 been executed.

19 Then in the next paragraph it says, grants
20 ownership of plaintiff's legal and equitable interest
21 in the building and related entity to defendant.

22 Q Wait a minute. Where is that? I see on page
23 five that is says ---

24 A Fourth paragraph on page five, the second
25 sentence --- the first part talks about the IRA and

1 then I picked up and quoted after the words,
2 defendant's IRA to plaintiff and then it says and
3 grants ownership of plaintiff's legal and equitable
4 interest in the building and related entity to
5 defendant.

6 Then it says there's never been an order issued
7 which changed these requirements. Then on page six it
8 talks about the transfer of these assets and says at
9 the top in the paragraph numbered 1, that the parties
10 are to sign the documents no later than October 23rd,
11 2010, to comply with the IRA transfer and the law
12 office building and related entity transfer and that
13 second numbered paragraph authorizes the clerk of
14 court for Richland County to execute the documents,
15 deeds, assignments and transfer instruments if that
16 didn't take place.

17 Q Okay. In this particular order ---

18 MS. BALLARD: I'm not sure he was through.

19 BY MS. LIPSCOMB:

20 Q I'm sorry. Were you through?

21 A Then, I think you were asking me, Ms. Lipscomb,
22 where that order addressed that. That's in the
23 findings. Over in what I would call the ordering
24 clause on page you have eight, in the paragraph which
25 is numbered three, although I think that's a mistake.

1 I think that should be number two, but it repeats sort
2 of that conclusion that the court and directive of the
3 court that no later than October 23rd, 2010, sign the
4 documents, do things reasonably necessary to comply
5 with respect to the IRA transfer and the transfer of
6 the interest in the law office building.

7 Q And ---

8 A So I believe those are the areas. That may not
9 be all of them, but I know those are some of the areas
10 that I was referring to in any earlier testimony.

11 Q The order that you're referencing, September 29th
12 of 2010, that is on appeal; is that correct?

13 A I don't know.

14 Q You don't know?

15 A I don't know.

16 Q If I represented to you that it was on appeal,
17 would you disagree?

18 A Maybe, and I'm not trying to be difficult, Judge,
19 but there are so many orders and so many appeals that
20 it would be virtually impossible for me today to
21 independently state that I can say that I know what is
22 on appeal or what's not on appeal. There has been a
23 fair amount of controversy in the Hammer litigation
24 about whether appeals were timely taken from various
25 orders.

1 Q All right. Let me show you this.

2 A I can say this, however. A lot of appeals have
3 been filed and it would not surprise me if an appeal
4 of this order had been taken.

5 Q Let me show you a document and ask you if you can
6 identify it, and if you'll keep your finger there, it
7 will make it easy for you. That's a notice of appeal,
8 is it not?

9 THE COURT: Do you want him to look at the one
10 you marked with your thumb or the one on top?

11 MS. LIPSCOMB: I want him to look --- to notice
12 the first page that indicates it's a filed copy of the
13 notice of appeal, correct.

14 THE COURT: Ms. Lipscomb, I'll take your
15 representation. Was an appeal taken from the order?

16 MS. LIPSCOMB: Yes, Your Honor, and it's still on
17 appeal and the initial briefs have been filed.

18 THE COURT: All right. I'll accept that.

19 MS. LIPSCOMB: And I can show you the exhibit.
20 Did you see the particular --- that's the order.

21 THE COURT: Whether the appeal was timely or
22 whether or not it's cumulative of other things, I
23 will --- okay. So that order has been appealed?

24 MS. LIPSCOMB: Yes, Your Honor.

25 THE COURT: All right. I'll accept your

1 statement.

2 BY MS. LIPSCOMB:

3 Q And a another ---

4 THE COURT: By the way, just to make sure the
5 record is clear, that is the order of Judge Rucker
6 dated ---

7 MS. LIPSCOMB: It is dated --- it's the exact
8 same order that is referred to as Exhibit 15.

9 MS. BALLARD: It's clocked in on September 29,
10 2010.

11 MS. LIPSCOMB: Yes.

12 THE COURT: Dated September 24 in Newberry.
13 Okay. That's just where he signed it.

14 MS. BALLARD: Yes, sir.

15 THE COURT: All right. I just wanted to make
16 sure we were clear on that.

17 MS. LIPSCOMB: Yes, sir, dated in Newberry,
18 September 24, clocked at 12:40, which is identical to
19 exhibit 15.

20 THE COURT: Okay.

21 MS. LIPSCOMB: So that was on appeal at the time.

22 BY MS. LIPSCOMB:

23 Q Mr. Madden, during this time, the parties were
24 engaged in trying to resolve everything on a global
25 settlement; is that right?

1 A Which time are you referring to?

2 Q During the time about which --- between when you
3 made your tender, which is Defendant's Exhibit 16 and
4 I returned the deed, did you have any understanding of
5 why I returned the deed? In that explained in
6 Exhibit 17?

7 A Okay. Dealing with your last question first,
8 Defendant's Exhibit --- that letter to me, which I
9 think you said is the 17, you outlined three certain
10 reasons for returning those documents, yes, ma'am.

11 Q All right. And then ultimately, we gave you ---

12 MS. LIPSCOMB: Just a minute, Your Honor.

13 THE COURT: All right.

14 (Pause.)

15 BY MS. LIPSCOMB:

16 Q Can you identify what's not been marked, but it's
17 a letter dated November 12, 2010?

18 MS. BALLARD: Your Honor, Ms. Lipscomb has
19 provided me with a copy of this exhibit. Before she
20 asks any questions about it, I'd like to note an
21 objection for the record under the Rules of Evidence
22 408 which prohibits the introduction into evidence
23 settlement discussions.

24 THE COURT: Not as a blanket matter, but the rule
25 does prohibit that. The evidence can be offered for

1 other reasons.

2 MS. LIPSCOMB: Yes, Your Honor.

3 THE COURT: So we'll take that up. Of course,
4 I'll have to read the letter.

5 MS. BALLARD: Yes, sir.

6 THE COURT: To rule on the objection, so if you
7 would mark it for ID Ms. Lipscomb,.

8 MS. LIPSCOMB: Yes, Your Honor.

9 THE COURT: So the record can be clear.

10 MS. BALLARD: What exhibit number ---

11 MS. LIPSCOMB: I think that it's either number 3
12 or 4 ---

13 THE COURT: This is Exhibit No. 3 for 1634 for
14 ID.

15 THE COURT REPORTER: Judge, we had the prior
16 exhibit that was marked 3 and then withdrawn, so 4
17 might make more sense.

18 THE COURT: Okay. Let's make this 4. So this is
19 Exhibit No. 4 for 1634 for ID. If you will just mark
20 your copy as No. 4.

21 MS. BALLARD: Thank you, Your Honor.

22 MS. LIPSCOMB: Thank you.

23 (WHEREUPON, Plaintiff's Exhibit No. 4 was marked
24 for identification only.)

25 THE COURT: And then you want the witness to

1 review that.

2 MS. LIPSCOMB: I believe he already has.

3 BY MS. LIPSCOMB:

4 Q Are you through with reviewing it, Mr. Madden?

5 A I am.

6 Q What is it?

7 A It appears to be a letter that was sent to me by
8 you on November 12th, 2010, containing an offer of
9 settlement from Mr. Hammer.

10 Q Okay. So in that offer, it indicates on page two
11 that all litigation would be ended; is that correct?

12 A That is part of the offer, yes.

13 Q Okay. And in the second --- another part of the
14 offer was that Mrs. Hammer would transfer 56 percent
15 interest in the L.P. to --- or in such a manner that
16 there would be no tax consequences; is that correct?

17 A That's what paragraph two refers to the transfer
18 by Mrs. Hammer of the 56.8 percent interest in 1634
19 Main L.P. in a manner which does not create tax
20 consequences, yes.

21 Q Okay. And then it was ultimately tendered in the
22 December 1, 2010 letter; is that correct?

23 A What was ultimately tendered?

24 Q The deed and assignment of the interest in the
25 partnership?

1 A The deed and the assignment of the interest in
2 the partnership were sent to you according to
3 Defendant's Exhibit No. 16 by my letter dated
4 November 10, 2010, which would have been two days
5 prior to the Exhibit marked for 1634 No. four.

6 MS. BALLARD: Your Honor, I withdraw my objection
7 to the exhibit.

8 THE COURT: Okay. Do you want to offer No. 4,
9 Ms. Lipscomb?

10 MS. LIPSCOMB: Yes, Your Honor.

11 THE COURT: Any objection, Mr. Hammer?

12 MR. HAMMER: No, sir.

13 THE COURT: All right. Four is in. That's 1634
14 Exhibit No. 4.

15 (WHEREUPON, Plaintiff's Exhibit No. 4 was
16 admitted into evidence.)

17 BY MS. LIPSCOMB:

18 Q Mr. Madden, I misunderstood. You said something
19 about two days before and I missed what you said.

20 A Okay, I understood your question, Ms. Lipscomb,
21 to say, to ask me if after the November 12, 2010
22 letter, which is the Exhibit No. 4 in the 1634
23 lawsuit, if after that point is when Mrs. Hammer sent
24 the deed and transfer of limited partnership interest
25 and my answer to that question was no, because

1 Defendant's Exhibit 16 is my letter dated November 10,
2 2010, which would have been two days prior to your
3 1634 Exhibit 4.

4 Q Okay. And is November 10 the first time the
5 quitclaim deed and assignment had been tendered?

6 A No.

7 Q When was it previously tendered?

8 A It was tendered at the courthouse on October 27,
9 2009, the day it was originally signed.

10 Q Was that the day --- was that tendered --- I was
11 not there?

12 A You were not involved in that.

13 Q And do you know why it was rejected at that
14 point?

15 A No.

16 Q All right.

17 MS. LIPSCOMB: Thank you, Your Honor.

18 THE COURT: All right. Mr. Hammer, may we take a
19 brief ---

20 MR. HAMMER: Oh absolutely.

21 THE COURT: --- recess.

22 MR. HAMMER: Absolutely. I was going to ask for
23 that.

24 THE COURT: Mr. Madden, you can step down. This
25 won't be long. We'll take a brief recess. Of course,

1 you may not discuss your testimony with anyone.
2 However, if Mr. Hammer wants to discuss anything with
3 you and you want to do that, that's fine, but you
4 cannot talk about obviously any attorney/client
5 issues. I'll certainly defer to Mr. Hammer because of
6 his objection about being caught by surprise since
7 Mr. Madden had been withdrawn as a witness. You don't
8 have to talk to him, but you all can talk about any
9 questions that Mr. Hammer may wants to ask. You can
10 do the same with Ms. Lipscomb should she have any
11 additional questions.

12 MS. LIPSCOMB: Thank you.

13 THE COURT: All right.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: All right. Mr. Madden, come up, have
16 a seat. Do you have any additional questions? I'll
17 give you that if you like.

18 MS. LIPSCOMB: No, Your Honor, just give me a
19 moment.

20 THE WITNESS: I'll lock myself in.

21 MR. HAMMER: Your Honor, we're trying to find
22 something in Mr. Ackerman's original deposition. We
23 had a copy in his office, rather than take your copy.

24 THE COURT: You can take mine if you like. I
25 haven't written on it.

1 MR. HAMMER: There may be some exhibits or
2 something on there.

3 THE COURT: I'll leave it right there to you.

4 MR. HAMMER: We have some. All right. That's
5 fine. We have that there.

6 MR. HAMMER: Thank you.

7 THE WITNESS: Am I done?

8 MS. BALLARD: I don't think so.

9 MR. HAMMER: May I tell Mr. Aiken that you're
10 back in the courtroom?

11 THE COURT: Yes, but he's not counsel in this
12 particular case, so I really don't need him.

13 MR. HAMMER: No. He's not.

14 THE COURT: All right. All right. Mr. Hammer,
15 you can question Mr. Madden.

16 CROSS-EXAMINATION:

17 BY MR. HAMMER:

18 Q Mr. Madden, how are you?

19 A I'm good.

20 Q Mr. Madden, do you have the May 9th agreement in
21 front of you as the May 9th, 2008 agreement that you
22 referred to?

23 THE COURT: That's the one in Exhibit 15?

24 MR. HAMMER: I think it was. I wasn't sure and
25 that's why I asked.

1 BY MR. HAMMER:

2 Q Do you have that?

3 A Yes, I have it. I have the document you're
4 referring to.

5 Q May I hold that for just a second, please?

6 A Sure.

7 Q Thank you, Mr. Madden. Mr. Madden, as a matter
8 of course, when you begin representing the client, one
9 of the first things you want to do in the domestic
10 area is to get a financial picture of what the client
11 has; is that correct?

12 A It is ---

13 MS. BALLARD: Your Honor, I object to this line
14 of questioning. He is here to provide a chronology to
15 what happened with the ---

16 THE COURT: Overruled.

17 MS. BALLARD: --- with the delay of the deed.

18 THE COURT: Overruled.

19 THE WITNESS: Yes.

20 BY MR. HAMMER:

21 Q Did you do that with Mrs. Hammer?

22 THE COURT: Okay. Now, attorney/client issues,
23 Mr. Madden, I'll leave it to your judgment as to when
24 you need to raise that point, but Mr. Hammer's
25 question to you is whether or not you inquired of Mrs.

1 Hammer as to her financial picture.

2 THE WITNESS: Yes, sir, and I respectfully
3 decline the opportunity to answer that based on the
4 attorney/client privilege.

5 Q Did you file a financial declaration?

6 A Did I file?

7 Q A financial declaration on Mrs. Hammer's behalf
8 in the court?

9 A At some point Mrs. Hammer filed a financial
10 declaration, yes.

11 Q When you say Mrs. Hammer, I'm talking about you,
12 as the lawyer, you would have done the filing; is that
13 correct?

14 A I would have handed it to the court or clocked it
15 in downstairs or Mr. Taylor may have done that
16 depending upon who was involved at the time.

17 Q And in order to do the financial declaration, you
18 would have had to have gone through and had a full
19 understanding of all the financial matters connected
20 with Mrs. Hammer's finances; isn't that fair to say?

21 A No.

22 Q You would not have been interested in her tax
23 returns and things of that sort?

24 A I would have been interested in her tax returns
25 and things of that sort.

1 Q And would you have reviewed her tax returns?

2 A To the extent your question asks me about what I
3 did for Mrs. Hammer, I respectfully decline the
4 opportunity to answer it and assert her privilege as
5 to being an attorney/client either confidential
6 communication or privileged matter or something that
7 would fall within the work product doctrine.

8 To the extent that you're asking me if generally
9 I would want to review tax returns of a litigant in a
10 divorce case, the answer is yes.

11 Q And did you review Mrs. Hammers' tax returns?

12 A I have not answer that question based on the
13 attorney/client privilege.

14 MR. HAMMER: Your Honor, I don't think there
15 would be any attorney/client privilege in connection
16 with the tax returns. That is a matter that is public
17 --- that becomes record in the financial declaration
18 that he has to enter.

19 THE COURT: The question is whether he reviewed
20 them, not what they say.

21 All right. So, Ms. Lipscomb, it's your client's
22 privilege. First of all, does she waive the privilege
23 for that particular question or if she waives it, does
24 that constitute a blanket waiver? What is your
25 position on Mr. Hammer's request that I order the

1 witness to answer the question?

2 MS. BALLARD: You said Ms. Lipscomb. You meant
3 me.

4 THE COURT: I'm sorry. Ms. Ballard, I'm sorry.

5 MS. BALLARD: Okay. We object. We do not waive
6 any attorney/client privilege. We do not waive any
7 work product privilege. The testimony that we offered
8 is strictly non-privileged, it was information dealing
9 strictly with third parties. We have do not offer any
10 privileged information.

11 THE COURT: Mr. Hammer, anything else on that
12 particular point?

13 MR. HAMMER: Yes, sir. May I have the ---

14 MS. LIPSCOMB: Here it is.

15 THE COURT: I gave it to Ms. Lipscomb.

16 MR. HAMMER: I'm sorry.

17 BY MR. HAMMER:

18 Q At the time of the agreement, it wasn't clear to
19 me whether you were a party in the room with the
20 negotiations as far as the agreement was concerned
21 with other individuals, and you say these were other
22 individuals who were not lawyers representing Mrs.
23 Hammer; is that correct?

24 A I did not say they were not lawyers.

25 Q I say lawyers representing her. They were

1 lawyers, but they weren't her lawyers.

2 A That is correct.

3 Q All right. So they were just --- as far as, for
4 our discussion here so there won't be any confusion,
5 there were other individuals who were talking on
6 behalf of Mrs. Hammer. They weren't lawyers
7 representing Mrs. Hammer and you had discussions with
8 them; is that correct?

9 A Yes.

10 Q And one of those people was Allen Medlin; is that
11 correct?

12 A Yes.

13 MR. HAMMER: Your Honor, that would waive the
14 attorney/client privilege. He has ---

15 THE COURT: It depends on what they discussed.

16 MR. HAMMER: Well.

17 THE COURT: Right. If you could, at least not
18 for evidentiary purposes, but for clarification for me
19 since I have to make a factual finding, what
20 discussions --- I take it from your question that
21 you're talking about negotiations in a courthouse ---

22 MR. HAMMER: I will.

23 THE COURT: You need to clarify.

24 MR. HAMMER: I will.

25 BY MR. HAMMER:

1 Q I'm talking about negotiations in connection with
2 this partial settlement agreement that has been the
3 focus of your testimony?

4 A You're talking about the May 9, 2008 partial
5 settlement about outstanding issues?

6 Q Right. The contract, agreement. That's what I'm
7 talking about.

8 A Yes.

9 Q You are telling us, if I understand you
10 correctly, that you had discussions with people other
11 than lawyers who were not representing Mrs. Hammer in
12 the capacity as lawyers in connection with this
13 agreement; is that right?

14 A I did.

15 Q All right.

16 THE COURT: If, if Mrs. Hammer was in the room,
17 let's just use a will consultation as an example. If
18 a person who wants a will is conferring with an
19 attorney, and that person has six --- three, four,
20 five, six family members in the room while the person
21 who wants the will and who is the client talking to
22 the lawyer, perhaps in that instance what the person
23 signing the will says to the lawyer and vice versa,
24 there is no privilege.

25 It depends on whether or not, first of all,

1 whether or not Mrs. Hammer was present, and then what
2 was discussed. It just doesn't waive. Lawyers
3 consult with other professionals all the time on
4 matters that pertain to representation, whether it be
5 a business deal, an estate plan, things of that
6 nature, but the question is whether or not --- first
7 of all whether or not Mrs. Hammer was present.

8 MR. HAMMER: Let me get to that.

9 THE COURT: All right.

10 BY MR. HAMMER:

11 Q First of all, this was --- the person that was
12 discussing this with you was discussing it --- the
13 actual terms of the agreement on Mrs. Hammer's behalf;
14 isn't that correct?

15 A That's correct. It was my understanding in those
16 discussions that he was acting in the capacity of her
17 agent for purposes of those communications.

18 Q All right. Not as her lawyer?

19 A As her agent, an authorized agent.

20 Q To talk for her?

21 A That's correct.

22 Q All right. But you had no signed document to
23 that effect, did you?

24 A I think I do.

25 Q You have a signed --- do you know that you do?

1 Can you testify here under oath that you absolutely
2 are certain?

3 A No.

4 Q Okay.

5 A What I can testify to, Mr. Hammer, is at the very
6 beginning of this case, of my involvement with Mrs.
7 Hammer that this discussion was had about
8 communications and about the attorney/client privilege
9 and that I made clear at the outset with Mrs. Hammer
10 and with Mr. Medlin what authority he had to
11 communicate on her behalf and she authorized that
12 communication and at all times I considered her to be
13 his authorized agent in communicating with me and
14 therefore thought those communications were
15 privileged.

16 Q Now, you said there were other parties present.
17 You said there was a group of people present with all
18 of these negotiations; is that correct?

19 A I believe what I said was that there were several
20 people involved, and to be clear, in the May 2008
21 timeframe, these negotiations did not take place at
22 the courthouse. These negotiations were ---

23 Q I ---

24 A --- taking place outside the courtroom
25 environment.

1 Q Did ---

2 A I'm not aware of ---

3 Q That's what I understand.

4 A Of a summit or ---

5 Q Of course, not in the courthouse. All of these
6 people got together in a room at various times on the
7 telephone or they had conversations back and forth in
8 the course of negotiations for this 2008 --- May 9,
9 2008 agreement?

10 A I don't remember how many people. I don't
11 remember the logistics of how I have the happened. My
12 best recollection is that there was a point person on
13 your side of the transaction and there was a point
14 person on Mrs. Hammer's side of the transaction and
15 those were the people doing most of the communicating.

16 Q But you were involved in --- you say you were
17 involved in those communications; is that correct?

18 A I received information about of those
19 communications.

20 Q All right. So there were at least three groups
21 of people involved, a group who were non-lawyers that
22 we agreed for Mrs. Hammer, a group who were ---
23 whether they're lawyers or not, who were for Mr.
24 Hammer and yourself, both of those outside groups were
25 not lawyers representing either of the parties; is

1 that correct?

2 A Okay. If I may have break your question down.

3 Q Well ---

4 A To make clear, I only had communications with one
5 point ---

6 Q If you'll just answer my question.

7 MS. BALLARD: May he finish his answer, Your
8 Honor.

9 THE COURT: Wait just a second. Let him finish.

10 MR. HAMMER: I'd like to get a yes or no and then
11 an explanation, if you don't mind.

12 THE WITNESS: I can't answer that yes or no, Your
13 Honor.

14 THE COURT: All right. Then answer its in the
15 fashion that you believe ---

16 MR. HAMMER: Let me --- may I rephrase the
17 question, and then I withdraw that question?

18 THE COURT: All right.

19 BY MR. HAMMER:

20 Q We have established that there were a group of
21 people on Mrs. Hammer's side who did some negotiation
22 for Mrs. Hammer; is that correct?

23 A No, sir. We established there was at least one
24 person that I had communication with that was
25 assisting Mrs. Hammer in the negotiation.

1 Q All right. You say at least one. Were there
2 more than one?

3 A I considered there to be Mr. Medlin, who was
4 Mrs. Hammer's agent and Mrs. Hammer. Those were the
5 two people --- those were the only two people on earth
6 that I have ever had communications with which I
7 considered to be privileged communications for Mrs.
8 Hammer.

9 Q I understand. I'm not asking what you consider
10 to be privileged communications. I'm asking whether
11 you had any discussions with anyone other than Mrs.
12 Hammer and Mr. Medlin, who you originally said was ---
13 who are nonparties?

14 A That ---

15 Q Who were people who ---

16 THE COURT: Just ask the question. Your question
17 is was there anybody else.

18 THE WITNESS: The only other person would have
19 been your counsel.

20 MR. HAMMER: All right.

21 THE WITNESS: Or my co-counsel.

22 THE COURT: Continue please, Mr. Hammer.

23 BY MR. HAMMER:

24 Q All right. And then on the other side, there
25 were some people also negotiating; is that correct?

1 A That's my understanding although I never had
2 communications with those folks.

3 Q So when --- if I understand it, you weren't privy
4 to all the negotiations that went on?

5 A You're exactly, right.

6 Q All right. You weren't in the room with all of
7 the negotiation that went on?

8 A That's correct.

9 Q So your testimony as to the negotiations is based
10 on what someone has told you; isn't that correct?

11 A I don't believe I testified about the
12 negotiations.

13 Q That ---

14 A You'll have to refresh my memory.

15 Q Well, you prepared the order, didn't you?

16 A I did.

17 Q You prepared the settlement agreement, didn't
18 you?

19 A I did.

20 Q You had to get information from someone in order
21 to prepare that settlement agreement?

22 A That's correct.

23 Q So you got information from other people to
24 prepare that settlement agreement; is that correct?

25 A That is correct.

1 Q All right. That's what I was getting at. It
2 wasn't based on your firsthand knowledge of what the
3 discussions were?

4 A That's correct.

5 Q All right. Now, you --- so when you gave us your
6 interpretation, your interpretation of the portion
7 that we're talking about, the settlement agreement was
8 not based on firsthand knowledge, that was based on
9 information that you received from others?

10 A I don't believe I gave an interpretation.

11 Q All right. Did you consider the settlement
12 agreement to be a binding settlement agreement?

13 A Yes.

14 Q Do you consider it to be a binding settlement
15 agreement today?

16 Q Yes. Have you ever considered it not to be a
17 binding settlement agreement?

18 A No.

19 Q Have you explained that --- and you've conveyed
20 that obviously, and you're conveying it here in open
21 court. You've conveyed that to Mrs. Hammer; is that
22 correct?

23 A I'm not going to answer that based on the
24 attorney/client privilege.

25 Q So if I understand something --- if I understand

1 correctly, you have just said that you considered it
2 at the time. You consider it now. You've always
3 considered it to be a binding agreement and here in
4 open court, but you're not going to tell us whether or
5 not you explained that Mrs. Hammer?

6 A That's correct.

7 THE COURT: That he was not what he said, and I'm
8 step in here because there is a privilege issue.
9 That's not he said.

10 MR. HAMMER: All right.

11 THE COURT: Let didn't say he's not going to tell
12 us whether he told Mrs. Hammer that. He is not going
13 to discuss anything that he has communicated with Mrs.
14 Hammer.

15 MR. HAMMER: Okay. I understand, but ---

16 BY MR. HAMMER:

17 Q So you're not going to discuss whether or not you
18 communicated with Mrs. Hammer whether this was a
19 binding settlement agreement?

20 A Yeah. I'm not going is to discuss anything in
21 this courtroom that I have discussed with Mrs. Hammer
22 in confidence in my role as her lawyer.

23 Q All right. Well let's discuss what you thought
24 then. You thought this was a binding settlement
25 agreement on this date?

1 A I did.

2 Q And on this date you knew Mrs. Hammer's financial
3 situation?

4 A I had an understanding of her financial
5 situation.

6 Q And you have reviewed her tax documents?

7 A I do not recall specifically the answer to that
8 question. That's my answer.

9 Q But --- as to paragraph --- as to the paragraph
10 (D) on page three regarding the interest in the
11 building, you would not have --- you would have known
12 what interest in the building she was actually getting
13 and actually conveying before you put that down
14 wouldn't you?

15 A Not necessarily.

16 Q So did you or did you not know what interest she
17 was conveying?

18 A I knew she was conveying all the interest that
19 she had.

20 Q But you didn't know what that was.

21 A I don't know if I knew that or not.

22 Q Well, let's just see what you know right now.
23 Right now, do you think that she owns 56.8 percent of
24 the ---

25 MS. BALLARD: Your Honor, this is beyond the

1 scope of the testimony that we offered.

2 THE COURT: Mr. Hammer, what's the purpose of
3 these questions? The witness testified, I believe
4 almost exclusively on direct, that the timeline, how
5 they got from May of '08 to the tender, if you will,
6 and the alleged refusal of the tender in late 2010, so
7 how does that --- what does that have to do with what
8 did he think she owned and so forth? I assume what
9 you want to get at is what those K-1s show. Why don't
10 you just --- they're in evidence. If you want to ask
11 him about those, ask him about those, but what is
12 the --- how does all this line of questioning
13 correspond with the timeline?

14 MR. HAMMER: Well, Your Honor, if you'll allow me
15 to get just two or three or four questions to tie it
16 up, I will.

17 THE COURT: All right, sir. I will allow that.
18 To that extent, Ms. Ballard, the objection is
19 overruled.

20 MS. BALLARD: Thank you, Your Honor.

21 MR. HAMMER: Thank you.

22 BY MR. HAMMER:

23 Q In terms of the timeline, let me go back and
24 review. You've always considered this to be a valid
25 document, correct?

1 A That's correct.

2 Q And so in connection with the valid document, in
3 order for you to send a valid --- a valid --- to meet
4 the terms of the document, you would have to know what
5 she owned in order to do that; is that correct?

6 A Not necessarily.

7 Q When you said the --- if you sent the wrong
8 items. Well, if you sent the documents for the wrong
9 items, you couldn't expect those to be accepted, could
10 you? You wouldn't expect, if your sent the wrong
11 documents conveying the wrong pieces of property, you
12 would not expect those to be accepted, would you?

13 A I don't know.

14 Q Well, if a lawyer sent you and you knew they were
15 the wrong documents for items to be conveyed to your
16 client, would you accept those documents that someone
17 did not own?

18 A I may.

19 Q In this particular case, what you're telling us
20 is that you might have sent the wrong documents even
21 knowing that they're the wrong documents?

22 A No, I didn't say that.

23 Q Have you reviewed the K-1s?

24 A I don't recall.

25 Q If you look at them, might it refresh your

1 memory?

2 A I doubt it.

3 Q So your testimony here is that you really didn't
4 know what interest she owned in the building or in the
5 property, correct?

6 A I believe I testified that I did not know that.

7 Q All right. And your testimony is that you always
8 believed that this document was valid?

9 A Yes, sir, we --- I've answered that one four
10 times now.

11 Q And your testimony is that on --- approximately a
12 year-and-a-half later you sent a --- you waited a
13 year-and-a-half to November of 2010 to send any type
14 of documents to --- I think you did say that you sent
15 some earlier but there was some confusion about that,
16 but the documents that we cross-examined on and
17 talked --- that the lawyer talked with you about ---
18 that Ms. Ballard talked with you about, was the 2010
19 timeline that we were trying to straighten out; isn't
20 that correct?

21 A Could you ---

22 Q I understand ---

23 A A lot came in, are you talking about ---

24 (Talking over each other.)

25 Q I understand --- the main thrust, and what the

1 judge is asked about, is the timeline that we're
2 talking about, correct?

3 A Yes, sir.

4 Q The main thrust of Ms. Ballard's questions had to
5 do with the 2010 letter that you sent the --- wherein
6 you sent what you didn't know was the proper documents
7 over to the lawyers, correct?

8 A Well, no, because I didn't --- I didn't testify
9 that I sent what I knew were not the proper documents.

10 Q I understand.

11 A Nor did I admit that I didn't send the proper
12 documents.

13 Q Let ---

14 A What I testified about is that on November 10th,
15 2010, I sent a deed and an assignment of limited
16 partnership interest.

17 Q And you would have thought that what you sent was
18 the correct documents. You wouldn't be sending
19 something that you thought wasn't the correct
20 documents to the lawyers; is that correct?

21 A I believed, when those documents were
22 transmitted, that those documents conveyed the
23 interest which Shirley Hammer had in the real estate,
24 if any, and that they conveyed the interest she had in
25 the limited partnership, if any, to you pursuant to

1 her agreement with you, which was the May 2008 order
2 that you got that asset in its entirety and she got
3 other stuff.

4 Q All right. Now, you sent what you thought was
5 the correct documents of what she owned in the
6 building, and you sent a deed. Am I correct about
7 that?

8 A Yes, sir.

9 Q And you sent an assignment, am I correct about
10 that?

11 A That is correct.

12 Q All right. And you tell us that you thought that
13 those were the correct --- that what you sent
14 represented the correct amounts of what she owed; is
15 that correct?

16 A No, sir. What I said was that I believed that
17 those documents transferred any interest she had in
18 that asset and the dirt to you.

19 Q Well, what made you think that she had any
20 interest in the dirt at all?

21 A If she had any, according to the agreement, the
22 settlement agreement, you were to receive that asset
23 as part of the equitable apportionment of marital
24 property, and she was to convey all or any interest
25 she had in it to you.

1 Q Well ---

2 A And so when you asked me what made me think she
3 had any interest, the language of the agreement that
4 you were to get made me think she may have some
5 interest. It was not necessary for me to understand
6 what interest she had, nor was it necessary for me to
7 understand the entire transaction. What I needed to
8 know that was you got the asset and that she needed to
9 give it to you and that's what I was doing by way of
10 communication of those documents.

11 Q So you didn't know whether or not --- what
12 interest she had in the building or whether she had an
13 interest in the building. You were just sending the
14 deed in case she had an interest in the building?

15 A I was sending a deed because she is required to
16 transfer any interest she had, whatever it was, to
17 you.

18 Q But if she didn't have any interest in the
19 building, that deed was unnecessary.

20 A I don't know, but ---

21 Q If ---

22 A That's probably why it's called a quitclaim deed.

23 Q Let me just repeat that.

24 A Okay.

25 Q If she did not have any interest in the property,

1 there was no deed that was necessary; is that correct?

2 A I don't know the answer to that question.

3 Q Well, would you ---

4 A And I don't think I'm capable of answering that
5 question because that's more of a transactional issue
6 and a lawyer dealing with the title would probably
7 better --- be better suited to answer that question.

8 Q You mean, as a marital lawyer for many years, and
9 I assume that you had some --- and let me ask you
10 about that. Do you have any type of financial
11 background?

12 A Yes.

13 Q What is your financial background?

14 A I have a bachelor's degree in finance.

15 Q So you do understand finance?

16 A I do.

17 Q You understand transactions?

18 A I do.

19 Q And understanding transactions, what you're
20 telling us here now is that you would send a deed for
21 a piece of property even though you did not know that
22 that person owned that property?

23 A Yeah, I think that's possible.

24 Q Okay. Now, back to this agreement itself?

25 A Yes, sir. You're talking about the partial

1 settlement of outstanding issues.

2 Q You don't mind if I stand here?

3 A No. You're talking about the partial settlement
4 of outstanding issues of May of 2008?

5 Q Right, right. It says any interest of either
6 party in the office building, which houses Howard
7 Hammers' law office and the accompanying parking lot
8 and in any business entity related to this building
9 subject to any debt, lien or encumbrance.

10 A Yes, sir.

11 Q Was there any debt, lien or encumbrance at the
12 time?

13 A Don't know.

14 Q Did the you put in your transmittal of the
15 interest that it was subject to any debt, lien or
16 encumbrance? Do you have the actual document, is what
17 I'm asking.

18 A Which document?

19 Q The actual document that you claim that you sent
20 for the transmittal of the interest in the L.P.?

21 A No. I'm looking at Defendant's Exhibit 16, which
22 is the deed.

23 Q All right.

24 A And I'm looking --- that includes the assignment
25 of limited partnership interest.

1 Q May I look at that.

2 A Yes, sir.

3 (Pause.)

4 Q So, in this, you said this assignment is made
5 pursuant to a partial outstanding issues dated
6 May 9th, 2008; isn't that what it says?

7 A That's part of what it says, yes, sir.

8 Q That's the last part. That shows what it's ---
9 the reason for it. It was based upon that --- the
10 May 8th, 2009, partial settlement?

11 THE COURT: May 9, 2008.

12 MR. HAMMER: May 9, 2008.

13 BY MR. HAMMER:

14 Q Isn't that what it says?

15 A It says this assignment is made pursuant to that
16 certain partial settlement of outstanding issues dated
17 May 9, 2008, by and between assignor and assignee and
18 pursuant want to court order.

19 Q All right. And that court order that you're
20 referring is the court order that you say adopted the
21 agreement; isn't that correct?

22 A I can't say that it is limited to that. I know
23 that would have been one of the court orders in
24 effect, but as I recall, Ms. Ballard showed me another
25 Court order which very well could have been a part of

1 what was referenced in that assignment document.

2 Q But you can't testify for a fact that it was ---
3 that that's what it was, can you?

4 A No, all I can testify to is that the goal was for
5 Mrs. Hammer to do what she was supposed to do so you
6 could get what you were supposed to get.

7 Q Right. And you say that since --- since you say
8 that starting on May 9th, 2008, you believed that this
9 partial settlement was valid, and you believed it from
10 that time all the way to the present time?

11 MS. BALLARD: Your Honor, he has asked that
12 question now for the 5th time.

13 THE COURT: Wait. Yes, sir, Mr. Hammer?

14 MR. HAMMER: I haven't finished the question,
15 Your Honor.

16 MS. BALLARD: He's asked him if the ---

17 MR. HAMMER: I am ---

18 MS. BALLARD: If he believed the ---

19 MR. HAMMER: I didn't say that.

20 THE COURT: If you interrupt her again, I am
21 going to fine you, okay? That is enough.

22 Yes, ma'am, Ms. Ballard?

23 MS. BALLARD: He is asking for the 5th time
24 whether or not Mr. Madden believed that the May, 2008
25 agreement was final and enforceable.

1 THE COURT: Well, he says he believes it is.

2 MR. HAMMER: That wasn't even my question, Your
3 Honor.

4 THE COURT: All right. Ask the question, but you
5 need to move. Okay. Move on.

6 BY MR. HAMMER:

7 Q My question was since you believed, from 2008,
8 from that time to the present time that the deed ---
9 that the agreement was valid, can you explain to me
10 why you did not send it the next day? Why you waited
11 a year-and-a-half --- because you sent it pursuant to
12 the 2008 agreement ---

13 THE COURT: All right. You ---

14 MR. HAMMER: That agreement that you believed was
15 valid.

16 THE COURT: You can answer ---

17 BY MR. HAMMER:

18 Q Why is it that you waited a year-and-a-half?

19 A Sure. I can explain that. Would you like for me
20 to explain that?

21 Q Please.

22 A We made multiple efforts following the May 9,
23 2008 agreement to effectuate the terms of that
24 agreement. Those efforts included correspondence back
25 and forth between me and your lawyer, Mr. McLaren, and

1 in that correspondence things like the documents
2 related to the transfer of the law office building
3 were discussed.

4 For example, I would say to Mr. McLaren, we need
5 to work out that transfer of the documents on the law
6 office building and we need to do this about the car,
7 and we need to do this about this element of the
8 agreement.

9 There was that communication back and forth over
10 that period of time between May of 2008 up until the
11 time that you filed the challenge to the validity of
12 the May of 2008 order, and then when you filed --- at
13 that time is when we also had these contempt actions
14 pending about the enforcement of the May of 2008
15 order, which were to be set to be heard in the
16 June 23, 24, 2009 timeframe.

17 So when you asked can I explain why nothing
18 happened, why I didn't send that deed over, sure.
19 The reason is that we were going back and forth
20 between the lawyers trying to make that happen, and it
21 was not happening, which led to us having a hearing,
22 having two hearings basically, one where you were
23 attempting to rescind that agreement and the other
24 where we were attempting to enforce it and to get it
25 effectuated.

1 There also is a provision in there, and I cannot
2 remember whether it was in --- let me look at this
3 document.

4 I believe in the order issued from the June 24th,
5 2009 hearing, there is language which talks about
6 designating a third party to draft the documents for
7 the assignment of the transfer or the transfer
8 documents for the law office building. I don't know
9 whether it's in this document or whether it was in the
10 May of 2008 document or the June 24th document, but in
11 one of those documents that language existed.

12 So I know that that --- at some point we had
13 attempted to put this third party in the position ---
14 some lawyer that we hired to handle the transaction
15 part, and there was a period of time where we couldn't
16 agree on that lawyer or who that lawyer was to be.
17 Then we agreed on somebody, and that person refused,
18 so there was a fair amount of back and forth with
19 respect to all of those issues during the period of
20 time you asked me about.

21 Q Your answer is a little confusing to me because
22 you have said that between May 8th --- May 9th, 2008,
23 and June 2009, certain things went on. The fact of
24 the matter, Mr. Madden, is the only thing that went on
25 was correspondence between you and Mr. McLaren, and

1 none of that correspondence prevented you from
2 sending, as you ultimately did, the deed and the
3 assignment to Mr. McLaren --- as you ultimately sent
4 to Ms. Lipscomb, was there?

5 A I don't agree with the way you characterized
6 that.

7 Q I didn't ask you about my characterization. I
8 was asking --- I said was there anything that
9 prevented you from doing what you did with
10 Ms. Lipscomb for those eight or nine months?

11 A Let me look at one thing.

12 (Pause.)

13 Yes.

14 Q What was that?

15 A Your failure to abide by the provisions of the
16 partial settlement agreement.

17 Q And what was that page?

18 A The partial settlement agreement required that
19 you transfer to Shirley the St. James Street property,
20 transfer half million dollars to her from retirement
21 assets, and pay to her \$1.262 million in cash and that
22 all of those things had to be done before Shirley
23 executed the documents necessary to convey the law
24 office building and associated business entity, and
25 those things had not been done.

1 Q Well, first if those things had not been done,
2 why were you going back and forth with Mr. --- as you
3 testified earlier, with Mr. McLaren about getting
4 Shirley's interest transferred in the building and
5 this business about the tax lawyers and all of that?
6 If those had not been done, why did you mention those
7 to Mr. McLaren?

8 A Two different things. Two different timeframes.
9 In --- between 2008, May of 2008 and June of 2009, the
10 communications were about you, you Howard Hammer,
11 doing the things you were supposed to do and Shirley
12 then being prepared to sign the documents she needed
13 to sign.

14 Q And ---

15 A And tax lawyer issue, as I recall, was after 2009
16 and if I had a copy of that order, I could show you,
17 but there's language in there in one of these orders
18 that talks about that.

19 Q But not in this particular first order?

20 A I don't think it's in this first order, right.

21 Q And this is the first order that you say --- and
22 I remind you again from the very beginning of time to
23 this day that you consider to be the operative order,
24 and yet you say in this order that there was something
25 I was supposed to do that I didn't do, and --- and

1 what was that?

2 A Well, there was this transfer of the St. James
3 Street house.

4 Q Yes.

5 A That issue --- and I can't recall the specifics
6 of when what occurred, but my recollection is that
7 those things, those three things had not all been
8 done.

9 Q Those were done immediately.

10 A I said that was my recollection.

11 THE COURT: You can't testify.

12 BY MR. HAMMER:

13 Q You have no recollection, and if I told you that
14 those three things were done almost immediately, that
15 Mrs. Hammer got the --- that the mortgage was paid
16 off, that Mrs. Hammer got the interest in the James
17 Street house and by the way, the St. James Street
18 house, Mrs. Hammer insisted that, as part of this
19 agreement, that she was going to give an interest in a
20 house right behind that house that she lived in; isn't
21 that correct?

22 A No.

23 Q The Rice Court house was behind it, wasn't it?

24 A I don't know.

25 Q If I told you that it was right behind it, you

1 wouldn't dispute that, would you?

2 A I would.

3 MS. BALLARD: Your Honor, this has gone way
4 jobbed the scope.

5 MR. HAMMER: Sir?

6 THE WITNESS: I would.

7 THE COURT: Wait just a second. Mr. Hammer, when
8 she makes an objection, I have to hear it.

9 MR. HAMMER: Yes, sir.

10 MS. BALLARD: This has gone way beyond the scope
11 of what his direct testimony was.

12 THE COURT: Mr. Hammer.

13 MS. BALLARD: And he's arguing with the witness.

14 THE COURT: First of all, don't argue anymore,
15 okay, with the witness. I understand you're a
16 litigant and a lawyer. Lawyers argue. Witnesses
17 testify. You can't do both at the same time.

18 He is, in some respects, going at the witness's
19 testimony on the delay, but you go off on these
20 tangents that don't have anything to do with anything.
21 I have haven't heard any objections to relevance, so
22 I'm not going to rule on whether or not it's relevant,
23 but as far as him going outside the scope of your
24 direct, I don't interpret the rule on
25 cross-examination that way, because he is entitled to

1 question the witness, okay.

2 MS. BALLARD: All right, sir.

3 THE COURT: But you should be about at an end
4 point. You have established your scenario by which
5 the delay was not because of what --- anything you did
6 or refused to do, so, you know, at some point, there
7 becomes no return.

8 MR. HAMMER: Okay. I didn't know that was
9 established.

10 THE COURT: That's up to you. I'm the fact
11 finder, and I'm listening to every single thing that's
12 said. At some point, you know, you have to determine,
13 as your own attorney, whether or not you think you may
14 have gotten enough out of the witness.

15 MR. HAMMER: And I wasn't sure of that. That's
16 why I was proceeding.

17 THE COURT: That's up to you. I'm not going to
18 rule on that.

19 MR. HAMMER: All right.

20 BY MR. HAMMER:

21 Q Let's try to close out with some points. As to
22 the Rice Court property that we were just talking
23 about. Do you know where that's located?

24 A I don't.

25 Q Okay. So if I related to you that it was ---

1 MS. BALLARD: Your Honor, this is ---

2 MR. HAMMER: I withdraw that question.

3 THE COURT: Overruled, you can ask it.

4 BY MR. HAMMER:

5 Q If I told you that property was directly behind
6 Mrs. Hammer's, the property that Mrs. Hammer wanted to
7 convey to --- have conveyed to her at 320 St. James
8 and that property was contingent to it and there was
9 only a wall separating that property, you wouldn't
10 dispute that?

11 A I would.

12 Q You would?

13 A Uh-huh.

14 Q As to the agreement itself and getting back to it
15 for one final time, the agreement itself is you had an
16 understanding in paragraph --- in Paragraph 8 as to
17 what the interests were in the building, correct?

18 A No.

19 Q You didn't know what the interest was?

20 A No, sir.

21 Q All right. So we have on the other hand --- we
22 have on the one hand one party not knowing what the
23 interest is in the building, correct?

24 A Don't know.

25 Q Well, you didn't know what it was; isn't that

1 correct?

2 THE COURT: That's been asked and answered.

3 MR. HAMMER: All right.

4 BY MR. HAMMER:

5 Q And you represented Mrs. Hammer in that
6 connection, right?

7 A I represented Mrs. Hammer and continue to
8 represent Mrs. Hammer in connection with the family
9 court litigation.

10 Q All right. And on the other hand, you don't know
11 what the other party's belief was about what the
12 interest was in the building; is that correct?

13 A I do not know what your belief was about the
14 interest in the building.

15 Q All right. And you do not know what Mrs.
16 Hammer's belief was about the interest in the
17 building?

18 A If I did know that, it would be privileged and I
19 would not answer that question.

20 Q Yes. But if you did not know it, you could
21 answer the question?

22 THE COURT: He already said he does not know.

23 MR. HAMMER: Okay.

24 BY MR. HAMMER:

25 Q So you didn't know what either belief was about

1 the interest of the parties?

2 A No. What I said is, I don't know what her
3 interest was, and I don't know what you believed your
4 interest was.

5 Q All right. And so you can't say there was a
6 meeting of the minds as to this particular paragraph?

7 A No, I can say that.

8 THE COURT: No. I'm not going to --- I have
9 already established that I'm not going to rule on the
10 efficacy or the enforceability of the family court
11 agreement, because that is a family court matter, so
12 that question is not going to be ruled on by me.

13 MR. HAMMER: All right. And that --- we would
14 respectfully request that we also be allowed to make
15 our presentation in connection with that and ---

16 THE COURT: All right.

17 MR. HAMMER: And preserve our rights in
18 connection with that, and if it becomes necessary to
19 recall this witness, reserve the right do that
20 depending on your ruling.

21 THE COURT: All right.

22 BY MR. HAMMER:

23 Q To summarize your testimony, if I understand you
24 correctly, the reasons that you did not send this ---
25 it had something to do with the Rice Court property?

1 A No, sir.

2 MS. BALLARD: Your Honor, I object ---

3 THE COURT: I will not permit a summary.

4 MS. BALLARD: Thank you, Your Honor.

5 MR. HAMMER: Okay.

6 THE COURT: In any trial, I do not permit that to
7 be done on direct or cross.

8 MR. HAMMER: All right.

9 THE COURT: Because that is asked and answered by
10 its very definition.

11 MR. HAMMER: All right.

12 BY MR. HAMMER:

13 Q The one thing that you say that I did not do or
14 that was not performed on my part had something to do
15 with the Rice Court property. Was that my
16 understanding?

17 A That's not the one thing.

18 Q Well, what else was there?

19 A The transfer of the money from the IRA and the
20 \$1.262 million. I think the \$1.262 million was done
21 in early June, but I know from reviewing that order
22 that the money had not been transferred from the
23 retirement assets as of the time we were in court in
24 September of --- may I see that document --- 2010.

25 No, I'm not sure about that, Mr. Hammer. I

1 apologize. If I may, Your Honor, there are three
2 things in there that had to be done. The St. James
3 property, the half million dollars on the retirement
4 assets and then the \$1.262 million in cash, and in
5 that period between May of 2008 and June of 2009, the
6 missing --- the one thing I remember which had not
7 been done was that that \$500,000 in the retirement
8 assets had not been transferred over by Mr. Hammer,
9 and that that had to be done before the agreement
10 required Mrs. Hammer to sign over the interest in the
11 building and that was the subject of that litigation
12 that lead to the June 24, 2009 settlement.

13 MR. HAMMER: If Your Honor will just give me one
14 moment.

15 THE COURT: All right.

16 (Pause.)

17 BY MR. HAMMER:

18 Q Where in this agreement does it say that the
19 \$500,000 had to be transferred before Mrs. Hammer was
20 to transfer all of hers?

21 (Pause.)

22 A You're right, Mr. Hammer. It did not say that.
23 I made a mistake. It references the transfer of St.
24 James, the transfer of the \$1,262,000 in cash, and the
25 transfer or the removal of the debts associated with

1 Rice Court.

2 Q Okay.

3 A Those are the conditions that it references.

4 Q And ---

5 A Those are the conditions --- those and the other
6 things that I testified about earlier were the things
7 that were the subjects of the communications back and
8 forth between your counsel and me over that period of
9 time.

10 Q But now just to pare it down, the conditions that
11 would have required Mrs. Hammer to make that were
12 simply, we understood the Rice Court, whatever had to
13 be done with the Rice Court, correct, the debts that
14 had to be paid off on the Rice Court, right?

15 A The fulfillment ---

16 Q Right.

17 A --- of the terms of this document.

18 Q Which require that the debt on Rice Court be paid
19 off, correct?

20 A That's my understanding.

21 A And then the \$1 million to be transferred,
22 \$1,200,000, correct.

23 A \$1,262,000.

24 Q And the deed to Mrs. Hammer?

25 A For St. James.

1 Q And St. James?

2 A And that St. James be paid off.

3 Q And you were aware that the \$1,200,000 was
4 transferred within a week, in early June, of this
5 agreement, are you not?

6 A I know the \$1,262,000 was transferred. I do not
7 know the date.

8 Q all right. You wouldn't dispute that it was
9 within a month's time?

10 A A month's time of what date?

11 Q Of the date of the agreement?

12 A I may dispute that. I do not remember the date
13 it was transferred.

14 Q You wouldn't dispute by July 1st all of these
15 things had occurred?

16 A I just --- I don't know.

17 Q You don't know?

18 A I remembered a lot of the details, but I cannot
19 remember specifically when that money was transferred.

20 Q Okay. All right, sir. That's enough.

21 MR. HAMMER: Thank you very much.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Any redirect?

24 MS. BALLARD: None, Your Honor.

25 THE COURT: All right. You can step down. Thank

1 you, Mr. Madden.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You may call your next witness.

4 MR. HAMMER: We would ask that Mr. Madden not be
5 excused. We may have to recall him.

6 THE COURT: Is he under subpoena?

7 MS. BALLARD: He is not under subpoena, Your
8 Honor.

9 THE COURT: You want him to be under subpoena?

10 MR. HAMMER: Yes, sir.

11 THE COURT: When do you want him?

12 MR. HAMMER: I'm going to want him for two
13 purposes.

14 THE COURT: No. When?

15 MR. HAMMER: When do you intend ---

16 THE COURT: When are you going to finish? And if
17 he has professional obligations, we're going to work
18 around his schedule, but I think he said just about
19 everything he can say, but I'm not going to step on
20 your right to call any witness you wants.

21 Ms. Ballard, is Mr. Turbeville your last witness?

22 MS. BALLARD: Mrs. Hammer will testify and then I
23 have one other witness.

24 MR. HAMMER: If Your Honor will allow me to make
25 a suggestion. If Mr. Turbeville is willing to wait a

1 little bit.

2 THE COURT: No. He has waited enough.

3 MR. HAMMER: I understand, but if he were willing
4 to, I understand it would be up to you.

5 THE COURT: You want to call him out of order?

6 MR. HAMMER: And let him --- it has to do with my
7 motion.

8 THE COURT: What motion is that?

9 MR. HAMMER: The motion concerning the...

10 THE COURT: Cross claim?

11 MR. HAMMER: No. The motion concerning the
12 agreement.

13 THE COURT: And what is that motion?

14 MR. HAMMER: At the beginning of the case, I
15 related to Your Honor that --- that the --- what I
16 laid out, I don't think Your Honor wants me to lay it
17 out again.

18 THE COURT: Is there any reason you can't tell
19 me?

20 MR. HAMMER: That the agreement was void for the
21 reasons I had explained earlier on.

22 THE COURT: And hasn't there been a --- hasn't
23 Judge Manning ruled that is a family court issue ---

24 MR. HAMMER: Well, Judge ---

25 THE COURT: --- and that that order is on appeal?

1 MR. HAMMER: Well, what Judge Manning ruled had
2 to do --- in this case, there was a declaratory
3 judgment action.

4 THE COURT: Oh, you want to talk to him about the
5 public policy stuff about the grievances and all that
6 kind of stuff.

7 MR. HAMMER: And allow me to answer your question
8 if I may. May I do that?

9 THE COURT: Yes, sir.

10 MR. HAMMER: Because I think there is a
11 tremendous amount of confusion in connection with
12 that.

13 THE COURT: I --- well, I don't necessarily agree
14 with that.

15 MR. HAMMER: Well, let me lay out what our
16 position is. Maybe you will agree. Maybe you will,
17 maybe you won't.

18 The declaratory judgment action only had one
19 matter taken up and that one matter was a motion by
20 Ms. Ballard to dismiss on subject matter jurisdiction.

21 THE COURT: Because the agreement was subject to
22 the decisions of a family court judge, not a circuit
23 court judge.

24 MR. HAMMER: Correct, or partially correct I
25 guess, but the outcome would be that it was under the

1 jurisdiction of the family court as opposed to the
2 jurisdiction of the circuit court.

3 THE COURT: Right.

4 MR. HAMMER: Because it was a family court order.
5 That's all that that opinion had to do --- that's all
6 that it had to do with. It had to do with it in that
7 one case. It was limited to the law of that case.

8 THE COURT: So you want to try to attack the
9 family court order approving that agreement on another
10 ground?

11 MR. HAMMER: Essentially, I want to attack it on
12 another ground, and I want to take up whether or not,
13 in this case, because it was brought in --- it's a
14 little different situation.

15 THE COURT: Because it's part of the 1634
16 litigation?

17 MR. HAMMER: Not only is it part of the 1634
18 litigation, but having taken the position that it was
19 only applicable in the family court, they then took
20 the position in this litigation --- in the declaratory
21 --- only one in the family court that had jurisdiction
22 over this.

23 THE COURT: So you're saying there has to be some
24 overlap or otherwise none of that would be in this
25 court to begin with?

1 MR. HAMMER: Some of that, but even further if
2 you look at their pleadings counter to all the
3 actions, they pled in their action, as part of their
4 defense, as part of their counterclaim they pled this
5 agreement.

6 THE COURT: So you want to recall Mr. Madden as
7 part of your case?

8 MR. HAMMER: I will be calling him on the
9 question of the motion that ---

10 THE COURT: Well, I'm not going to take testimony
11 in a motion. I'll take testimony as part of a trial.
12 I'm not going to take testimony in a motion.

13 MR. HAMMER: All right. Well, then I will call
14 him as part of my case.

15 THE COURT: Well ---

16 MR. HAMMER: I have ---

17 THE COURT: The way we're --- we're going to get
18 through with Mr. Turbeville before we go to lunch and
19 I have ---

20 MR. HAMMER: Whatever ---

21 THE COURT: Let me stop you, okay. And then
22 she's got Mrs. Hammer and then she has another
23 witness, so I don't think we're going to have
24 Mr. Madden today unless he wants to be available.

25 Now, Mr. Madden, what is your schedule?

1 THE WITNESS: I need to be in court in
2 Spartanburg at two o'clock.

3 THE COURT: Okay. So he will not testify today.
4 How about tomorrow?

5 THE WITNESS: I have no court scheduled. I am
6 scheduled to go on vacation in the morning at
7 nine o'clock.

8 THE COURT: Does that involve plans other than
9 driving an automobile?

10 THE WITNESS: No, sir.

11 THE COURT: All right.

12 THE WITNESS: And I have to come through
13 Columbia. I live in Greenville. I have to come
14 through Columbia. If I am required to be back, and I
15 cannot do it right now, then I'll do whatever I'll do
16 whatever you tell me to do, but I do ---

17 THE COURT: You need to get to Spartanburg.

18 THE WITNESS: Yes, sir, I need to get to
19 Spartanburg this afternoon. I would --- if I have to
20 come back, the ideal scenario for me would be to do
21 that first thing in the morning.

22 THE COURT: That's what we'll do. You can
23 communicate with Ms. Ballard.

24 I hesitate to have you communicate with
25 Mr. Hammer because I don't have much confidence that

1 it's going to be anything other than logistic
2 discussion with Mr. Hammer, and with all due respect
3 to you, Mr. Hammer, you've got to --- well...

4 Mr. Madden, you leave Greenville at what time?

5 THE WITNESS: Whatever time you've tell me to be
6 here. I had planned to leave around 8:30. If I need
7 to be here at 9:30, I'll leave earlier.

8 THE COURT: How long does it take you to get
9 here?

10 THE WITNESS: About an hour and 40 minutes.

11 THE COURT: Why don't you try to be here at ten?

12 THE WITNESS: Yes, sir.

13 THE COURT: And the examination will be concise
14 and informative and not argumentative, okay.

15 MR. HAMMER: Thank you.

16 THE WITNESS: And so that I understand --- there
17 was a subpoena from both sides. I was released from
18 that subpoena by both sides. Now, I'm back under
19 subpoena to be here in the morning at ten o'clock.

20 THE COURT: Yes, sir, and you'll be entitled to
21 your witness fee --- your travel time and your mileage
22 and Mr. Hammer will have to pay you that when you get
23 here.

24 THE WITNESS: Yes, sir. I wasn't asking about
25 that, but I understand.

1 THE COURT: That's my order.

2 THE WITNESS: Thank you. Ten o'clock in the
3 morning.

4 THE COURT: Yes, sir.

5 MS. BALLARD: We'd call Marion Turbeville.

6 THE COURT: All right. Come on up, Mr.
7 Turbeville.

8 MARION TURBEVILLE,
9 after being duly sworn, testified as follows:

10 THE COURT: I believe we know how to spell your
11 last name, but your name is Marion K. Turbeville?

12 THE WITNESS: Marion D. Turbeville, middle
13 initial D., as in Daniel.

14 THE COURT: You can question the witness.

15 DIRECT EXAMINATION:

16 BY MS. BALLARD:

17 Q Mr. Turbeville, what is your occupation?

18 A I am a commercial real estate broker and also do
19 some financial consulting generally in regard to
20 financing.

21 Q And what is your relationship with Danville
22 Business Advisors?

23 A I am one of the owners.

24 Q And how long have you operated Danville Business
25 Advisors?

1 A Since 1996.

2 Q And what generally does it do?

3 A Typically we do mostly client representations
4 where we help a client who is expanding, starting or
5 relocating a business that generally involves real
6 estate. We'll help them locate that site, arrange the
7 development team, put together a financing package and
8 business plans. Sometimes we do the construction
9 accounting and in some instances we manage the
10 property after it's developed.

11 Q So for purposes of an existing building, what
12 type of services does Danville offer?

13 A Generally property management and leasing.

14 Q Okay. It's already been introduced into evidence
15 as an exhibit for 1634 Mine Street L.P. I'm going to
16 show you Exhibit No. 2 and ask if that is the
17 agreement that Danville Business Advisors has with the
18 limited partnership called 1634 Main L.P.?

19 THE COURT: Exhibit No. 2 is the --- a
20 residential contract of sale.

21 MS. BALLARD: That's my contract, Your Honor.
22 This is their exhibit.

23 THE COURT: Okay.

24 MS. BALLARD: Thank you, Your Honor.

25 THE WITNESS: Yes, it is.

1 BY MS. BALLARD:

2 Q Okay. Has Danville Business Associates
3 maintained its position as an agent for 1634 since
4 this contract was signed on January 8th, 2002?

5 A Yes. To the extent that we manage and lease the
6 property.

7 Q And generally what do you do for 1634 Main?

8 A It's a full service building, so it's got
9 janitorial. We provide all the repairs and we
10 maintain the checking account, pay all the bills,
11 collect the rents, and provide management statements
12 to --- to the general partner.

13 Q And who is the general partner?

14 A The general partner is SH-5 LLC.

15 Q Do you know of your own knowledge who the sole
16 member of that is?

17 A I've been told by counsel that the sole member is
18 Howard Hammer.

19 Q And who have you dealt with since January 8,
20 2002, in connection with your responsibilities,
21 Danville responsibility's, in managing the property
22 located at 1634 Main Street?

23 A Howard Hammer.

24 Q Has anyone else ever been a spokesperson for the
25 limited partnership in its dealings with you?

1 A Not that I can recall.

2 Q Okay. Now when you said you manage the
3 checkbook, do you provided year end statements,
4 Mr. Turbeville, to the limited partnership?

5 A We provide them to the general partner.

6 Q You provide them to the general partner?

7 A And the accountant for the partnership.

8 Q That's Mr. Ackerman?

9 A Yes.

10 Q I'm going to show you ---

11 MS. BALLARD: Let's mark this has 31, please.

12 (WHEREUPON, Defendant's Exhibit No. 31 was marked
13 for identification only.)

14 THE COURT: The question was has he provided what
15 to Mr. Ackerman?

16 MS. BALLARD: Financial information.

17 BY MS. BALLARD:

18 Q Mr. Turbeville, I'm going to show you what's been
19 marked for identification as Defendant's Exhibit No.
20 31. Can you tell the court what that is?

21 A Yes. These are the year-to-date operating
22 statements for the period ending December 31, 2005
23 through December 31, 2011, and a year-to-date
24 operating statement for the period ending May 31, 2012
25 and there's also a check register attached to each

1 one.

2 Q All right. Are these documents that you
3 generated in your capacity as leasing agent for 1634
4 Main L.P.?

5 A Yes, as a property manager.

6 Q Are these accurate? Is this an accurate
7 reflection of the cash flow in and out of 1634 Main
8 L.P.'s account for that time period?

9 A Yes.

10 THE COURT: That's 2012 through what date, sir.

11 THE WITNESS: December 31, 2005.

12 THE COURT: Yes, sir.

13 THE WITNESS: These were year end statements
14 through December 31, 2011.

15 THE COURT: And then ---

16 THE WITNESS: And then a year-to-date for May 31,
17 2012.

18 THE COURT: All right.

19 MS. BALLARD: I think it's August 31st, 2012.

20 THE WITNESS: Oh, is it August? I had forgotten.
21 We did supplements and you're right, it is
22 August 31st, 2012.

23 MS. BALLARD: All right. Your Honor, I would
24 move these into evidence.

25 THE COURT: Any objection, Ms. Lipscomb?

1 MS. LIPSCOMB: None, Your Honor.

2 THE COURT: Mr. Hammer?

3 MR. HAMMER: May I ask a question?

4 THE COURT: Of me?

5 MR. HAMMER: No, of the witness. I'm not sure
6 whether he prepared them or if someone else prepared
7 them.

8 THE COURT: All right. You may have ask that
9 question, Ms. Lipscomb.

10 MS. BALLARD: Ms. Ballard.

11 THE COURT: I'm sorry.

12 MS. BALLARD: That's okay.

13 BY MS. BALLARD:

14 Q Mr. Turbeville, were these prepared by your
15 office by some staff member in your office?

16 A No. I prepared them.

17 Q Okay.

18 THE COURT: All right. Any objection?

19 MR. HAMMER: No, sir.

20 THE COURT: All right. They're in as number 31.

21 (WHEREUPON, Defendant's Exhibit No. 31 was
22 admitted into evidence.)

23 BY MS. BALLARD:

24 Q All right. If we look at the December 2005
25 statements, I notice under rental income that Hammer

1 law firm is one of the tenants; is that correct?

2 A Correct.

3 Q And for the remaining time period, the annual
4 statements reflect, if I read it correctly, that
5 Hammer law firm continued to be an occupant of the
6 building throughout?

7 A Yes.

8 Q Okay. Has Hammer law firm paid rent every year
9 that it's been occupying the building?

10 A No.

11 Q Can you tell from looking at Exhibit 31 what
12 years Hammer law firm has not paid rent?

13 A Yes, I can.

14 Q What years would those be, please?

15 A There was no rent paid in 2008.

16 Q All right, sir.

17 A There was no rent paid in 2010.

18 Q Yes, sir.

19 A And there has been no rent paid in 2012.

20 Q Yes, sir. And in 2009, there was a total of
21 \$13,330 paid; is that correct?

22 A Yes.

23 Q Prior to 2008, the rental that had been paid by
24 Hammer law firm was approximately \$60,000 a year; is
25 that correct.

1 Q Yes. Have you discussed with the general partner
2 the possibility of bringing suit against the Hammer
3 law firm for the rent that is due to the limited
4 partnership?

5 A Not in detail, no.

6 Q Have you had any discussions with the limited
7 partner about that?

8 A I have discussed that.

9 THE COURT: The limited partner, you said?

10 MS. BALLARD: I'm sorry, the general partner.

11 BY MS. BALLARD:

12 Q The general partner.

13 A I discussed the fact that the cash flow in the
14 building is currently negative.

15 Q Have you received any instructions from --- well
16 who have you received instructions from about how to
17 go about collecting money that might be due to the
18 limited partnership?

19 A The --- Howard Hammer, as SH-5.

20 Q Okay. And what instructions, if any, has Howard
21 Hammer as general partner --- excuse me, Howard Hammer
22 as the sole member of SH-5, what instructions, if any,
23 has he given you regarding pursuit of funds that might
24 be due to the limited partnership?

25 A Asked me to consult with counsel and if we

1 thought there was a basis for bringing a lawsuit, that
2 we should initiate an action to do so.

3 Q Have you, in fact, initiated a lawsuit against
4 Hammer law firm for unpaid rents?

5 A Not against Hammer law firm.

6 Q Have you initiated any other lawsuits at the
7 request of the general partner?

8 A Against Mrs. Hammer.

9 Q Okay. And that lawsuit was initiated at the
10 request of who?

11 A The general partner of the 1634 Main L.P.

12 Q And who was speaking for the general partner when
13 that request was made?

14 A That would have been Howard Hammer.

15 Q All right. So you, Danville Business Advisors
16 retained Ms. Lipscomb for the bringing of this suit;
17 is that correct?

18 A Yes.

19 Q How was it that you determined the amount of
20 money that you felt was due by Mrs. Hammer?

21 A I did a comprehensive analysis of the deferred
22 maintenance on the building. I believe that was in
23 2009.

24 Q Yes, sir.

25 A It started off with trying to determine that we

1 wanted to pressure wash the building, but I was
2 advised by the architect that it couldn't be done
3 because of the condition. We looked at the interior
4 items for lack of a better term, I used the phrase
5 that they got fatigue.

6 Q Yes, sir.

7 A And got estimates from reliable subcontractors
8 that I've dealt with over the years and wrote a
9 recommendation to the partnership that was delivered
10 to the general partner and outlined those repairs, and
11 based on the tax returns of the limited partners at
12 that time, computed allocations based on those
13 percentages that were reflected in the tax returns.

14 Q And when you made the determination of what the
15 percentages would be owed, you took those numbers from
16 the tax returns prepared by Mr. Ackerman?

17 A Correct.

18 Q You didn't make any independent analysis of who
19 the actual owners of this limited partnership were,
20 did you?

21 A No.

22 Q So in your discussions with SH-5 about who to
23 pursue to try to collect some funds, what, if
24 anything, did Mr. Hammer tell you about the various
25 options that existed?

1 A In his particular instance, he indicated he would
2 not have funds available, and he would give the
3 partnership a confession of judgment, and they could
4 pursue the actions based on that, and based upon the
5 percentage reflected in the tax return, Mrs. Hammer
6 had a majority interest, which was almost 57 percent,
7 so I think after that it was only like 5 percent, so
8 in order to initiate any repairs to the building, it
9 was incumbent that the partnership get money from Mrs.
10 Hammer.

11 Q All right. Did you discuss with Mr. Hammer the
12 fact that Hammer Law firm owed about \$120,000 in past
13 rent?

14 A I have reminded him that he's not paid rent.
15 Physically I've never seen the lease that exists
16 between that partnership and the Hammer law firm.

17 Q Okay. But of all the options that were discussed
18 by you with Mr. Hammer, the one he suggested was suing
19 Shirley Hammer?

20 A Yes.

21 Q And that, in fact, is what you did at his
22 suggestion?

23 A Yes. He was acting as the general partner,
24 obviously.

25 Q Yes, sir. I understand. Have you had an

1 opportunity to review the limited partnership
2 agreement since this lawsuit has been brought?

3 A Yes I have.

4 Q Let me show you what's in evidence as Shirley
5 Hammer's Exhibit No. 11. Is that the limited
6 partnership agreement that you've been provided?

7 A Yes.

8 Q If you would, Mr. Turbeville, look with me --- I
9 don't want to knock your water over ---

10 THE COURT: Is this another numbered exhibit?

11 MS. BALLARD: This is Exhibit No. 11, Your Honor,
12 the same one I just handed him.

13 THE COURT: Number 11. Okay.

14 BY MS. BALLARD:

15 Q Are you familiar with paragraph ten of
16 Exhibit No. 11 entitled limited liability in the
17 limited partnership agreement?

18 A Yes, I've read that.

19 Q Say it into this speaker --- this microphone.

20 A Yes, I have read that paragraph.

21 Q Do you construe that paragraph to prohibit
22 additional contributions by a limited partner for
23 maintenance and upkeep of the building?

24 MS. LIPSCOMB: Objection, Your Honor.

25 THE COURT: Ms. Lipscomb.

1 MS. LIPSCOMB: We object to his qualifications as
2 to interpreting the agreement and also object as to
3 any interpretations being required. The language
4 speaks for itself.

5 THE COURT: Mr. Hammer?

6 MR. HAMMER: Same objection.

7 THE COURT: The objection is overruled.

8 BY MS. BALLARD:

9 Q Go ahead. And advise the court of whether you
10 believe exhibit --- paragraph ten in Exhibit No. 11
11 prohibits limited partners from making additional
12 contributions for maintenance of the building?

13 A It appears to me that it limits it to their
14 interest in the building.

15 Q Correct. So they could not be required to pay
16 additional funds? Would that be correct?

17 MS. LIPSCOMB: Objection to the form. She
18 mischaracterized his response.

19 THE COURT: Sustained.

20 MS. BALLARD: All right.

21 BY MS. BALLARD:

22 Q So in terms of recovering money from a limited
23 partner in the limited partnership, what source is
24 available to you pursuant to that provision?

25 MS. LIPSCOMB: Your Honor, we object to the form

1 of the question. Is she limiting it to that provision
2 or to the agreement? I think there is some confusion,
3 at least in my mind.

4 THE COURT: Okay. I'll let --- do you understand
5 the question, Mr. Turbeville? I'm not quite sure that
6 I do now.

7 You asked him to what extent is her liability
8 for --- to what extent? Is it limited? You're asking
9 for a number?

10 MS. BALLARD: No, sir. I asked what source was
11 available for a limited partner for him to collect
12 against if he needed funds for the general
13 partnership, what source is there to collect from
14 against any limited partner.

15 THE COURT: All right. You've ---

16 MS. BALLARD: According to that provision.

17 THE COURT: The objection is noted. Mr. Hammer,
18 I'll note that you join in that objection.

19 It's overruled. You can answer the question, Mr.
20 Turbeville.

21 BY MS. BALLARD:

22 Q Do ---

23 (Pause.)

24 A I don't see it right offhand, but I thought I had
25 read some place in this partnership agreement that if

1 there were deficits that the general partner could, in
2 fact, make demand for those.

3 Q Okay. You thought that was in there?

4 A I thought it was in here. I don't see it right
5 now, but I'm pretty sure I read it in this agreement.

6 THE COURT: You're pretty sure you read what,
7 sir?

8 THE WITNESS: That the general partner could, in
9 fact, if there were operating deficits that he could
10 make calls.

11 THE COURT: Okay.

12 THE WITNESS: But its would be limited to the
13 representative percentages of ownership.

14 BY MS. BALLARD:

15 Q Does that mean that the call would be against the
16 cash that the limited partner had already invested in
17 the partnership or would that mean that you would be
18 entitled to pursue additional cash from the limited
19 partner?

20 A My interpretation would be either or.

21 Q Okay. Do you know whether Mr. Hammer provided
22 you with this before he instructed you to sue Shirley
23 Hammer?

24 MS. LIPSCOMB: Objection to the form of the
25 question. He didn't --- I think he testified that

1 Mr. Hammer instructed him to sue ---

2 THE COURT: Well, he said that Mr. Hammer told
3 him to sue Shirley Hammer.

4 MS. LIPSCOMB: I misunderstood. I apologize.

5 THE COURT: At least that's what I wrote down.

6 MS. BALLARD: Yes, sir.

7 BY MS. BALLARD:

8 Q Did Mr. Hammer provide you with this Exhibit No.
9 of 11 before he instructed you to sue Shirley Hammer?

10 A To the best of my knowledge, yes, I've had that
11 for a while.

12 Q Okay. Were you aware that there had been a deed
13 executed by 1634 Main L.P. to Shirley Hammer conveying
14 52.75 percent of the dirt to Shirley Hammer in her
15 individual capacity?

16 A No.

17 Q When did you become aware of that?

18 A At the time you answered the complaint, I believe
19 is the first time I actually saw that language.

20 Q All right. Did you make an evaluation at that
21 time as to who, in your mind, had authority to speak
22 on behalf of that building?

23 MR. HAMMER: Objection, Your Honor. That would
24 not be something within his purview.

25 THE COURT: And the question was what,

1 Ms. Ballard?

2 MS. BALLARD: The question was when he became
3 aware of the deed indicating that Mrs. Hammer owned
4 52.75 percent of the dirt, whether he made the
5 determination of who had the ability to speak on
6 behalf of the building.

7 THE COURT: Well, I --- yes, Mr. Hammer?

8 MR. HAMMER: Now, that I reheard the question,
9 it would be irrelevant.

10 THE COURT: Speak on behalf of the building? I
11 don't understand.

12 MS. BALLARD: Let me rephrase it, Your Honor.

13 BY MS. BALLARD:

14 Q Did you make an evaluation, if any,
15 Mr. Turbeville, of whether or not Mrs. Hammer's
16 ownership of more than 50 percent of the dirt gave her
17 any management authority over the handling of the
18 building?

19 MR. HAMMER: Your Honor, I don't know the
20 relevancy of that to the issues that are before you.

21 THE COURT: The objection is overruled.

22 THE WITNESS: I did not.

23 BY MS. BALLARD:

24 Q Okay. What significance, if any, did you
25 attribute to the fact that you had seen a deed

1 transferring more than 50 percent of the ownership of
2 the dirt to Mrs. Hammer?

3 A I'm not sure I understand. Would you repeat that
4 question?

5 Q Yes, sir. I'll be happy to. What significance,
6 if any, did you see when you learned, after you
7 brought this lawsuit, that Mrs. Hammer owned more than
8 50 percent of the building that you're managing?

9 A Without access to any amendments to the
10 partnership agreement or the arrangements between 1634
11 Main and her, I have no reason to believe that she was
12 to be involved in the management.

13 Q So again, after the lawsuit was filed, you took
14 your instructions from who?

15 A Continued to get those from the general partner.

16 Q And is it your understanding based on --- you
17 indicated that you advise clients on business
18 formation and the type of business that they should
19 operate, correct?

20 A Basic --- it's limited, and typically it involves
21 when people acquire real estate. It's a simple
22 recommendation that they form an LLC or a partnership
23 or something to limit --- to take it out of their
24 names individually.

25 Q Are you aware of whether a general partner or a

1 limited partnership owes any fiduciary obligation to
2 the limited partners?

3 A I don't think I'm qualified to answer that
4 question.

5 Q All right. That's fine. Let me show you
6 Exhibit No. 28 that's already been introduced into
7 evidence. Those are notes from ---

8 THE COURT: What number?

9 MS. BALLARD: Twenty-eight, Your Honor, of
10 Shirley Hammer's exhibits.

11 THE WITNESS: Twenty-eight.

12 BY MS. BALLARD:

13 Q Those are notes from, as I understand it, the
14 lender being 1634 Main L.P. to Howard Hammer. Do you
15 recognize those?

16 A Yes I do.

17 Q And who signed those notes for 1634 L.P.?

18 A By Howard Hammer, as managing member.

19 Q All right, sir. It doesn't mention anything
20 there about that SH-5, does it?

21 A It does not.

22 Q Have of those loans been repaid?

23 A No.

24 Q And they total how much?

25 A \$27,500.

1 Q That's what they total?

2 A Yes, yes.

3 Q Okay. Thank you. And Mr. Turbeville, one last
4 exhibit that's already been introduced into evidence.

5 It's Exhibit No. 29. Are you familiar with that
6 document?

7 A Yes, I am.

8 Q What is that document?

9 A It's a letter dated November 29, 2011, from
10 Danville Business Advisors to Mr. Moring, C.P.A. in
11 which I delivered copies of the 2005 to 2010 K-1s to
12 him for Shirley Hammer after it was brought to my
13 attention that she may not have received them.

14 Q And by whom was it brought to your attention that
15 she may not have previously received of those K-1s?

16 A Mr. Hammer.

17 Q Mr. Howard Hammer?

18 A Uh-huh.

19 Q So as part of your prior duties as leasing agent
20 pursuant to the agreement that we looked at earlier,
21 had it been your practice to provide the K-1s to the
22 limited partners or had someone else been doing that?

23 A No, that wasn't my responsibility.

24 Q Okay. Was this the first occasion that you had
25 to transmit any of the K-1s to the limited partners?

1 A Yes.

2 Q Again, did Mr. Hammer ask you to transmit any
3 K-1s to anyone other than Shirley Hammer?

4 A No.

5 Q And the date of the transmittal, again was what?

6 A November 29, 2011.

7 Q Okay. And he advised you at that time that he
8 was --- what did he advise you at that time when he
9 asked you to send them to Mr. Moring?

10 A He indicated that he wasn't sure if
11 Mrs. Hightower had received her K-1s for those years.

12 Q Mrs. Hightower being Mrs. Hammer?

13 A That's correct.

14 Q Okay. Let me have that back.

15 Did Mr. Hammer make you aware of the loans that
16 he took out against 1634 prior to making them?

17 A Actually, well, yes, he did because I had to
18 write checks for them.

19 Q Okay. Did you make any investigation into
20 whether Mr. Hammer had any income or assets to secure
21 those loans at the time those loans were made?

22 A No.

23 Q And has Danville Business Associates as an agent
24 of 1634 made any effort to collect those debts?

25 A No.

1 Q The documents that we were looking at initially,
2 Exhibit 31?

3 A Yes.

4 Q I've done some calculations on those, and I just
5 want to know if you agree or disagree with me. If
6 those documents, in fact, reflect that in the year
7 2005, Howard Hammer received \$419,567 from the limited
8 partnership, would you agree that's accurate?

9 THE COURT: And that was off exhibit what?

10 MS. BALLARD: Exhibit 31 in the year 2005.

11 THE COURT: Would you have an extra copy for me
12 of that at some point?

13 MS. BALLARD: Yes, sir. In fact, I'll give you
14 mine right now. I'm sorry. I thought I already had.

15 BY MS. BALLARD:

16 Q If my math is right, do you agree that's
17 accurate?

18 A I'm not sure which numbers you're using to come
19 up with that figure, but I showed a partnership
20 distribution of \$127,639.

21 Q Okay.

22 A I show a partnership buyout of \$178,553.

23 Q Okay. How much do you show that Shirley Hammer
24 received during the year 2005 as a distribution?

25 In the year 2005.

1 A There's one for \$4,212 on March 9.

2 Q Okay.

3 MR. HAMMER: What page is that on again, Your
4 Honor?

5 THE COURT: Ms. Ballard, that would be helpful if
6 you would ---

7 MS. BALLARD: I don't know that there are page
8 numbers.

9 THE COURT: Well, at the top there are sometimes
10 page numbers. The remaining part of the exhibit has
11 noted the monthly check registers, so some
12 clarification would be helpful.

13 MS. BALLARD: He is reading, Your Honor, from
14 that portion of the 2005 check register that has
15 handwriting on it. That isolates it pretty well, I
16 think.

17 THE COURT: All right. What month in the ---

18 THE WITNESS: It was March 9th.

19 THE COURT: All right. So that would be the
20 first page of the monthly check register for the month
21 ending December 31, 2005?

22 THE WITNESS: Yes, sir.

23 THE COURT: March 9, Shirley Hammer, \$4,212. You
24 got that, Mr. Hammer?

25 MR. HAMMER: Yes and I --- the other one I did

1 not get either.

2 THE WITNESS: Then on page three.

3 THE COURT: The other one where it's talking
4 about the partnership distribution and the partnership
5 buyout was on the immediately preceding page.

6 BY MS. BALLARD:

7 Q Go ahead.

8 A Page.

9 Q Did it say he received any other funds in 2005?

10 A Page three.

11 THE COURT: Let them get on the same page.

12 MS. BALLARD: I'm sorry. I thought they were.

13 MR. HAMMER: Page two?

14 THE COURT: All right. The top page of Exhibit
15 31, go to the next page, Mr. Hammer. Go to the very
16 next page. That has the partnership distribution and
17 the partnership buyout on that page, and then he went
18 to the very next page and showed a distribution to
19 Shirley Hammer of \$4,212 on March 9. Then you can go
20 forward.

21 MS. BALLARD: All right.

22 BY MS. BALLARD:

23 Q After March 9, what other funds were distributed
24 to Shirley Hammer in 2005?

25 A On June 22, \$4,962.

1 Q Okay.

2 A And on page four, December 6, \$7,500.

3 THE COURT: December 6th?

4 THE WITNESS: Yes, sir.

5 MS. BALLARD: Check number 1561.

6 THE COURT: Okay.

7 BY MS. BALLARD:

8 Q I'm sorry. I was looking at my math wrong. If
9 those numbers that you have read out are correct,
10 Shirley Hammer in the calendar year 2005, received
11 \$16,674 from the 1634 Main and Howard Hammer received
12 100 --- either 127 or one \$131,000; is that correct?

13 A Well, he received ---

14 (Pause.)

15 Q Most of it was in that check on 12/29.

16 There was a check on 6/22?

17 A Yes, that would appear to be right.

18 Q Okay. So a check on March 9th, 2005, for the
19 amount of \$33,165 to Howard Hammer?

20 A Yes, uh-huh.

21 Q Then on June 22nd, 2005, to Howard Hammer in the
22 amount of \$39,071.

23 A Correct.

24 Q Then on 12/29/2005 to Howard Hammer in the amount
25 of \$59,062.50, correct?

1 A Yes.

2 Q Okay. Now, had Shirley Hammer received any
3 distribution in any amount since 2005?

4 (Pause.)

5 A There was a joint check written on March 28th,
6 2008. That's on page one of a December 31, 2008 check
7 register.

8 Q All right, sir.

9 A That was for \$3,182.36 made payable jointly to
10 Howard and Shirley Hammer.

11 Q Okay. Any other distributions?

12 (Pause.)

13 Q To Shirley Hammer.

14 A No, there aren't.

15 Q Okay. Let me show you the check that you just
16 made reference to that's been introduced into evidence
17 as Defendant's Exhibit No. 27. Is that the check that
18 you were referring to that was made payable
19 March 28th, 2008, to Howard Hammer and Shirley Hammer?

20 A Yes.

21 Q Who signed that check, can you tell?

22 A I did.

23 Q And do you recognize from the back of the check
24 where that check was deposited or who received those
25 funds?

1 A I don't. It has for deposit only and an account
2 number.

3 Q Okay. So who would have instructed you, if
4 anyone, to write the check dated March 28th, 2008, to
5 Howard Hammer and Shirley Hammer in that amount?

6 A Howard Hammer as a general partner of SH-5.

7 Q Did you delivery this check to Shirley Hammer or
8 have any idea whether she received any of those funds?

9 A No. I did not deliver it to her, and I do not
10 know if she received any of those funds.

11 Q Okay. One last question, Mr. Turbeville. You
12 said earlier Mr. Hammer offered to confess judgment
13 for funds that were due. Did he, in fact, ever
14 confess judgment to the limited partnership?

15 A I do not know the answer to that.

16 Q You've never seen a document to that effect?

17 A No.

18 MS. BALLARD: That's all I've got. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: All right. Ms. Lipscomb, any
21 questions?

22 CROSS-EXAMINATION:

23 BY MS. LIPSCOMB:

24 Q Mr. Turbeville, Mr. Hammer on behalf of SH-5
25 actually instructed you to talk to me about bringing a

1 lawsuit, didn't he?

2 A Yes.

3 Q And you and I discussed whether or not it was ---
4 well, you asked me to evaluate whether or not it was
5 feasible or appropriate to bring one, didn't you?

6 MS. BALLARD: We didn't waive privilege.

7 MS. LIPSCOMB: I'm just saying, but no.

8 MR. HAMMER: Right.

9 BY MS. LIPSCOMB:

10 Q You and I discussed whether or not it was
11 appropriate or feasible to bring the lawsuit, correct?

12 A Yes.

13 Q And you and I discussed that Mr. Hammer would
14 confess judgment?

15 A Yes, we did.

16 Q And we discussed an amount that he would need to
17 confess the judgment in writing?

18 A Yes.

19 Q You just don't know whether or not that's been
20 prepared?

21 A Correct.

22 Q Or signed?

23 A Yes.

24 Q Okay. And, Mr. Turbeville, in your position as a
25 commercial real estate agent, a property manager, it's

1 important to keep up repairs on buildings in order to
2 protect your asset, isn't it?

3 A Yes, as a general rule.

4 Q And the --- you describe 1634 Main as being
5 fatigued, correct?

6 A Yes.

7 Q Is it easier to --- excuse me, is it harder to
8 lease to tenants when a building is fatigued as
9 opposed to when it is kept up and maintained?

10 A Certainly in this market, it is.

11 Q It's a hard market, isn't it?

12 A Yes, it's still difficult.

13 Q And the --- when you were asked to do the
14 assessment or get an assessment of what needed to be
15 done, you did that, correct?

16 A Yes.

17 Q And you didn't necessarily pick the highest
18 bidder or the lowest bidder. You got what you thought
19 were fair proposals?

20 A Yes.

21 Q And have those repairs been made?

22 A No.

23 Q Do they need to be made?

24 A Yes.

25 Q Were you aware of any arrangement between Mrs.

1 Hammer and the partnership with regard to any deferred
2 income and any plan involving her sale of the Isle of
3 Palms property in 2001?

4 A No, I was not.

5 Q And you took what you understood to be her
6 ownership percentage from the tax returns in 1634
7 Main, correct?

8 A Yes.

9 Q Do you have Exhibit 11 with you up there, the
10 limited partnership agreement?

11 A No, I don't.

12 Q Here it is. Here it is. Would you look that the
13 for just a second and look at page one. I'm sorry. I
14 mean page two. Do you see where it says the purpose,
15 number four?

16 A Yes.

17 Q And it says the purpose in business of the
18 partnership shall be to acquire, buy, develop, own,
19 invest in, hold, manage, exchange, operate, lease,
20 whether as lessor or lessee, sublease, whether as
21 sublessor or sublessee, refinance, sell and transfer
22 any real or personal property or other partnership
23 assets and to engage in any and all activities
24 incidental thereto or related to the forgoing. I
25 think I inserted a word there, too, sorry. Any and

1 all activities incidental or related to the foregoing?

2 Do you see that?

3 A Yes, I see that.

4 Q And making repairs and making assessments would
5 fall into the category of activities incidental to
6 leasing or maintaining the property, correct?

7 A Yes.

8 Q And the property at 1634 Main L.P., that was the
9 primary if not the only --- maybe you don't know, but
10 that was a primary asset of 1634 Main L.P., correct?

11 A Yes.

12 Q As a general rule, operating in --- with
13 partnerships, it's not unusual to make assessments, is
14 it?

15 A No. It's not uncommon to have assessments.

16 Q Now, with regard to --- also, if you'll look,
17 please, at --- it's on page 12 of Exhibit 11,
18 paragraph 16.4, are you there?

19 A Yes, I see that.

20 Q It says the general partner shall be entitled for
21 reasonable salary for services related to the
22 partnership which compensation will be in addition to
23 any distributions due the general partner, correct?

24 A Yes.

25 Q To your knowledge, has Mr. Hammer ever taken any

1 salary since 2001 or to the present for management of
2 the partnership?

3 A I can't address 2001, because I didn't manage it
4 then.

5 Q I'm sorry.

6 A But from 2002 until the present I'm not aware of
7 any compensation he has received as a general partner.

8 Q And if he had received any as salary pursuant to
9 16.4, you would know, at least as long you've been
10 involved?

11 A Yes.

12 Q Because you write the checks, correct?

13 A Yes.

14 Q All right.

15 Q In fact, Mr. Hammer spends a significant amount
16 of time with you in person or on the telephone with
17 regard to the management of the building, correct?

18 A Yes, we have significant contact.

19 Q And he spends a lot of time with you dealing with
20 the partnership matters?

21 A Yes, as any normal general partner would do.

22 Q Okay. Now, you were asked whether or not you
23 investigated whether or not Mr. Howard had any
24 security for the two notes he took out. You knew that
25 Mr. Hammer had at least a significant percentage

1 ownership of the building or of the limited
2 partnership, didn't you?

3 A Yes, based on the tax returns, he did.

4 THE COURT: You said Mr. Howard; you meant Mr.
5 Hammer, correct? I want to make sure we don't have
6 anybody else?

7 MR. HAMMER: And I'm used to that, Judge. It
8 happens often.

9 BY MS. LIPSCOMB:

10 Q You knew that Mr. Hammer had a significant
11 percentage in the limited partnership, correct?

12 A Yes.

13 Q Certainly his ownership percentage would be far
14 in excess of the twenty-some thousand dollars that he
15 had borrowed, correct?

16 A Yes.

17 Q That building is worth significantly more than
18 \$100,000, is it not?

19 A Yes.

20 Q Okay. Over the years, over the ten year period,
21 his time --- the time involved, even at a nominal
22 hourly rate, would entitle him to a salary of
23 significantly more than the amount he borrowed, would
24 it not? \$25,000 over ten years of his management
25 time?

1 THE COURT: You're talking about a salary?

2 MS. LIPSCOMB: Yes.

3 THE WITNESS: That would be a reasonable
4 assumption, I think.

5 BY MS. LIPSCOMB:

6 Q You said something --- Ms. Ballard asked you
7 something about \$419,000. What was she referencing?
8 Were you able to find anything about that?

9 MS. BALLARD: I indicated that was a mistake on
10 my part.

11 MS. LIPSCOMB: Okay. All right. I
12 misunderstood. Thank you.

13 BY MS. LIPSCOMB:

14 Q So, I mean, he never received \$419,000 that you
15 know about, did he.

16 A Not that I'm aware of.

17 Q Okay. That's all.

18 MS. LIPSCOMB: Thank you, Your Honor.

19 THE COURT: Any questions, Mr. Hammer?

20 MR. HAMMER: Just a few, just to clear some
21 things up.

22 CROSS-EXAMINATION:

23 BY MR. HAMMER:

24 Q Now, you've already cleared up that when you
25 initially said that I had told you to bring the

1 lawsuit that you had misspoke and that you spoke with
2 Ms. --- that what I told you to do was to speak to
3 Ms. Lipscomb about that bringing the lawsuit, correct?

4 A Yes.

5 Q All right. And in terms of the years that
6 Ms. Ballard asked you about whether or not Mrs. Hammer
7 received any distribution, there was no distribution
8 made to anybody during those years because there was
9 no money to make distribution during those years that
10 she talked about; isn't that correct?

11 A In the years that there were no distribution,
12 that's correct.

13 Q And that started in 2008 or 2009 whatever
14 Ms. Ballard had said? I don't remember her exact
15 question, but she said to you starting at such and
16 such a year Mrs. Hammer received no distributions and
17 the reason she received no distributions for the years
18 that Ms. Ballard referenced, there were no
19 distributions to make; is that correct?

20 A That's correct.

21 Q And nobody got any distribution during those
22 years; is that correct?

23 A Correct.

24 Q The lawsuit itself, after I asked you to talk to
25 Ms. Lipscomb about engaging her for the lawsuit, the

1 very contact between the --- when the lawsuit was
2 handled, the agreement to bring the lawsuit, the
3 details of the lawsuit were then handled not by me but
4 by you, representing the --- as the intermediary
5 because I thought I had a conflict, a potential
6 conflict and you handled that with Ms. Lipscomb,
7 correct?

8 A I handled the information for Ms. Lipscomb to
9 prepare the lawsuit.

10 Q Now, in the complaint, they allege that ---

11 MS. BALLARD: I apologize in the complaint what?

12 THE COURT: The counterclaim or complaint or
13 what.

14 MR. HAMMER: I'm sorry. Second amendment to
15 amended answer to complaint, counterclaims, and
16 third-party complaint, there is an allegation --- have
17 you got that?

18 MS. BALLARD: Yes.

19 BY MR. HAMMER:

20 Q There is allegation that the plaintiff --- that
21 is, 1634 Main Street and Howard Hammer individually
22 acting in concert with others, conspired to injure
23 defendant and cause special damages by withholding
24 rental payments due to defendant. Were there any
25 rental payments withheld that were due to Mrs. Hammer?

1 Did you withhold --- did you withhold any rental
2 payment due to Mrs. Hammer?

3 A I wasn't aware that she was entitled to rental
4 payments, but it would have been my, you know, based
5 on my knowledge at the time, any monies that would
6 have been given to Mrs. Hammer would have been
7 partnership distributions, which was consistent with
8 the way it was handled through the years.

9 Q So rental payments --- when we talk about rental
10 payments, and that's what I wanted you to testify to,
11 not me to ask you, but rental payments would have been
12 what went in and what ultimately became distributions
13 --- the rental payments. Then you had to subtract the
14 expenses and then you were left with the distribution,
15 correct?

16 A Correct.

17 Q And we've already gone over that that she
18 received all distributions she was supposed to receive
19 under the agreement?

20 A She received distributions that --- the
21 distribution that were made were based on her
22 percentage of the ownership at the time when there
23 were funds to distribute.

24 Q And the distributions were made in accord with
25 what was essentially instructions from the accountant.

1 When I say instruction, based upon his K-1s that he
2 delivered to you; is that correct?

3 A All the distributions that were made were based
4 on numbers that were provided by Mr. Ackerman.

5 Q All right. And you have no reason to believe
6 that Mr. Ackerman conspired with me or with 1634 Main
7 or any evidence that that happened to deprive her of
8 any distribution, do you?

9 A I don't have any reason to think that, no.

10 Q To the contrary, all the evidence that you have
11 is that she was provided with everything she should
12 have been provided with, correct?

13 A Yes.

14 THE COURT: All right.

15 MR. HAMMER: Thank you, Your Honor.

16 THE COURT: Any redirect?

17 MS. BALLARD: Briefly.

18 REDIRECT EXAMINATION:

19 THE COURT: May I ask a question that perhaps all
20 of you could follow up?

21 MS. BALLARD: Yes, sir.

22 THE COURT: Mr. Turbeville, if you look to
23 Exhibit 31 that you should have. Do you have that?

24 THE WITNESS: Yes.

25 THE COURT: The second page, for the period

1 ending December 31, 2005, it shows partnership buyout,
2 \$178,553. Do you see that?

3 THE WITNESS: I see that.

4 THE COURT: Is that reflected in the --- some
5 time during the year 2005 and if so, could you tell me
6 what month it may have been or if someone out there
7 can? I think it's an exhibit that's in evidence.

8 MS. LIPSCOMB: I think I can.

9 THE COURT: Ms. Lipscomb.

10 MS. LIPSCOMB: The next page under the check
11 register --- what happened is there was some
12 testimony earlier that --- and Mr. Ackerman testified
13 that Stanley Hammer, Judith Hammer, and Allison
14 Hammer were bought out.

15 THE COURT: And where is that?

16 MS. LIPSCOMB: That's the first page. Actually,
17 it's the third page into Exhibit 31.

18 THE COURT: Yes.

19 MS. LIPSCOMB: If you add up the top three
20 numbers to Stanley Hammer, Judith Hammer, and Allison
21 Hammer, that adds up to \$178,553.

22 THE COURT: All right. I see it. That answers
23 the question.

24 MS. LIPSCOMB: Thank you.

25 THE COURT: Go ahead.

1 BY MS. BALLARD:

2 Q Mr. Turbeville, if the Hammer law firm had
3 continued to pay rent at the rate that it was paid in
4 2005, 2006, 2007, the limited partnership would, in
5 fact, have funds to distribute, wouldn't it?

6 A Yes, it would have.

7 Q And Ms. Lipscomb ---

8 A Can I qualify that?

9 Q Certainly.

10 A To the extent that those funds would have been
11 applied to the recommended maintenance issues first.

12 Q Yes. Any funds --- if Hammer law firm had been
13 paying the same rent that it used to pay from --- to
14 the present time, the limited partnership would have
15 funds to first make repairs and then if available to
16 make distributions, correct?

17 A Correct.

18 Q Ms. Lipscomb asked you about provision 16.4 in
19 the limited partnership agreement, Exhibit No. 11, and
20 she suggested to you that the funds paid to Howard
21 Hammer could reasonably be considered a salary to
22 Howard Hammer for his services as general partner. Do
23 you see that?

24 A Yes.

25 MS. LIPSCOMB: Your Honor, I object to the form

1 of the question. I think it mischaracterizes my
2 questions and his responses.

3 THE COURT: All right.

4 MS. LIPSCOMB: That was no ---

5 THE COURT: It's somewhat not within the scope of
6 what was actually said, but you can make that point as
7 an argument later on.

8 MS. BALLARD: Thank you, Your Honor.

9 THE COURT: You're having the witness look at
10 this 16.4 on page 12.

11 MS. BALLARD: Correct, Your Honor.

12 BY MS. BALLARD:

13 Q The general partner is who?

14 A SH-5.

15 Q Not Howard Hammer?

16 A Correct.

17 MS. BALLARD: Thank you.

18 THE COURT: All right. Anything else?

19 MR. HAMMER: Yes, sir.

20 THE COURT: Restricted solely to the scope of
21 what Ms. Ballard just brought up.

22 MR. HAMMER: I understand.

23 RECROSS-EXAMINATION:

24 BY MR. HAMMER:

25 Q As far as the rental, initially when there was a

1 Hammer law firm, that Hammer law firm encompassed not
2 only the --- that Hammer law firm encompassed some
3 close to 5,000 square feet, isn't that correct? Four
4 or 5,000 square feet?

5 A Yes.

6 Q And in 2008, the Hammer law firm stopped
7 existing, and there was a Hawkins law firm that was in
8 the Hammer law firm area because in June of 2008
9 Hammer stopped practicing law; isn't that correct?

10 A I'm not sure when you stopped practicing law.

11 Q But after that period of time in 2008, there
12 continued to be after June 6th, 2008, there continued
13 to be occupants of that building; isn't that correct?

14 A You're referring to Darryl Hawkins?

15 Q Yes.

16 A Darryl was in the building. I don't recall when
17 he left, though.

18 Q All right. And at the point he left, the
19 building was the part --- the amount of area that was
20 in the Hammer law firm and then used by Hawkins was
21 lessened, was split almost in half; is that correct,
22 and then that became a part that was later rented to
23 the Oliver Gospel Mission?

24 A That is correct.

25 Q And so that was nearly half of the space that was

1 later rented to the Oliver Gospel Mission?

2 A You're referring to the portion occupied by
3 Mr. Hawkins?

4 Q No. Initially the whole portion was --- the
5 whole portion that Hammer occupied was occupied by
6 Mr. Hawkins; isn't that correct?

7 A I'm not sure how much of the space was occupied
8 by Mr. Hawkins. I just know that his office was
9 there.

10 Q All right. The space that was cut off for the
11 Oliver Gospel Mission was somewhere close to half of
12 the entire space?

13 A No.

14 Q How much was it?

15 A It was a little over 1,000 feet.

16 Q How much was the total space?

17 A It's roughly 4,000, 4,500 in my estimate.

18 Q So about a fourth then?

19 A Probably about a fourth.

20 Q All right. And the rents that were received from
21 the Oliver Gospel Mission, there was a decrease in
22 what the rental values were for that building after
23 2007 or 2008; is that correct?

24 A Yes. Rents in general have been depressed since
25 2008 and 2009.

1 Q So if you had received any --- you did not
2 receive any rentals from Hawkins law firm?

3 A No, I never received any rent from Hawkins law
4 firm.

5 Q All right. And you are aware that Hawkins law
6 firm was occupying the building?

7 A Darryl Hawkins had his office there, yes.

8 Q And you --- after the space was cut off, the
9 Hammer law firm stopped doing business as a law firm.
10 You're aware of that?

11 A I'm aware that you quit practicing law, yes.

12 Q And you're aware of the whole space that was left
13 that I am using for my own personal purposes,
14 approximately one room plus --- the majority of ---
15 well, one room plus a library. That's the majority of
16 space that's being used. The front three offices
17 aren't being used. The middle portion generally is
18 not being used. There is an entry that you have to
19 come through, but it has not been used except to enter
20 and exit; is that correct?

21 A Functionally, that space can only be divided into
22 about two suites. That would be 1250 to 1300 square
23 feet each.

24 Q So that would be the only thing that I would be
25 able to --- that I would be able --- the 1200 or so

1 would be about the space that I would be using since
2 2008, 2009 or thereabouts?

3 A Probably 1200 or 1300 square feet, yeah.

4 Q And 2009 is --- you don't --- you wouldn't
5 dispute 2009 was the last year that Mr. Hawkins ---
6 that Mr. Hawkins was in that building?

7 A I don't have a reason to dispute it, no.

8 Q All right. And starting in 2010, I would have
9 about 1200 or 1300 square feet; is that correct?

10 A Yes.

11 Q And the rental value of the space I would have
12 would be about eight, nine, ten, what --- about what
13 value?

14 A Probably \$10 to \$11 a square foot.

15 Q And what was the lowest value that you were
16 renting in that building?

17 A The lowest value?

18 Q Yeah.

19 (Pause.)

20 How much did the Oliver Gospel Mission pay?

21 A They pay about \$1,000, maybe about \$1,100 a
22 month.

23 Q Okay.

24 A Which is about \$11.

25 Q So out of the year that we're talking about,

1 starting 2010, 2011 --- 2010, 2011, 2012 has not been
2 satisfied yet, but out of 2010 and 2011, one of those
3 years was paid. --- there was \$13,000 paid in one year;
4 is that correct?

5 A Was that 2008?

6 Q No. I think you said that was 2010 or 2011. I'm
7 not sure?

8 THE COURT: 2009, \$13,000 some odd dollars, and
9 2011 ---

10 BY MR. HAMMER:

11 Q So those two years, those amounts were paid by
12 the Hammer law firm?

13 A Yes.

14 Q So that would leave one year that the Hammer law
15 firm hasn't paid?

16 A No. It was more than that.

17 Q But I hadn't paid for 2012. I think the judge
18 just said there were two years that they had paid.

19 THE COURT: 2008 zero, 2010 zero and thus far for
20 2012 zero.

21 MR. HAMMER: All right.

22 BY MR. HAMMER:

23 Q 2009 --- 2009 there was something paid?

24 A That was the \$13,000.

25 Q All right. 2010?

1 A I think I testified there was no rent paid in
2 2010.

3 Q And none for 2011?

4 THE COURT: No.

5 THE WITNESS: Yes. There was \$15,000 and change.

6 MR. HAMMER: All right. So we're left with ---
7 which years?

8 THE COURT: All the even numbered years.

9 MR. HAMMER: Sir?

10 THE COURT: 2008, 2010 and 2012 he testified that
11 he received no rentals.

12 BY MR. HAMMER:

13 Q No rent in 2012 and so 2008 and 2010 no rent also
14 and 2008 was the year that you don't know whether
15 Hawkins was there or not. You can't --- you can't ---
16 you know that Hawkins was there at least until the
17 portion --- until the time that it was rented to, and
18 cut off to Oliver Gospel Mission?

19 A We rented to Oliver Gospel Mission, I think in
20 2010.

21 Q And that was shortly after Mr. Hawkins had left?
22 That renovation was made and it was cut out at that
23 point; isn't that correct?

24 A Like I said, I don't recall when Darryl Hawkins
25 left.

1 Q Can I help refresh your memory by maybe thinking
2 about how after Mr. Hawkins left that you rented it to
3 the Oliver Gospel Mission?

4 A The space was vacant maybe 18, 24 months, I
5 guess.

6 Q You think it was that long?

7 A At least 12 to 18 months. I just don't remember.

8 Q Okay. Now, in 2010, according to this statement,
9 they paid \$9,000 in 2010?

10 A Oliver Gospel Mission?

11 Q Yes, sir. It's space labeled 00146.

12 MS. LIPSCOMB: It's at the bottom of the page
13 Main-00146.

14 THE COURT: Why don't you just go show it to him?

15 THE WITNESS: What you're saying is that in 2010
16 the Oliver Gospel Mission paid \$9,280?

17 Their lease started in the spring of that year.

18 BY MR. HAMMER:

19 Q So their ---

20 A It was either March or April, I think.

21 Q So March or April of 2010 is when their lease
22 began?

23 A Spring of 2010.

24 Q So somewhere between 2008 and spring of 2010 is
25 where Mr. Hawkins was in the building and you don't

1 know approximately when he left?

2 A I don't recall when Darrell left the building.

3 Q All right. I'm not sure I understand that. You
4 don't recall ---

5 A I don't recall the specific time Darryl Hawkins
6 vacated the premises.

7 THE COURT: That's been asked. He said he doesn't
8 remember ---

9 MR. HAMMER: I'm sorry. I didn't understand him.
10 I thought he said that he didn't recall that he left.

11 THE COURT: He said he didn't recall when.

12 MR. HAMMER: He didn't recall when. Okay. So
13 your estimate of 18 to 20 months and that's just an
14 estimate, right? So you really don't know when he
15 left, do you?

16 THE COURT: He said that.

17 MR. HAMMER: That's what I --- okay. I just
18 wanted to clear that up.

19 Thank you very much.

20 MS. BALLARD: Very briefly.

21 THE COURT: All right. Only with regard to
22 anything Mr. Hammer ---

23 MS. BALLARD: Or Ms. Lipscomb.

24 THE COURT: Well, haven't you already redirected
25 once?

1 MS. LIPSCOMB: Yes, Your Honor, and I didn't ---

2 THE COURT: Well, she didn't re-recross, so no.

3 Only with regard to Mr. Hammer.

4 RE-REDIRECT EXAMINATION:

5 MS. BALLARD: All right.

6 BY MS. BALLARD:

7 Q Am I correct that Mr. Hammer has continuously
8 occupied the building, at least some portion of the
9 building during the entire time that Danville Business
10 Advisors have been the property management?

11 A Yes.

12 MS. BALLARD: Thank you, sir.

13 THE COURT: You may step down. Thank you, sir.

14 MS. BALLARD: Mr. Turbeville is under subpoena
15 for me and I believe from Mr. Hammer, as well --- I
16 mean, Ms. Lipscomb. I'd ask that he be excused.

17 THE COURT: Ms. Lipscomb?

18 MS. LIPSCOMB: I agree.

19 THE COURT: Mr. Hammer?

20 MR. HAMMER: He is not ---

21 THE COURT: Thank you, Mr. Turbeville, you can
22 pay rent on your way out the door of the Richland
23 County courthouse. He's been out in the hall for so
24 long.

25 THE WITNESS: Thank you.

1 THE COURT: All right, sir.

2 MS. BALLARD: Thank you, Mr. Turbeville.

3 THE COURT: We'll get back together at 2:30.

4 Thank you.

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: All right. Ms. Ballard.

7 MS. BALLARD: Thank you, Your Honor. My next
8 witness is Ray Covington. He was under subpoena.

9 THE COURT: Okay. What is his name, again?

10 MS. BALLARD: Ray Covington.

11 THE COURT: Okay.

12 MS. BALLARD: We have kept him informed of when
13 to be here and he is not here. Our last call was
14 moments ago.

15 THE COURT: Did you speak to him or just leave
16 messages?

17 MS. BALLARD: Messages at this the number that he
18 told us to leave.

19 THE COURT: Yes, Mr. Hammer?

20 MR. HAMMER: Your Honor, while we're waiting,
21 might I suggest this, and it may obviate the necessity
22 of Mr. Madden coming in the morning. I've been
23 talking about the motion I had. If Your Honor would
24 allow me to present that at this juncture.

25 THE COURT: Okay.

1 MR. HAMMER: And then I can discuss that with
2 him.

3 THE COURT: Does Mr. Covington know to come into
4 the courtroom?

5 MS. BALLARD: Yes, he does, Your Honor. My
6 assistant will continue to try to reach him. In the
7 absence of Mr. Covington, I'm ready to proceed with
8 Mrs. Hammer.

9 THE COURT: So you want to call her now?

10 MS. BALLARD: Yes, sir.

11 THE COURT: Okay. The purpose of raising this
12 now, Mr. Hammer, would be what?

13 MR. HAMMER: To obviate the necessity of
14 Mr. Madden having to come in the morning.

15 THE COURT: How long would this take?

16 MR. HAMMER: I hope it wouldn't take more than
17 ten or fifteen minutes, max.

18 THE COURT: That probably means 30, so can you
19 give it to me in a nutshell what you're talking about?

20 MR. HAMMER: It's just a little bit more complex
21 than that. I want to ---

22 THE COURT: Then he's just going to have to come
23 and you can --- your motion, just tell me, do you have
24 a written motion?

25 MR. HAMMER: It was what I made at the first of

1 the case.

2 THE COURT: It doesn't have to be, but is it in
3 writing?

4 MR. HAMMER: No, sir. It's not. I'll tell you
5 what it is.

6 THE COURT: Just tell me real, real briefly what
7 the motions is without arguing.

8 MR. HAMMER: All right, sir. The motion is ---
9 the motion is that there is jurisdiction in this court
10 to find --- to --- for you to make a determination on
11 this contract. The reason is ---

12 THE COURT: That is what contract?

13 MR. HAMMER: The partial settlement contract.

14 THE COURT: Let's just call it a partial
15 settlement agreement.

16 MR. HAMMER: Partial settlement agreement --- the
17 basic outline --- the partial settlement agreement was
18 brought up by them in their pleadings. They entered
19 it into this case. I'm going to put aside the other
20 case, but they entered it into this case.

21 The partial settlement agreement said the
22 agreement is a binding --- when they put it in, they
23 said it's only apportionable under the family court.
24 The agreement actually says that the agreement is a
25 binding contract and is enforceable and subjects to

1 law. Let me go on to the next issue. The next issue
2 is Mosley vs. Mosley, which is ---

3 THE COURT: No, I want to know what your motion
4 is.

5 MR. HAMMER: My motion is --- my motion is going
6 to be that you have jurisdiction to make a
7 determination on the --- on this contract and on
8 whether or not it is void regardless of what has
9 happened before, and my motion is going to be based
10 upon several Supreme Court cases upon the agreement
11 itself and upon the fact that they have raised it.

12 THE COURT: All right. I just don't ---

13 MR. HAMMER: That would be the basis of the
14 motion.

15 THE COURT: I want to focus on this.

16 MR. HAMMER: I understand.

17 THE COURT: You have that issue and I ruled
18 against you and you want to bring Mr. Madden in, then
19 you're just going to have to bring him in.

20 I can tell you this, I do not have subject matter
21 jurisdiction to void that agreement. I don't have it.

22 MR. HAMMER: I ---

23 THE COURT: I know you just told me that I did,
24 and I disagree with you.

25 MR. HAMMER: I'd like to be able to make a

1 presentation as to why you do.

2 THE COURT: You're not going to do it now.

3 MR. HAMMER: I understand that.

4 THE COURT: All right, sir.

5 Call your next witness.

6 MS. BALLARD: Thank you, Your Honor. We'd call
7 Shirley Hammer to the stand.

8 THE COURT: She is still under oath, but since
9 it's a new case, even though they are consolidated, we
10 will swear her again.

11 State your name for the record, ma'am.

12 THE WITNESS: Shirley Hammer.

13 SHIRLEY HAMMER,

14 after being duly sworn, testified as follows:

15 THE COURT: Thank you. Have a seat.

16 THE BAILIFF: Just have a seat there. Watch your
17 step for me.

18 MS. BALLARD: Watch your step, Shirley.

19 DIRECT EXAMINATION:

20 BY MS. BALLARD:

21 Q Shirley, you've already introduced yourself to
22 the court. You are Howard's former wife; is that
23 correct?

24 A Yes.

25 Q During the period of time that you and Howard

1 were married, who handled the financial matters in
2 your household?

3 A Howard did the bigger picture. I actually wrote
4 some checks out for household and for managing of the
5 apartments.

6 Q Apartments were --- for the court's benefit, did
7 you all own some real estate that you used as rentals?

8 A Yes, quite a few.

9 Q In the course of the marriage, what was your
10 responsibility for those properties?

11 A I managed the properties. I kept them rented. I
12 renovated them, and I would pay bills, things like
13 that, take in checks.

14 Q In terms of ---

15 A And deposits.

16 Q In terms of the overall financial planning for
17 the family and for tax purposes, who handled those
18 matters?

19 A Howard.

20 Q You were aware that you had a C.P.A. that did
21 your joint returns for the period --- during the
22 period of time you were married?

23 A Correct, Howard handled all of those with
24 Mr. Ackerman.

25 Q Did Howard ever discuss with you any of his tax

1 planning issues?

2 A No.

3 Q Did you ever have discussions with Mr. Ackerman
4 or with other people about strategic planning for tax
5 purposes?

6 A No, did not.

7 Q Okay. When you --- well, I won't say divorced.
8 After this settlement in the family court in 2008, did
9 you execute a deed transferring your interest in the
10 real property located at 1634 Main Street to Howard?

11 A I did.

12 Q And you did that in accordance with what?

13 A With the agreement, the divorce agreement.

14 Q The property settlement agreement?

15 A Yes, yes, I'm sorry, yes.

16 Q And who handled the transmission and delivery of
17 that to Howard for you?

18 A My attorney.

19 Q And that was Tim Madden?

20 A Correct.

21 Q Did you also execute documentation transferring
22 any interest you might have in a limited partnership
23 known as 1634 Main L.P. to Howard?

24 A Everything to do with 1634 went to Howard.

25 Q Okay. Let me just show you Exhibit No. 16, the

1 cover letter of which --- this is Shirley Hammer's
2 Exhibit number 16.

3 THE COURT: Okay.

4 BY MS. BALLARD:

5 Q The cover letter of which is from Mr. Madden, but
6 if you would look at the documents that are attached,
7 I just wanted to confirm that those are your
8 signatures. Let's start with the deed if we could.

9 A Yes.

10 Q All right. And this indicates --- when did you
11 initially sign this, Shirley?

12 A Initially it was November 5th, 2009.

13 Q Okay. And in whose presence did you sign it?

14 A We were in court that day, and Tim was --- Tim
15 was there and Howard and his attorney.

16 Q Okay. And you executed it and did what with it?

17 A Gave it to my attorney.

18 Q Did you subsequently execute it in 2010 or is
19 this the same document you executed in 2009?

20 A Oh, this is the same document. We just changed
21 the date, and I initialed it.

22 Q Okay. Look at the assignments of limited
23 partnership interest. What date did you sign that?

24 A Same thing, November 5th, 2009.

25 Q And when the date was changed, did you re-sign

1 it?

2 A No.

3 Q Okay. Was your attorney authorized by you to
4 make that change of the date on that?

5 A Yes.

6 Q Shirley, what was your understanding after
7 the 2008 settlement as to your ownership of 1634 Main,
8 the dirt, and your interest in the limited partnership
9 known as 1634 Main L.P.?

10 A That Howard owned 1634 period, everything.
11 Whatever that connects to, but yes.

12 Q The dirt and the limited partnership?

13 A Yes, yes.

14 Q You were aware you had to execute a deed to make
15 that happen, correct?

16 A Correct.

17 Q And you did that on November 5th, 2009?

18 A Correct.

19 Q Okay.

20 Q Shirley, have you ever seen a demand for a
21 contribution for repairs or for any other purpose from
22 anyone acting on behalf of 1634 Main Limited
23 Partnership?

24 A No.

25 Q When this lawsuit was filed against you, had you

1 previously been --- had you previously received any
2 communication from anyone suggesting that you owed
3 money to 1634 Main L.P.?

4 A No.

5 Q Have you received any distributions or reports
6 about the operation of 1634 Main or anything related
7 to 1634 Main since you and Howard separated in 2005?

8 A Nothing except the tax returns that came in
9 November, I think, of last year and were sent to my
10 accountant.

11 Q And your accountant's name is what?

12 A Wally Moring.

13 Q I'm looking for that now.

14 A It's Camp and Moring.

15 Q And you're referring to Shirley Hammer's Exhibit
16 No. 29?

17 A Yes.

18 Q Prior to your attorney --- your accountant's
19 receipt of Exhibit No. 29, had you ever received ---
20 after 2005, had you ever received a K-1 for 1634 Main
21 L.P. indicating that you had any ownership interest
22 whatsoever in the limited partnership?

23 A No.

24 Q Had you received any tax bills for the real
25 estate located at 1634 Main?

1 A No.

2 Q Since you've separated from Mr. Hammer and
3 eventually were divorced from him, have you met with
4 Mr. Ackerman or Mr. Turbeville either at your request
5 or theirs to be brought up to date on what's happening
6 with 1634 Main L.P.?

7 A No.

8 Q Okay. As far as you're concerned, when did your
9 connection to the limited partnership end?

10 A 2008 or 2009, whichever that was.

11 Q Okay. You're talking about the settlement
12 agreement and the execution of deed?

13 A Correct, yes.

14 Q Okay. Shirley, when this lawsuit was filed, what
15 was your reaction?

16 MR. HAMMER: Objection, Your Honor. I don't know
17 exactly what relevancy her reaction was. I thought we
18 had dropped everything for emotional.

19 THE COURT: Relevance?

20 MS. BALLARD: Your Honor, it relates to the abuse
21 of process claim that we are asserting.

22 THE COURT: You're talking about the lawsuit
23 brought by 1634 Main?

24 MS. BALLARD: 1634 Main.

25 THE COURT: How about any claims against

1 Mr. Hammer?

2 MS. BALLARD: That, as well.

3 THE COURT: Is there an abuse of process
4 third-party action ---

5 MS. BALLARD: Yes.

6 THE COURT: --- against him in this litigation?

7 MS. BALLARD: Yes, sir.

8 THE COURT: All right. Mr. Hammer?

9 MR. HAMMER: Again, she has dropped everything
10 dealing with emotional distress.

11 THE COURT: Is that correct, Ms. Ballard?

12 MS. BALLARD: That's correct, Your Honor, the
13 abuse of process allows for recovery of attorney's
14 fees.

15 THE COURT: You're talking about her emotional
16 reaction or what she physically did.

17 MS. BALLARD: No, what her thoughts were and what
18 she elected to do after that.

19 THE COURT: I will allow it, but I will note that
20 there aren't going to be any emotional distress
21 damages.

22 MS. BALLARD: That's correct.

23 THE COURT: So I can sift through that.

24 MS. BALLARD: Thank you, Your Honor.

25 BY MS. BALLARD:

1 Q What was your reaction, Shirley, when you
2 received this lawsuit?

3 A I said here goes Howard again. He --- I feel
4 like he has harassed me. We've had appeals after
5 appeals after appeals after appeals.

6 Q In the family court matter?

7 A In the family court matter. I mean, he has
8 totally forgotten that we have children that we're
9 trying to raise, and they're caught up in the middle
10 of this, and it's horrific.

11 Q Did you retain counsel to represent you in the
12 defense of this matter?

13 A I did.

14 Q And who was that?

15 A You mean you?

16 Q Yes.

17 A Desa, Desa Ballard, I'm sorry.

18 Q I have been representing you since the beginning
19 of this case, right?

20 A Yes.

21 Q Did you request that counterclaims be filed
22 against 1634 Main and third-party claims be filed
23 against your ex-husband, Howard Hammer?

24 A Correct. I mean, it's been --- I know it sounds
25 like a lot of money that we have settled on, but my

1 attorney's fees have been ---

2 MR. HAMMER: Judge --- Your Honor, this is not
3 relevant to --- this is not responsive to the answer,
4 nor is it relevant to the action for abuse of process.
5 She is talking about the whole global attorney fees.
6 She has been talking about her domestic matters also,
7 if I understood her correctly.

8 THE COURT: Okay. Well, let's restrict the
9 answer, please, ma'am, to any attorney action in the
10 common pleas litigation.

11 Ms. Ballard, she may not know what that is, but
12 if you'd explain to her, preface your questions in
13 that regard.

14 MS. BALLARD: Yes, sir.

15 THE COURT: Mr. Hammer's objection is sustained
16 with regard to any matters or fees incurred from the
17 family court matter.

18 MS. BALLARD: We are not attempting to recover
19 any fees incurred in family court, Your Honor, but I
20 do think it's relevant that I'm allowed to ask how
21 much she has expended in family court since the
22 settlement because it is relevant to the I abuse of
23 process claim. I'm not asking for damages, but merely
24 as context.

25 THE COURT: How is that giving me any context at

1 all?

2 MS. BALLARD: It's giving you context as to how
3 tortured and heated the family court litigation has
4 been since 2009 when it was supposedly resolved.

5 THE COURT: And that has to do what with this
6 case?

7 MS. BALLARD: Abuse of process.

8 MS. LIPSCOMB: Your Honor, I ---

9 THE COURT: So you're for abuse of process for
10 family court stuff?

11 MS. BALLARD: No, sir. I believe in order for
12 the court to consider the full context of this case,
13 the court has to understand that the family court
14 litigation has extended and continues to extend at
15 this time.

16 THE COURT: Went, I understand that from what
17 Mr. Madden says.

18 MS. BALLARD: I believe the amount of fees she
19 has incurred, not that I'm seeking to recover those as
20 damages, but the amount of fees incurred in that
21 domestic case, is relevant to the extent of that
22 litigation.

23 THE COURT: I'll allow you to proffer it. I'll
24 tell you I'm not going to consider it.

25 MS. BALLARD: Okay, thank you, Your Honor.

1 THE COURT: Ms. Lipscomb.

2 MS. LIPSCOMB: I just want to note an objection.
3 If she goes down this route, then we are going to have
4 to introduce the 15 or so litigations and complaints
5 and motions filed by Mrs. Hammer, and I don't think
6 the court wants to get into that either.

7 THE COURT: I'm going to get into anything that's
8 relevant and that's not otherwise inadmissible, that
9 might be inadmissible for another reason. I'm here to
10 here everything that is lawfully presented to me.

11 MS. LIPSCOMB: Yes, Your Honor.

12 THE COURT: If she wants to, in your mind, open
13 that door, you're certainly entitled to pursue it.

14 MS. LIPSCOMB: Thank you.

15 THE COURT: So Ms. Ballard, I will allow you to
16 proffer the dollar amount of fees.

17 MS. BALLARD: Yes, sir.

18 THE COURT: I'm not going to consider those, but
19 I will allow you to introduce evidence of the domestic
20 litigation turmoil, if you will, to paint a broader
21 picture.

22 MS. BALLARD: Yes, sir.

23 THE COURT: Of the relationship between Mr.
24 Hammer and Mrs. Hammer as a whole.

25 MS. BALLARD: That's ---

1 THE COURT: The dollar figure has nothing to do
2 with anything. That depends on what the lawyer's
3 hourly rate is, this, that and the other, which I
4 really don't care about except any claim for attorneys
5 fees ---

6 MS. BALLARD: In this case.

7 THE COURT: --- that she has paid to you or owes
8 you.

9 MS. BALLARD: Let me just ask her this without
10 asking for an amount.

11 THE COURT: Go ahead.

12 BY MS. BALLARD:

13 Q Mrs. Hammer have you incurred attorneys fees for
14 your case since the settlement in 2009?

15 A Yes.

16 Q And those are fees to Mr. Madden?

17 A Correct.

18 Q Did you have any domestic fees that you paid to
19 anyone else since the settlement in 2009?

20 A Mark Taylor.

21 Q Have you had to pay any fees related to --- not
22 the amount, but have you had to pay any fees ---

23 MR. HAMMER: Objection, Your Honor. She keeps
24 leading.

25 THE COURT: That's not leading. The answer is

1 yes or no. She is not suggesting an answer. There is
2 a fine line.

3 MR. HAMMER: Thank you, Your Honor. I
4 understand.

5 THE COURT: Go ahead.

6 BY MS. BALLARD:

7 Q Have you had to pay any fees to any third parties
8 in connection to the continued litigation in family
9 court since the settlement in 2009?

10 A Yes.

11 THE COURT: 2008 or 2009?

12 MS. BALLARD: The property settlement was 2008,
13 the final everything else was 2009.

14 THE COURT: All right. I see.

15 THE WITNESS: I have the guardian. There have
16 been other attorneys, but yes.

17 BY MS. BALLARD:

18 Q And who is the guardian, just for this record?

19 A Dick Whiting.

20 Q Okay. Now in connection with the defense of the
21 suit that --- the two suits that have brought against
22 you, the 320 suit and the 1634 Main limited
23 partnership suit, have you expended attorneys fees in
24 defending those actions?

25 A Yes.

1 Q How many fees have you expended in defending the
2 Hammer versus Hammer case?

3 A I don't have the breakdown. I just have the
4 whole amount.

5 Q What is the whole amount of the two cases?

6 A That's \$175,445.

7 Q All right. Does that include the petition to the
8 Supreme Court, as well?

9 A No.

10 Q Do you know how much fees you have incurred in
11 connection with the petition that you filed,
12 Mr. Bachman filed on your behalf, to the Supreme Court
13 to try to consolidate all this litigation, bring it to
14 an end?

15 A I have no ---

16 MR. HAMMER: Your Honor, I have an objection.

17 THE COURT: Yes, Mr. Hammer.

18 MR. HAMMER: Again, that would not be relevant to
19 this matter, if I understand what ---

20 THE COURT: Clarify the question, please, Ms.
21 Ballard, regarding the consolidation of this
22 litigation.

23 MS. BALLARD: Yes, sir.

24 THE COURT: Listen to that question, Mr. Hammer,
25 and then you can --- you're talking about