22208

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Daniel B. Dorn, in his capacity as the Parent and Natural Guardian of E.D., R.D. and Y.D, Appellant.

v.

Paul S. Cohen and Susan Cohen, Individually and in their capacity as the Co-Conservators of the person of Abbie Ilene Dorn, a protected person and ward, and in their capacity as Co-Trustees of the Abbie Dorn Special Needs Trust, Respondents.

RECEIVED
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SC Court of Appeals

Paul S. Cohen, M.D and Susan Cohen, Respondents,

v.

E.D., R.D., and Y.D., The Living Issue of Abbie Ilene Dorn, and the South Carolina Department of Health and Human Services, Respondents below,

Of whom E.D., R.D., and Y.D., The Living Issue of Abbie Ilene Dorn are the Appellants,

and

the South Carolina Department of Health and Human Services is a Respondent.

In Re: The Abbie Dorn Special Needs Trust.

Appellate Case No. 2015-000659

The Honorable Deadra L. Jefferson
Horry County
Trial Court Case No. 2013CP2608152, 2013CP2608139, 2014CP2601691, 2014CP260174

RECORD ON APPEAL
VOLUME II

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Carolina Department of
Health and Human Services

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RECORD ON APPEAL

VOLUME II

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STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)

Daniel B. Dorn, et al,	)	
	)	2013-CP-26-08139
Plaintiffs	)	2014-CP-26-01744
	)	2014-CP-26-01691
vs.	)	2013-CP-26-08152
	)	
Paul S. Cohen, et al,	)	**ORIGINAL**
	)	
Defendants	)	

OFFICIAL COURT RECORD

BEFORE THE HONORABLE DEADRA JEFFERSON:

The enclosed nonjury judicial proceedings took place in the Court of Common Pleas, Horry County, Conway, SC; commencing at the hour of 11:42 PM on the 9th day of February, 2015.

REPORTED BY: H. Eugene Buckner, CVR

ORIGINAL

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Family Court Reporter at Large
15th Judicial Circuit
PO Box 1382, Conway, SC 29528-1382

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7 Cohen and the South Carolina Department of Health and

8 Human Services.

9 This is an appeal from the Probate

10 Court filed 12/26/13; and then there's a Motion to Stay

11 Certificate of Service.

12 Who's representing who?

13 If y'all will say it for the record

14 for the benefit of the court reporter?

15 MR. BOYD:

16 Your Honor, Reese Boyd. I'm here

17 with my partner Bret Davis. We represent the

18 Conservatories and Guardians and the Trustees that they

19 had, Dr. Paul Cohen and his wife, Susan.

20 THE COURT:

21 Who is it represents Dorn?

22 MR. MASSALON:

23 Good morning, Your Honor.

24 THE COURT:

25 Uh-huh.

OFFICIAL COURT RECORD

1 MR. MASSALON:
2 I'm John Massalon, and I represent --
3 uh -- Dan Dorn, along with Daniel Slotchiver, Steve
4 Slotchiver and Andrew McCumber.
5 THE COURT:
6 And who else? I'm sorry.
7 MR. MASSALON:
8 Okay; and I'm sorry, I represent John
9 Kachmarsky as well.
10 THE COURT:
11 Okay.
12 MR. MASSALON:
13 So I represent everybody -- uh -- on
14 the Dan Dorn side. And Mr. Kachmarsky is the -- uh --
15 Guardian Ad Litem and Attorney for the Guardian ad litem.
16 And -- And Your Honor, I --
17 THE COURT:
18 I got Steve Sclotshiver. I've got
19 his brother, Daniel, but I don't have --
20 MR. MASSALON:
21 -- Andrew McCumber.
22 THE COURT:
23 Andrew -- spell that
24 MR. MCCUMBER:
25 It's M-c-C-u-m-b-e-r.

OFFICIAL COURT RECORD

1 THE COURT:
2 Thank you.
3 I heard you said it, but I just
4 didn't catch it.
5
6 MR. MASSALON:
7 And just as a procedural point, we've
8 also got the same motions in a related case that's set
9 after lunch.
10 THE COURT:
11 Uh-huh.
12 MR. MASSALON:
13 And -- uh -- I've got all the case
14 numbers on that as well.
15 I don't know what you --
16 THE COURT:
17 I am so woefully blind.
18 We had a case set for like 10 minutes
19 this morning that took an hour and a half.
20 Uh -- It probably should have been
21 the only case scheduled for this morning -- uh -- but it
22 is what it is.
23 And so, if y'all could just give me a
24 chance to get caught up, y'all can then try this case and
25 I appreciate it.

OFFICIAL COURT RECORD

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2 9:30 is resolved, I'll try and circle back and deal with
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8 It's really a Motion to Stay the
9 Appeal on all of these cases; so that's what -- In my
10 view, it's exactly the same argument.
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12 It -- It is the same argument, Your
13 Honor.
14 And also, I wanted to point out to
15 The Court that we have Lenette Hedgepath. Ms. Hedgepath
16 represents Abbie Dorn.
17 THE COURT:
18 Ms. Hedgepath represents who?
19 MR. BOYD:
20 Ms. Abbie Dorn, Your Honor.
21 THE COURT:
22 Okay. Thank you.
23 MS. MOORE:
24 Your Honor, my name is Lee Moore.
25 I'm the court appointed guardian ad litem for Abbie Dorn.

OFFICIAL COURT RECORD

1 THE COURT:
2 And tell me your name again? I'm
3 sorry?
4 MS. MOORE:
5 Lee Moore. It's first initial name
6 "V" -- middle name Lee, L-e-e, last name, Moore.
7 THE COURT:
8 Thank you, ma'am.
9 Okay. We'll start with the Appeal;
10 and the go all the way back with the Motion to Stay.
11 You may proceed, Mr. --
12 MR. MASSALON:
13 Your -- Your Honor, if I may?
14 THE COURT:
15 Yes.
16 MR. MASSALON:
17 We were here in front of -- uh --
18 Judge Hyman --
19 THE COURT:
20 Uh-huh.
21 MR. MASSALON:
22 -- approximately three weeks ago.
23 And Judge Hyman had taken the Motion for -- uh -- Stay
24 under advisement. And --
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OFFICIAL COURT RECORD

1 Oh, so that's no longer pending
2 before The Court?
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5 Honor, but --
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8 advisement?
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He did continue it until the next available opportunity; which was today, Your Honor.

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Okay. I hear things in the order they were filed. So that appeal was filed first. So that will be heard first.

MR. MASSALON:

Okay. Thank you.

THE COURT:

You're welcome.

MR. MASSALON:

All right.

And -- And Your Honor, not to be troublesome about it, but the -- uh -- uh -- If I can give you a little background about it, it may be better if you hear the Motion to Stay for this reason:

Basically -- uh -- what the cases are about, Judge:

In 2006, Abbie Dorn was the victim of some medical negligence -- uh -- during childbirth. And she was left in a persistent vegetative state.

THE COURT:

Okay.

MR. MASSALON:

And -- uh -- as a result of that

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MR. MASSALON:

And -- uh -- as a result of that

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1 medical negligence, a lawsuit was filed and about a
2 million dollars was placed into a Special Needs Trust.
3 Her parents, Mr. and Mrs. Cohen, were
4 named as her Conservators and as the Trustees of the
5 Special Needs Trust.
6 Uh -- As you heard, Ms. Dorn -- Abbie
7 Dorn -- is a ward of the South Carolina Probate Court.
8 THE COURT:
9 Uh-huh.
10 MR. MASSALON:
11 She lives here in Horry County with
12 her parents.
13 THE COURT:
14 Uh-huh.
15 MR. MASSALON:
16 My client, Dan Dorn, is her former
17 husband.
18 He lives in California.
19 THE COURT:
20 Uh-huh.
21 MR. MASSALON:
22 And he has custody of -- of the three
23 children.
24 Uh -- After the Special Needs Trust
25 was established, Mr. and Mrs. Cohen filed a custody

OFFICIAL COURT RECORD

1 action against Dan Dorn in California.
2 And we alleged, used substantially
3 all of the money in the Special Needs Trust to sue him
4 for custody on behalf of -- uh -- Abbie Dorn.
5 That case -- uh -- was resolved by a
6 Consent Order in which it was acknowledged that the
7 visitation wouldn't have any benefit for Abbie Dorn.
8 And -- uh -- so after that custody
9 case was resolved -- uh -- Mr. Slotshiver filed a lawsuit
10 here in Horry County on Mr. Dorn's behalf against the
11 Cohens, asking for two things:
12 One, that they be removed as
13 Trustees.
14 And two, that they be required to pay
15 back the money; not to him; but to the Trust, because
16 they spent on visitation.
17 THE COURT:
18 Uh-huh.
19 MR. MASSALON:
20 The very next day -- uh -- a lawsuit
21 was filed by the Cohens to reform the trust and allow
22 them to do what they had done spending the money on the
23 lawsuit.
24 So we have two separate lawsuits --
25 uh -- that are pending in Probate Court filed a day

OFFICIAL COURT RECORD

1 apart.
2 Mrs. Dorn, Abbie Dorn, was a party to
3 the lawsuit that her parents filed.
4 She was not a party to the lawsuit
5 that Mr. Dorn filed.
6 That case got tried about two years
7 ago in front of the probate judge at the time in -- in
8 Horry County.
9 And at the trial of that case, an
10 issue came up about what if anything the attorney and the
11 guardian for Abbie Dorn should be allowed to do in the
12 Dan Dorn case?
13 And -- uh -- the judge recessed the
14 trial.
15 Subsequently, she allowed -- uh --
16 Mrs. Dorn to be named as a party in the Dan Dorn case;
17 file an Answer in that case.
18 And some testimony of witnesses who
19 weren't previously disclosed was allowed.
20 We appealed that decision.
21 And that's the basic appeal that is
22 in front of The Court.
23 Now -- uh -- after we filed that
24 appeal -- uh -- the attorneys for the Cohens filed a
25 motion to stay the case.

OFFICIAL COURT RECORD

1 And -- uh -- Judge Edmonds, the
2 Probate Judge, shortly after that, lost her bid for
3 reelection.
4 And so they then filed a motion -- uh
5 -- to basically mistry the case and asked Judge Edmonds
6 to mistry it since she had had it under advisement for a
7 year and lost her reelection bid; probably wouldn't be
8 able to reconvene the trial.
9 Uh -- And I'm almost at the end of
10 the story, Judge.
11 Uh -- The -- uh -- The judge did not
12 hear the motion for a mistrial.
13 Court Administration has not assigned
14 it to anyone else.
15 And the motion for a mistrial is
16 still pending.
17 THE COURT:
18 Uh-huh.
19 MR. MASSALON:
20 Uh -- And so --
21 THE COURT:
22 When was it -- When did you all seek
23 Court Administration's assistance?
24 MR. MASSALON:
25 Uh -- We did not.

OFFICIAL COURT RECORD

1 And -- And --
2 MR. BOYD:
3 Actually, Your Honor -- Yeah, The --
4 The Court -- The Probate Court actually -- uh -- filed a
5 Request for Recusal with Court Administration, Your
6 Honor.
7 And I believe I've got the date here
8 that it was --
9 THE COURT:
10 Filed a Motion for Recusal?
11 MR. BOYD:
12 I -- I think it was in September of
13 2014 when Judge Edmunds --
14 THE COURT:
15 Uh-huh.
16 MR. MASSALON:
17 I believe that's correct, Your Honor.
18 MR. BOYD:
19 -- asked to be recused and asked for
20 help from The Court Administration.
21 THE COURT:
22 After she was not reelected?
23 MR. BOYD:
24 After she was not reelected --
25 THE COURT:

OFFICIAL COURT RECORD

1 Okay.
2 MR. BOYD:
3 -- but before ruling on the motion
4 for a mistrial.
5 THE COURT:
6 Okay.
7 MR. MASSALON:
8 She did that on September 3rd, 2014.
9 THE COURT:
10 And there has been no response yet?
11 MR. MASSALON:
12 Actually, Your Honor, The Court
13 Administration -- uh -- did return the case to the
14 Probate Court --
15 THE COURT:
16 Uh-huh.
17 MR. MASSALON:
18 -- here in Horry County.
19 THE COURT:
20 And what's happening?
21 MR. MASSALON:
22 Well, now the new judge is on the
23 bench.
24 THE COURT:
25 Uh-huh.

OFFICIAL COURT RECORD

1 MR. MASSALON:
2 And -- uh -- uh -- on Friday --
3 THE COURT:
4 Uh-huh.
5 MR. MASSALON:
6 -- uh -- Mr. Boyd let us know that
7 understood that a hearing had been set on the motion to
8 mistry the case.
9 THE COURT:
10 Uh-huh.
11 MR. MASSALON:
12 And again, I -- I don't have great
13 command of this; I think it was April the 2nd.
14 MR. BOYD:
15 That's correct, Your Honor.
16 MR. MASSALON:
17 April the 2nd; okay.
18 And so -- uh -- again, just to recap:
19 The case was tried in April of 2013.
20 THE COURT:
21 Uh-huh.
22 MR. MASSALON:
23 It's been under advisement for two
24 years.
25 After trial, in our case, a party was

OFFICIAL COURT RECORD

1 added, an Answer was filed, and some witnesses were
2 allowed to testify.
3 And -- And our position is that:
4 At least our case has been tried and
5 is pending -- a decision is pending.
6 THE COURT:
7 Uh-huh.
8 MR. MASSALON:
9 I believe their case -- and obviously
10 they -- uh -- can speak for themselves; but I believe
11 their position is that:
12 The appeal should be stayed.
13 And -- uh --
14 THE COURT:
15 I guess I'm trying to figure out what
16 are you appealing if there's no final judgment?
17 MR. MASSALON:
18 Well what we're appealing, Your
19 Honor, is that:
20 The judge allowed a new party, and an
21 Answer, and witnesses to be allowed to testify in our
22 case after we rested, meaning the case was over --
23 THE COURT:
24 Isn't that interlocutory until you
25 have a final decision?

OFFICIAL COURT RECORD

1 MR. MASSALON:
2 Well -- uh -- that's one of the
3 issues that they've raised on the appeal but we say "no,"
4 Your Honor; because under the Appeal Statute, we believe
5 that it invokes the appellate jurisdiction under the
6 substantial right exception that -- the order that --
7 affecting a substantial right part of --
8 THE COURT:
9 I guess I'm trying to figure out how
10 you're prejudiced; because really -- I'm going to cut to
11 the chase on this.
12 MR. MASSALON:
13 Uh-huh.
14 THE COURT:
15 You're not going to get a mistrial; I
16 doubt it.
17 Under the Rules of Unavailability,
18 the next Judge this case only --
19 MR. MASSALON:
20 And --
21 THE COURT:
22 And then they can reopen the record;
23 and all of y'all get to be heard.
24 So I'm trying to figure out:
25 How is anybody prejudiced in just

OFFICIAL COURT RECORD

1 moving this forward, everybody being heard, calling all
2 the witnesses you want to call, getting a final judgment
3 on it; and then moving forward with an Appeal.
4 MR. BOYD: Mr. Massalon
5 Well, we don't want a -- a mistrial,
6 Your Honor.
7 They -- They have moved for a
8 mistrial.
9 THE COURT:
10 I understand that. But I said I was
11 cutting to the chase.
12 MR. BOYD:
13 And -- And for us --
14 THE COURT:
15 Our rules of very clear.
16 People get elected and don't get
17 reelected.
18 People die with stuff under
19 advisement.
20 I mean it happened in the Family
21 Court before. There's a case on point. You just
22 simply -- The next -- Or, even in a Recusal situation,
23 which has happened many, many, times for whatever reason
24 in the midst of case.
25 And it happens a lot more in nonjury

OFFICIAL COURT RECORD

1 context and Family Court and otherwise, for whatever
2 reason it comes to The Court's attention that they need
3 to recuse themselves.
4 They may not realize they knew
5 somebody in case or just a myriad of reasons why judges
6 have to recuse themselves.
7 That's why you have unavailability
8 rules. And the next person in line takes over, be it
9 The Chief Administrative Judge or the next judge with
10 jurisdiction over the matter.
11 So I'm trying to figure out why not
12 just -- It seems to me the more practical solution would
13 be for y'all to get the new Probate Judge to take over
14 and just reopen the record. And you need to just have a
15 full hearing on the merits and just be done with it.
16 MR. MASSALON:
17 I may let Mr. --
18 THE COURT:
19 Uh-huh.
20 MR. MASSALON:
21 Since Mr. Slotshiver tried that case,
22 I may let him respond to that; because he knows more
23 about that than I do.
24 THE COURT:
25 Was it tried to conclusion?

OFFICIAL COURT RECORD

1 MR. SLOTSHIVER:
2 No, your honor, it was not tried to
3 conclusion.
4 MR. BOYD:
5 We say yes.
6 THE COURT:
7 Well but that is up to the judge that
8 takes over as to whether that was or not.
9 And it's within their discretion to
10 reopen the record.
11 MR. BOYD:
12 And Your Honor, if I may?
13 We filed -- We filed a motion to
14 conclude --
15 (Laughter erupts in the courtroom.)
16 MR. SLOTSHIVER:
17 But I do want to clarify another
18 point.
19 MR. MASSALON:
20 Go ahead
21 THE COURT:
22 Yes.
23 MR. SLOTSHIVER:
24 What's -- What's complicating me,
25 Your Honor, is:

OFFICIAL COURT RECORD

1 You've got two cases -- two separate
2 cases --
3 THE COURT:
4 Uh-huh.
5 MR. SLOTSHIVER:
6 -- that was not consolidated.
7 THE COURT:
8 Uh-huh.
9 MR. SLOTSHIVER:
10 But they were tried together.
11 THE COURT:
12 Yes.
13 MR. SLOTSHIVER:
14 So, as the case proceeded, the judge
15 -- there were --
16 THE COURT:
17 Of course we wouldn't try one without
18 the other; they're dependent on one another.
19 Really, it should have been done as a
20 Counterclaim probably, but it just wasn't done that way.
21 MR. SLOTSHIVER:
22 Well, because -- because they weren't
23 consolidated --
24 THE COURT:
25 Uh-huh.

OFFICIAL COURT RECORD

1 MR. SLOTSHIVER:
2 -- and they weren't tried together
3 under The Court's ruling --
4 THE COURT:
5 Uh-huh.
6 MR. SLOTSHIVER:
7 -- what -- what happened is that:
8 The Court ruled that they were to be
9 -- The Court excluded witnesses.
10 So we tried our case.
11 THE COURT:
12 Uh-huh.
13 MR. SLOTSHIVER:
14 We put out witnesses up.
15 We put our experts up.
16 THE COURT:
17 Uh-huh.
18 MR. SLOTSHIVER:
19 We tried the case against the other
20 side --
21 THE COURT:
22 Uh-huh.
23 MR. SLOTSHIVER:
24 -- as we do in litigation.
25 We put out witnesses; they put their

OFFICIAL COURT RECORD

1 witnesses.
2 THE COURT:
3 Uh-huh.
4 MR. SLOTSHIVER:
5 And when that was over, from our
6 position, the case was concluded.
7 THE COURT:
8 How was it concluded?
9 They put up their witnesses as well?
10 MR. SLOTSHIVER:
11 They did.
12 Now what happened, after they put
13 their witnesses up, was we said to the judge:
14 Judge, we're ready for closing
15 arguments.
16 THE COURT:
17 Uh-huh.
18 MR. SLOTSHIVER:
19 And she said:
20 What about the guardian ad litem and
21 the attorney --
22 THE COURT:
23 Uh-huh.
24 MR. SLOTSHIVER:
25 -- for Abbie?

OFFICIAL COURT RECORD

1 She gets to call witnesses.
2 And we said:
3 Judge, Abbie's not a party in our
4 case.
5 She may be a party in the other case.
6 She is.
7 But in our case, she's not a party.
8 We haven't served them with
9 Pleadings. They never responded to Pleadings.
10 We never served them with Discovery.
11 They never gave us their witnesses.
12 So what's happened is:
13 The judge, at the end of the trial,
14 when it was completely done and all the witnesses had
15 been put up; all the strategies had been utilized, the
16 judge just decided to add new parties to a Cause of
17 Action.
18 THE COURT:
19 Why? This action is because of her.
20 She's always mentioned with the parties. We always have
21 to hear from the person who actually is the only person
22 in this who's actually affected because it belongs to
23 her.
24 So how do you not hear from the
25 guardian?

OFFICIAL COURT RECORD

1 That probably would have been my
2 question too.
3 MR. SLOTSHIVER:
4 Because what we were claiming -- what
5 we had claimed in our -- in our cause of action --
6 THE COURT:
7 Uh-huh.
8 MR. SLOTSHIVER:
9 -- is that the Trust was wrong to --
10 wrongfully had money, a million dollars or so spent out
11 of it.
12 THE COURT:
13 Uh-huh.
14 MR. SLOTSHIVER:
15 And what we're asking for is that the
16 Trustees put the money back into the Trust.
17 THE COURT:
18 Uh-huh.
19 MR. SLOTSHIVER:
20 They were never listed as parties.
21 They never --
22 THE COURT:
23 I think she has to be because
24 theoretically the money belongs to her.
25 So her interest is always going to be

OFFICIAL COURT RECORD

1 affected.

2 And The Court, of all people, needs

3 to hear from the persons whose interests are affected.

4 MR. SLOTSHIVER:

5 Well --

6 THE COURT:

7 So how do you proceed in litigation

8 and not here from the parties who theoretically are

9 representing the person who this belongs to?

10 A Trustee doesn't own the Trust.

11 A Trustee has a special relationship

12 to manage a Trust, but it doesn't belong to them.

13 MR. SLOTSHIVER:

14 Your Honor, we cited in our Brief on

15 Page 10, reference to Rule 17 C --

16 THE COURT:

17 Uh-huh.

18 MR. SLOTSHIVER:

19 -- that provides that persons may sue

20 a Defendant on behalf of an incompetent person -- in

21 general, guardian -- committee -- serves to award a like

22 fiduciary.

23 The Court may appoint a guardian ad

24 litem for an incompetent person not otherwise

25 represented.

OFFICIAL COURT RECORD

1 But we -- we proceeded under this --
2 under this provision.
3 And in this case, Your Honor, there
4 was never a dispute -- there was never an issue.
5 She was never said to be party.
6 THE COURT:
7 You can go back on, you can always
8 ask the general questions.
9 It just feels like these questions
10 have not been answered.
11 You can try a new strategy.
12 I do it all the time.
13 People try to -- If they don't answer
14 my questions, I ask them.
15 And it's my prerogative as a
16 factfinder in a court of equity to hear the entirety of
17 it.
18 I'm not bound by your strategy.
19 I'm not bound by who you call.
20 I'm not bound by who they call.
21 I can ask questions.
22 As a matter of fact, I can call my
23 own witnesses if I need to in a court of equity.
24 So I'm trying to figure out what
25 prejudice you really have suffered.

OFFICIAL COURT RECORD

1 And again, I'm getting back again to
2 the -- coming full circle with this; which is:
3 Even if she reopened the record, the
4 question becomes one of prejudice.
5 And prejudice is when you don't have
6 an opportunity to refute the new stuff that's coming in.
7 And that's the duty of a court of
8 equity and you can always recess it and come back to it.
9 You can let people go do Discovery.
10 You can let them go ask additional
11 questions.
12 You have the province of luxury.
13 It's not like it was a jury trial.
14 MR. SLOTSHIVER:
15 One of the things here -- and I
16 understand what you're saying, Judge; and I agree you
17 have the right to ask me questions, if you want.
18 The difference here is that the
19 Cohens -- they are the Conservators; they are the
20 guardians, and they are the Trustees.
21 They stand in the shoes of Abbie
22 Dorn.
23 THE COURT:
24 Yeah, but The Court stopped to
25 appoint a guardian for some reason; because at some point

OFFICIAL COURT RECORD

1 -- because you've alleged certain inappropriate actions,
2 their interest become adverse to her.
3 So the theory is, in The Court's
4 mind, that:
5 I need somebody independent to
6 represent her.
7 And since you're alleging they stole
8 from her daughter.
9 MR. SLOTSHIVER:
10 And actually, I agree with you with
11 reference to the case that the Cohen's filed.
12 THE COURT:
13 Uh-huh.
14 MR. SLOTSHIVER:
15 The Court found it necessary to
16 appoint somebody because they were asking to reform the
17 Trust and to change the Trust.
18 But in the case that we filed, The
19 Court did not deem it necessary.
20 In fact, it goes a step further.
21 The Cohen -- In the Cohen's case, The
22 Court appointed an attorney and a guardian ad litem to
23 represent the minor children.
24 In the case that we filed, The Court
25 appointed my client to represent the minor children.

OFFICIAL COURT RECORD

1 So you've got two very different
2 cases.
3 You have different representatives of
4 the same parties.
5 You've got different Defendants
6 involved.
7 I agree with everything you say with
8 reference to the case that the Cohen's filed.
9 But, as for the case that we filed on
10 behalf of Dan Dorn --
11 THE COURT:
12 But you tried them together.
13 MR. SLOTSHIVER:
14 She put -- She did try them together;
15 but she would not consolidate them.
16 She said:
17 I'll try them together. And there
18 may be a point that --
19 THE COURT:
20 From -- From a judicial economy
21 standpoint, that was a smart thing to do.
22 Why hear it twice.
23 MR. SLOTSHIVER:
24 I -- I agree.
25 THE COURT:

OFFICIAL COURT RECORD

1 Because it all overlaps.
2 MR. SLOTSHIVER:
3 I agree.
4 And what she said at the beginning of
5 the trial was:
6 If there becomes a moment they should
7 be separated, we'll separate them, but right now we're
8 going to try it together.
9 THE COURT:
10 Uh-huh.
11 MR. SLOTSHIVER:
12 We believe, Your Honor, that at the
13 end of the trial -- or to say it differently:
14 We believe that we did conclude our
15 trial.
16 There may be another trial and more
17 witnesses to be called and more evidence to put up in
18 reference to --
19 THE COURT:
20 I think though, that a procedural
21 posture -- the way it was tried -- they're inseparable at
22 this point.
23 And in my estimation, it's all
24 interrogatory.
25 It's all a discretionary call.

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1 You do that all the time.
2 In a jury trial, if I decide to let
3 somebody reopen their case, you can't go immediately
4 appeal it; because the jury might come back with a -- a
5 verdict that's in your favor.
6 So it becomes a moot issue.
7 The only time you get to appeal it is
8 if it comes back adverse to you; and somehow you say:
9 That decision adversely impacted the
10 jury verdict.
11 And here, it's no -- the analysis is
12 no different.
13 MR. BOYD:
14 And Your Honor, if I may just
15 briefly:
16 The record was not closed.
17 The record was open in the trial.
18 It never closed.
19 Mr. Slotshiver takes the position that his case has
20 rested.
21 But the record is open.
22 There's no -- There's no ambiguity
23 there.
24 Their own Brief acknowledges in this
25 case -- since there were no closing arguments in either

OFFICIAL COURT RECORD

1 case.

2 It just so happened that the -- that

3 the trial as a matter -- was interrupted -- The Court

4 wasn't able to reschedule; and to all of our surprise --

5 uh -- Judge Edmonds was not reelected.

6 And that was --

7 THE COURT:

8 The other sticking point is:

9 What happens once this motion in

10 April, what if she decides -- The Court then decides to

11 mistry it.

12 MR. BOYD:

13 Well --

14 THE COURT:

15 I think you can appeal that.

16 MR. BOYD:

17 That was -- That was the basis, Your

18 Honor, for our motion to stay this proceedings in the

19 interest of judicial economy and in the interest of

20 preservations of the assets of the Trust.

21 The legal fees that are being

22 occurred, we thought it was appropriate for The Court to

23 stay this appeal until that motion for mistrial is heard,

24 simply because if The Court says she wants to hear all of

25 this in novo, Your Honor, then all this is moot.

OFFICIAL COURT RECORD

1 THE COURT:
2 Did y'all have a court reporter?
3 MR. BOYD:
4 There was a court reporter.
5 THE COURT:
6 So there's a transcript?
7 MR. BOYD:
8 Yes.
9 MR. MASSALON:
10 And Your Honor, on the hearing coming
11 up in April, what I would say is:
12 But there's just no telling what will
13 happen with that.
14 There's several things that have
15 happened in this case so far that none of us envisioned
16 or could have predicted.
17 And so, again, our preference would
18 be to get some rulings on these appellate issues.
19 THE COURT:
20 I think it's interlocutory.
21 A judge always has a right to reopen
22 the record.
23 It's not final.
24 You don't know what their decision
25 is.

OFFICIAL COURT RECORD

1 There's no final judgment.
2 Uh -- Even in a criminal case, you
3 can reopen the record.
4 And our Courts have said very clearly
5 that it's interlocutory until you get a final decision;
6 because you don't know -- uh -- if reopening the record
7 doesn't affect your client and you get a ruling in your
8 favor, how have you been prejudiced?
9 MR. MASSALON:
10 Well -- uh -- Your Honor, on the --
11 the -- I agree that there's not been a final judgment;
12 but I think the substantial right -- uh -- exception --
13 uh -- allows some issues to be appealed short of a final
14 judgment.
15 THE COURT:
16 I think it's discretionary and I
17 don't think this falls into that exception.
18 Well, they got a transcript. They
19 were smart enough to get a court reporter to come to
20 Probate Court. Most people aren't.
21 (Laughter erupts in the courtroom.)
22 THE COURT:
23 Well, I always took one to Probate
24 Court with me because I knew that wasn't going to be one;
25 and I wanted to make sure I had a record because strange

OFFICIAL COURT RECORD

1 things happens in litigation.
2 You know lots of things can happen.
3 People get sick.
4 They aren't available; have a stroke.
5 I mean, 'cause crazy stuff happens in
6 litigation. People develop mental illnesses and lots of
7 other things where they can't remember stuff; and it's
8 best to have a record.
9 And again -- again, maybe I'm looking
10 at this from a too commonsensical standpoint.
11 Uh -- You all really good resolve
12 your own dilemma by agreeing to -- uh -- have under the
13 unavailability rules, have a Probate Court take over this
14 case -- uh -- have her read your -- read -- read the
15 transcript instead of rehearing all this testimony.
16 And -- uh -- of course I wouldn't
17 want to tie the hands of the new Probate Judge because I
18 don't know whether they would want to observe these
19 witnesses to judge their credibility.
20 But I guess there is some thought
21 that a Court -- you can't discern that from a cold
22 record; but having read so many cold records, especially
23 in TPRs, it really isn't that hard to determine
24 credibility.
25 Because from the questioning, there's

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1 strategy in Direct; there's strategy in Cross; there's
2 strategy in Redirect.
3 It really isn't that hard to discern
4 in terms of the record and the testimony from a
5 transcript.
6 If I were you all, and you can take
7 this for what it's worth -- uh -- I would -- uh -- under
8 the unavailability rules, have the Probate Court take it
9 over; agree to have her review the transcript; go ahead
10 and reopen the record; let them have whoever she suggests
11 that she wanted to hear.
12 And really, the new Probate Judge may
13 decide that -- There's nothing that precludes you all
14 from asking that that ruling be reconsidered, and say:
15 Well, we really don't need it.
16 And then, after reading the
17 transcript, she may decide:
18 Well, yes, I really do need to hear
19 it.
20 Uh -- And then, if she does decide to
21 do that, nobody's prejudiced; because you can always call
22 -- The party with the burden of proof is always going to
23 get the last say.
24 So, if you reopen a record, you
25 always have to give that person the ability to rebut that

OFFICIAL COURT RECORD

1 testimony.
2 You can't reopen a record and then
3 shut it down.
4 It doesn't -- It doesn't work like
5 that.
6 Even if you reopen the record in a
7 criminal case, the State still get's last say; because
8 they have the burden of proof.
9 You reopen it in a civil case,
10 where's there's no counterclaims or otherwise where
11 there's an alternative burden of proof, the Plaintiff's
12 always going to get the last say.
13 Even in a PCR, if I ask questions, I
14 still give everybody the opportunity to ask more
15 questions.
16 I also give them the opportunity to
17 call more witnesses if they feel necessary to rebut
18 anything that I've elicited from witnesses.
19 In a court of equity, The Court sits
20 as the factfinder.
21 And if they feel there are questions
22 that have not been answered, they have the right to ask
23 questions.
24 They have the right to get those
25 answers.

OFFICIAL COURT RECORD

1 They have the right, even after
2 they've called those witnesses to say:
3 You know, I called those witnesses, I
4 asked those questions, but I didn't give it no weight in
5 my decision because I determined after I heard it, that
6 it really wasn't -- it was of no importance ultimately in
7 how I resolved the case.
8 So, there is a lot more to be done in
9 this case.
10 And I think it serves the parties to
11 have a final resolution with a final order from the
12 Probate Court.
13 So y'all can take that for what it's
14 worth. And it looks like you already have what appears,
15 at least in this motion to stay, some Briefing Schedule
16 or a scheduling consent order that you all entered on
17 June 23rd of 2014.
18 Let's see here.
19 MR. MASSALON:
20 Yes, Your Honor.
21 That order was contingent upon the
22 decision of the Dorchester County Probate Court to
23 provide independent appellant counsel for Mr. Kachmarsky,
24 which occurred on October 3rd.
25 And what we did, Your Honor, we -- uh

OFFICIAL COURT RECORD

1 -- so if the motion to stay pending the appeal was
2 approved, we went ahead and filed our substantive brief
3 today on the appeal issues --
4 THE COURT:
5 Uh-huh.
6 MR. MASSALON:
7 -- just again, it was in the effort
8 to be pragmatic, and --
9 THE COURT:
10 Uh-huh.
11 MR. MASSALON:
12 -- and to get it going.
13 THE COURT:
14 Uh-huh.
15 MR. MASSALON:
16 And I don't know what these folks
17 would like to do, if anything, about that; but -- but I
18 -- I think that if you tell us to do --
19 THE COURT:
20 I just think that's the smarter,
21 shorter way to handle it and the best way to save money.
22 Again, it may be way too pragmatic,
23 but I just think when you're in a Court of Equity and you
24 have somebody that has to make the findings of fact, the
25 final order is always best.

OFFICIAL COURT RECORD

1 Because, right now, you don't know
2 what the final order is.
3 MR. BOYD:
4 There is no final order.
5 THE COURT:
6 Yeah, I mean, that's what I'm saying:
7 You don't know.
8 You don't know what the final order
9 reveals on this.
10 MR. MASSALON:
11 Well this is, as far as where we
12 stand, I -- I -- I -- I think -- uh -- that if the appeal
13 went -- the motion to stay the appeal is granted or
14 denied, I think that would help us all add some clarity.
15 And I again, don't want to speak for
16 these folks, but we would like that motion ruled upon to
17 where we would know --
18 THE COURT:
19 I don't understand why that would
20 give you any additional clarity?
21 MR. MASSALON:
22 Uh -- Well, Your Honor --
23 THE COURT:
24 That's not going to have any bearing
25 on what the Probate Court does in April or --

OFFICIAL COURT RECORD

1 MR. MASSALON:
2 It's our position --
3 MR. BOYD:
4 Our issue of the motion to stay, Your
5 Honor, was simply an effort to avoid a Briefing, and the
6 -- and the need for court appearances by -- As The Court
7 can see, there's quite a few attorneys; and that's quite
8 a large expense incurred every time we come here, Your
9 Honor.
10 And so, we were trying to --
11 THE COURT:
12 That's why I suggested what I
13 suggested because you all to some extent are the
14 architects of your own dynamics.
15 MR. MASSALON:
16 I understand that, Your Honor.
17 THE COURT:
18 Uh-huh.
19 MR. MASSALON:
20 I do. I understand that.
21 THE COURT:
22 And I have to take it under
23 advisement right after the Probate Judge rules on that;
24 and how does that affect you. It doesn't stay her
25 ruling.

OFFICIAL COURT RECORD

1 MR. MASSALON:
2 No.
3 THE COURT:
4 You're still going to have to do all
5 that briefing.
6 MR. MASSALON:
7 Well, and I actually did have one --
8 THE COURT:
9 Of course, I don't know who -- Who
10 got elected as Probate Judge in Dorchester --
11 MR. BOYD:
12 The new judge in Horry County is
13 Kathy Ward.
14 THE COURT:
15 Kathy Ward.
16 MR. BOYD:
17 Yes. Yes, Your Honor.
18 THE COURT:
19 Okay.
20 THE COURT:
21 Uh -- I'm sorry. I didn't mean to
22 say Dorchester.
23 MR. BOYD:
24 Well, it was in Dorchester for a
25 while. But then --

OFFICIAL COURT RECORD

1 THE COURT:

2 Yeah; and then it ended up here?

3 MR. BOYD:

4 Yes, Your Honor.

5 THE COURT:

6 Okay. I don't know who the Probate

7 Judge there either. Sorry.

8 MR. BOYD:

9 That's Judge Blunt.

10 MR. MASSALON:

11 Judge Blunt, Your Honor.

12 THE COURT:

13 Okay.

14 MR. MASSALON:

15 One thought on that.

16 And the reason I said I might add

17 some clarity is -- uh -- and we'll talk about whether

18 there's some way we can negotiate a resolution as have

19 you suggested.

20 But if we don't, one issue that may

21 come up when we go back to Probate Court -- and we

22 haven't been there yet -- but she might look at us and

23 say:

24 Well y'all have got this appeal

25 pending.

OFFICIAL COURT RECORD

1 Do I have jurisdiction to hear
2 anything while --
3 THE COURT:
4 Well, I'm going to deny the appeal.
5 Oh, and I'm going to say it's
6 interlocutory, if that helps you with clarity.
7 MR. MASSALON:
8 I don't think it will help, Your
9 Honor; but it will actually --
10 THE COURT:
11 I think it's interlocutory.
12 I think that you can just -- It's
13 discretionary.
14 A judge can always reopen a record.
15 MR. MASSALON:
16 If that's Your Honor's position --
17 THE COURT:
18 Because it may not -- It -- You can't
19 prove any form of prejudice because it's a court of
20 equity. And it's the one time everybody gets to be
21 heard.
22 MR. MASSALON: Mr. Boyd:
23 Well, and Your Honor, my -- my motion
24 to stay then, Your Honor, is moot.
25 So, if that's Your Honor's --

OFFICIAL COURT RECORD

1 THE COURT:
2 Does that help?
3 MR. MASSALON:
4 Yes, Your Honor.
5 THE COURT:
6 And I still think y'all should do
7 what I suggested. Take it for what it's worth.
8 I don't know what the new probate
9 judge is going to do.
10 Is the new Probate Judge a lawyer?
11 MR. MASSALON:
12 She's not a lawyer, Your Honor.
13 THE COURT:
14 And tell me her name again?
15 MR. MASSALON:
16 Kathy -- Kathy Ward.
17 MR. BOYD:
18 Your Honor, she was Associate Probate
19 Judge in Probate Court for many years.
20 THE COURT:
21 Okay. And that's Horry County?
22 MR. MASSALON:
23 Yes ma'am.
24 THE COURT:
25 Okay.

OFFICIAL COURT RECORD

1 And did she indicate why your motion
2 for re -- re -- for a mistrial had to wait till April?
3 Was she just sworn in?
4 UNKNOWN SPEAKER:
5 She was sworn in in January; and I
6 think that was a significant backlog because there was a
7 significant transition in court personnel, so the backlog
8 began to accumulate in the fall; and so they were working
9 through that backlog --
10 THE COURT:
11 And they only have -- They don't have
12 any Associate Probate Judge up here?
13 UNKNOWN SPEAKER:
14 There is probably one Associate
15 Probate Judge, Your Honor.
16 I believe she -- I heard the Court
17 will add another, but right now, it's the Senior Judge
18 and one Associate.
19 THE COURT:
20 And I have no idea what their backlog
21 -- I was just curious if that was why -- to get up to
22 speed to the judge had been sworn in.
23 But I just wanted clarity on that.
24 MR. BOYD:
25 Your Honor, just for The Court's

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1 information --
2 THE COURT:
3 Yes sir.
4 UNKNOWN SPEAKER:
5 That was already a lot of things
6 already scheduled on the Court's Docket in Probate Court
7 before Judge Ward took office.
8 THE COURT:
9 Uh-huh.
10 UNKNOWN SPEAKER:
11 And her Associate Judges that she has
12 with her is also a non-attorney.
13 THE COURT:
14 Uh-huh.
15 UNKNOWN SPEAKER:
16 Uh -- There were plans for there
17 being an Attorney Associate Judge come onboard.
18 Uh -- It was my understanding he was
19 supposed to come sometime in February; but I have not
20 heard that he's actually been sworn in yet.
21 THE COURT:
22 So they have -- They get appointed
23 through County Counsel?
24 UNKNOWN SPEAKER:
25 No. The -- uh -- uh -- Probate

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1 Judge is allowed to -- uh -- appoint her own Associate
2 Judge.
3 THE COURT:
4 Okay.
5 Well, I mean, the funding has to come
6 through from the counsel.
7 UNKNOWN SPEAKER:
8 The funding is actually there, but a
9 hold up is a private attorney trying to wind down his
10 practice.
11 THE COURT:
12 Okay. I got you.
13 All right.
14 If the Motion for Mistrial is denied,
15 you all would just go forward.
16 If the Motion for Mistrial is
17 granted, then I think that would be immediately
18 appealable.
19 Because there could be an argument
20 for substantial prejudice in trying to marshal all these
21 witnesses again and have then testify, especially -- and
22 I don't know if they are available or unavailable.
23 Okay.
24 Now, you said you had another motion?
25 MR. MASSALON:

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1 Well, it -- Judge, it's exactly the
2 same issue in the -- I believe I mentioned there were two
3 cases.
4 THE COURT:
5 Excuse me.
6 What's the case number on that other
7 case?
8 MR. MASSALON:
9 Uh -- The case number --
10 THE COURT:
11 Is it the 1691?
12 MR. MASSALON:
13 Give me just a moment, Your Honor.
14 MR. BOYD:
15 This one, Your Honor, is 1691 and
16 1744.
17 THE COURT:
18 Say that for me one more time.
19 MR. BOYD:
20 This one is 1691 and 1744.
21 And also --
22 THE COURT:
23 Oh, I see. I thought they were
24 duplicates on the docket; but they are actually different
25 cases.

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1 Did they involve all of the same
2 issues?
3 MR. MASSALON:
4 For purposes of this, yes, they did.
5 And it's also 8152 was on the docket
6 for 9:30, Your Honor.
7 At -- At 1:30, the case number on the
8 docket was 8139.
9 THE COURT:
10 All right. Let's see, 8139.
11 MR. MASSALON:
12 Yes ma'am.
13 THE COURT:
14 33 and 34?
15 MR. MASSALON:
16 Yes, that's 33 and 34 on the 1:30
17 docket, Your Honor.
18 THE COURT:
19 Okay.
20 So they all have the same issues.
21 And I'm referring to 2014-1691, 2014-
22 1744 and 2013-8139.
23 MR. MASSALON:
24 Yes -- Yes, Your Honor for purposes
25 of this hearing.

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1 THE COURT:
2 Are they all the same cause -- I'm
3 sorry I can't talk.
4 Are they all the same causes of
5 action duplicated in each of these files?
6 MR. MASSALON:
7 No, Your Honor.
8 And the underlying cases are not the
9 same, but --
10 THE COURT:
11 MR. MASSALON:
12 But the Notice of Appeal, Motion to
13 Stay the Appeal, issues are all the same.
14 THE COURT:
15 What is the nature of the appeal in
16 1691?
17 MR. MASSALON:
18 Uh -- In -- In 1691, Your Honor --
19 THE COURT:
20 Uh-huh.
21 MR. MASSALON:
22 -- uh -- we had -- uh -- two Orders:
23 One, an order granting a Motion to
24 Reconsider a Ruling to Exclude Medical Witnesses; and an
25 order granting the Motion to Amend the Pleadings to

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1 Conform to the Evidence.
2 And -- And so I would say, for
3 appellate issues, broadly they are the same.
4 Meaning:
5 It's still the same.
6 We've tried our case.
7 We closed.
8 Afterwards, the judge allowed more
9 witnesses, more pleadings, more parties.
10 THE COURT:
11 Okay.
12 And in 1744, what was the appeal
13 issues?
14 MR. BOYD:
15 I don't think I've got the 1744.
16 MR. MASSALON:
17 I don't have a 1744.
18 Oh, yes I do.
19 That's the same two issues, Judge.
20 THE COURT:
21 It's the same; which is the Motion to
22 -- uh -- Reconsider the Inclusion of Medical Witnesses
23 and the Motion to Conform to the Evidence?
24 MR. MASSALON:
25 That is correct, Your Honor.

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1 MR. BOYD:
2 And just for The Court's record, that
3 Order was entered by the Probate Court, March the 10th of
4 2014 according to my notes, Judge, excluding medical
5 witnesses --
6 MR. MASSALON:
7 I have March 17 and March 20th, Your
8 Honor, for those; but I'm not sure --
9 THE COURT:
10 And then the last, which is 2013-
11 8139; what was the nature of that appeal?
12 MR. MASSALON:
13 Uh -- Adding the new parties after --
14 That -- That is actually the --
15 THE COURT:
16 Same thing, basically --
17 MR. MASSALON:
18 That's the --
19 THE COURT:
20 -- as to 8152?
21 MR. MASSALON:
22 Correct, Your Honor.
23 THE COURT:
24 Okay.
25

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1 And so, there's a motion for new
2 trial on all of these?
3 MR. MASSALON:
4 I don't think there are any motions
5 for a new trial, Your Honor.
6 I think there's a motion to --
7 THE COURT:
8 I'm sorry, mistrial.
9 MR. MASSALON:
10 As I said earlier, my Motion for a
11 Mistrial --
12 THE COURT:
13 There's a Motion for a Mistrial on
14 all of these cases?
15 MR. MASSALON:
16 I believe that's --
17 THE COURT:
18 Is there a reason y'all just haven't
19 consolidated them all?
20 MR. MASSALON:
21 Your Honor, the -- the -- I believe
22 that Mr. Slotchiver said the judge consolidated -- At the
23 trial, the judge consolidated those for purposes of the
24 -- of the trial proceedings but not for purposes of
25 ruling.

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1 THE COURT:
2 Did y'all make a motion to
3 consolidate them?
4 MR. SLOTCHIVER:
5 Your Honor, my recollection is that
6 there was a motion in court -- uh -- early in the
7 proceedings -- or it might've been a pretrial motion,
8 Your Honor.
9 I -- I --
10 THE COURT:
11 Who's motion was it?
12
13 MR. SLOTCHIVER:
14 I don't remember the answer to that
15 question, Judge.
16 I'd have to go research that, Your
17 Honor. I don't have that in front of me.
18 THE COURT:
19 I was just curious if you knew?
20 Have y'all given any thought to
21 consenting to consolidating them?
22 MR. MASSALON:
23 Not until this minuet, Your Honor.
24 THE COURT:
25 It just seems like it's the same

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1 issue. Why try four different cases?
2 This is that all about the same?
3 MR. MASSALON:
4 It is all arising out of the same --
5 THE COURT:
6 Same set of circumstances?
7 MR. MASSALON:
8 That's right.
9 MR. BOYD:
10 Actually, Your Honor, it's -- I'm
11 sorry.
12 MR. MASSALON:
13 Your Honor, are you referring to
14 consolidation of appeals at the Circuit Court level or
15 are you referring to consolidation of the trial --
16 THE COURT:
17 Since I've denied the appeal as
18 interlocutory --
19 MR. MASSALON:
20 Okay.
21 THE COURT:
22 -- so why try four different --
23 MR. MASSALON:
24 So it's at the trial court level,
25 Your Honor?

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1 THE COURT:

2 So why do I have four different

3 numbers?

4 MR. MASSALON:

5 There were two appeals technically

6 filed; two sets of rulings appealed in each trial

7 proceedings, Your Honor; filed as an independent appeal.

8 That's how you got four -- That's how

9 you got four.

10 THE COURT:

11 Oh, I got you.

12 MR. MASSALON:

13 Yeah, we -- We thought about that.

14 But we were nervous about going over

15 that appeal deadline by the time of the amended notice of

16 appeal.

17 So we just filed them separately.

18 And that perhaps that may have been

19 overly cautious. But we --

20 THE COURT:

21 Well, what I would suggest you all do

22 -- again, take it for what it's worth -- is to consent to

23 consolidate in both causes of action; and go ahead and

24 have the Probate Judge take over under the unavailability

25 rule; and -- uh -- everybody have their shot at the apple

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1 and call as many witnesses as you need to and get that
2 final ruling.
3 So again, that's the order of The
4 Court.
5 It'll save you a lot of money in the
6 long run.
7 MR. MASSALON:
8 Thank you, Your Honor.
9 WHEREUPON: There being nothing
10 further in this regard, these proceedings were finally
11 concluded at 12:41 PM, February 9th, 2015.
12
13 ***REPORTER'S NOTE:***
14 Due to the inordinate number of attorneys participating
15 in these proceedings and their not habitually identifying
16 themselves as they spoke; and due to this reporter having
17 primary duty in Family Court, and being reluctant to
18 interrupt or improperly disrupt these proceedings, and
19 being unfamiliar with the various attorneys; the reporter
20 can certify the words spoken, but cannot in good faith
21 vouch for the identity of the speakers being completely
22 accurate within this transcript. This reporter is
23 relying on and requesting that the participating parties
24 correct any misidentified portions herein that may be
25 inadvertently attributed to the wrong participant.

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CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR-M, Official Family Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceeding was taken on the 9th day of February, 2015;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 9th day of July, 2015.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR-M
FAMILY COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA
PROBATE COURT
COUNTY OF HORRY
DANIEL B. DORN, in his Capacity as
the Parent and Natural Guardian of
Esti Dorn, Reuvi Dorn, and Yosse Dorn,
Petitioner,
CASE NO. 2008-GC-26-25
vs. CASE NO. 2008-GC-26-50
PAUL S. COHEN and SUSAN COHEN,
individually and in their capacity as the
Co-Conservators of the person of Abbie
Ilene Dorn, a protected person and ward,
and in their capacity as Co-Trustees of
the Abbie Dorn Special Needs Trust,

Respondents.

VOLUME I

BEFORE: HONORABLE DEIRDRE W. EDMONDS,
Judge

DATE: February 25, 2013

TIME: 9:57 AM

LOCATION: Horry County Courthouse
1301 Second Avenue
Conway, SC

REPORTED BY: MARIE H. BRUEGGER, Registered
Professional Reporter, CRR

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21 (INDEX AT REAR OF TRANSCRIPT)
22
23
24
25

1 THE COURT: We are here this morning
2 regarding the matter of Abbie Dorn Special Needs
3 Trust, 2008-GC-26-50, and in the matter of Abbie
4 Dorn Conservatorship, 2008-GC-26-25.
5 Just a couple of preliminary matters
6 that I wanted to start with this morning. We are
7 starting today with what we anticipate will be
8 close to a two-week trial. I just want to
9 recommend that the parties and counsel be mindful
10 of the time we have allotted for the trial, and to
11 the extent that we can conclude this within that
12 allotted time, I think that would be in
13 everybody's best interests, and I will do the same
14 as well.
15 We're starting today at 9:30.
16 Unfortunately, it's a little bit past that. We've
17 been waiting on Mr. Davis. And the rest of the
18 week we'll begin at 8:30. Next week, on Monday,
19 if necessary, we'll start at 9:30, and then the
20 rest of next week through Thursday at 8:30.
21 Today I anticipate adjourning at 5:00.
22 I have an appointment outside of my office at
23 5:30, so I'll need to be finished today no later
24 than 5:00. The rest of the week, we'll go 5:30,
25 6:00, or even later, if necessary. It just

1 depends on I think how the witnesses go and how
2 tired everybody gets.
3 Also, if there are any medical issues
4 or any other concerns that the parties or counsel
5 have about taking periodic breaks, I generally
6 would break at an appropriate time for just a few
7 minutes to allow people to get some water, use the
8 restroom, or whatever, but for a limited, very
9 short break. If we need to take an extended
10 break, 15, 20 minutes or half an hour, you can let
11 me know.
12 Other than just very short breaks, I
13 would anticipate going all day, breaking for lunch
14 for about an hour and 15 minutes. There are
15 numerous restaurants close by. I think if we can
16 take a limited amount of time for lunch, we can
17 get back on track.
18 Anything initially from counsel?
19 Those are the only opening remarks I had about how
20 we're going to go forward with this trial. No?
21 MR. DAN SLOTCHIVER: A few, Judge.
22 THE COURT: Yes, sir.
23 MR. DAN SLOTCHIVER: Good morning.
24 THE COURT: Good morning.
25 MR. DAN SLOTCHIVER: Just to clarify a

1 few things, a couple of issues, housekeeping
2 details to take up.
3 First, as you're aware, Judge, we have
4 a claim that my client has filed. He'll be here
5 shortly.
6 THE COURT: Yes, sir.
7 MR. DAN SLOTCHIVER: And then there's
8 a separate claim that's been merged for trial that
9 was filed by the Cohens, and then there is a
10 counterclaim that was filed by John Kachmarsky in
11 his role as guardian and attorney for the minor
12 children.
13 My understanding, and I want to get
14 clarity, is that all of these are being tried
15 together at the same time. In other words, we're
16 not going to try one, stop, and then try the
17 second one, and then try the third one, they're
18 all being tried together, so during the
19 examinations and whatever openings or closings,
20 whatever else we do, my understanding is it's all
21 one trial. Is that correct?
22 THE COURT: Mr. Boyd?
23 MR. BOYD: Your Honor, I have a
24 different impression, and in my earlier
25 discussions with Dan, I thought we had a different

1 understanding. You've got two matters that are,
2 yes, consolidated, but I don't think -- I don't
3 think, as a matter of practice, Your Honor, that
4 everybody can try their case simultaneously.
5 I think we've got Mr. Dorn's petition.
6 That was filed first. My thought, my
7 recommendation to the court would be that we try
8 the Dorn petition, Your Honor, and we open with
9 Mr. Dorn's petition, then we'll -- Mr. Dorn will
10 present his witnesses, we will cross, we will
11 present our rebuttal case, Your Honor, and then to
12 the -- because much of the case will be
13 duplicative.
14 At that point, we will then have an
15 opening, we'll present our petition, and, Your
16 Honor, I would just think the court would be able
17 to incorporate -- will incorporate what testimony
18 the first proceeding generates, to the extent that
19 that testimony needs to be supplemented, but I
20 don't think we can try all of these cases
21 simultaneously. I think that's going to create
22 confusion, and quite frankly, Your Honor, I just
23 think it's going to make it more difficult for us
24 to sort these issues out.
25 I think the proper approach is to try

1 the Dorn petition, let Mr. Dorn make his case,
2 we'll rebut, we'll rebut the case, we'll present
3 our petition, and if the testimony is duplicative,
4 Your Honor, we won't necessarily have to bring a
5 witness back for duplicative testimony. I think
6 the court can incorporate that testimony, but I
7 think to have two openings at once and two
8 rebuttals at once is going to be -- is going to be
9 a little bit -- it's just not going to be
10 effective, Your Honor.
11 THE COURT: Mr. Kachmarsky?
12 MR. KACHMARSKY: Yeah. My court claim
13 is for breach of fiduciary duty, which is
14 identical to Mr. Slotchiver's claim, so I don't
15 have a dog in the fight with regard to these two,
16 but with respect to my claim, I would like it to
17 be tried at the same time. I mean, I don't see
18 any purpose in having him go forward, having
19 Mr. Boyd then go, and then me come back and
20 basically try the same case again.
21 MR. DAN SLOTCHIVER: It's no
22 different, Your Honor, than I see in many causes
23 of action. That's what they are. These are
24 multiple causes of action all being heard at the
25 same time.

1 And the reformation action is really
2 part component of all of this complete case,
3 because part of the argument against the
4 reformation that's been made deals with the issue
5 that they shouldn't be reformed because of factors
6 that are involved. I don't think it's hard to do
7 one opening statement and one closing statement
8 and to hear it all at the same time. Otherwise,
9 we really will have two opening statements and two
10 closing statements. We'll be examining the same
11 witnesses over and over again.
12 And, as Your Honor is aware,
13 oftentimes or generally, whenever you file a case,
14 one of the things that the court's required to do
15 is to tell you -- and I see this more in federal
16 court, but also in state -- if there's any other
17 actions that need to be joined with this, so
18 they're all heard at the same time.
19 So I would ask that we not try one
20 case and then adjourn, essentially, and then come
21 back and try another case which deals with the
22 same issues, and in light of the counterclaim that
23 was brought, it really is the same case. There's
24 separate arguments, I understand, that we made in
25 the counterclaim, but it really is the same matter

1 that's being heard.
2 THE COURT: Thank you.
3 Anything from you, Ms. Hedgepath?
4 MS. HEDGEPATH: No, Your Honor.
5 THE COURT: Ms. Moore, nothing?
6 MS. MOORE: No.
7 THE COURT: Anything else, Mr. Boyd?
8 MR. BOYD: Your Honor, I think the
9 difficulty we have is I think the cases really are
10 separate. We've consolidated them for purposes of
11 trial, and I think we can streamline the
12 presentation of both cases, but they really are
13 separate matters to be heard independently.
14 In effect, you've got one petition
15 that Mr. Slotchiver has brought, and the claims
16 there, they're related, but they're not the same,
17 Your Honor. The claims in Mr. Slotchiver's
18 petition are actually fairly limited. The claims
19 in Mr. Slotchiver's petition, he alleges he asked
20 for removal of the trustees, he asked for an
21 accounting, and he alleges certain wrongful acts
22 on the part of the trustees, but he doesn't allege
23 a breach of fiduciary duty.
24 I think the proper way for the court
25 to address this case is hear the Dorn petition and

1 allow us to call our witnesses, prepare our --
2 present our rebuttal to that case, and then if the
3 court decides, for instance, in favor of Mr. Dorn,
4 that's going to have an impact on I think the way
5 the second petition is tried, Your Honor.
6 THE COURT: Well, you know, the
7 chances of me making a decision at the end of the
8 first case and ruling before you go forward is
9 slim to none. I mean, that's generally not going
10 to happen. So it seems to me that these cases are
11 very intertwined and that it would be more
12 effective for us to try the cases together.
13 Mr. Boyd, if you see the need at a
14 certain point to re-call a witness after you've
15 had an opportunity to maybe cross-examine that
16 witness, to call them in support, I'll certainly
17 give you an opportunity to do that. I don't want
18 to deny anyone the right to recall a witness when
19 we're concentrating on the second petition, but I
20 do think it would be appropriate to go forward and
21 hear them both together at the same time.
22 MR. BOYD: Okay.
23 THE COURT: All right?
24 MR. BOYD: Thank you, Your Honor.
25 THE COURT: Thank you.

1 Mr. Slotchiver?
2 MR. DAN SLOTCHIVER: Thank you, Your
3 Honor.
4 And for the record, I disagree with
5 his assessment of what the case is about, but
6 we'll deal with that throughout the hearing.
7 THE COURT: Yes, sir.
8 MR. DAN SLOTCHIVER: The second
9 matter, Your Honor, that I had written the court
10 about last week is that we received notices of
11 withdrawals from counsel for the conservator
12 guardian and individual and the Cohens in their
13 individual capacity, and essentially --
14 Well, first, as a formality, my
15 understanding is that the rules require that once
16 you are on the record as an attorney, you cannot
17 just withdraw. You have to file a motion to be
18 relieved as counsel with the court, and the court
19 then has the right to accept it or not accept it,
20 and generally speaking, other counsel would have
21 an opportunity to voice their opinion on this.
22 And in that regard, Your Honor, we
23 believe, as referenced in the letter, this was --
24 this came about by a conversation I had where I
25 suggested that during the trial, I don't believe

1 it would be appropriate for both Reese Boyd and
2 Bret Davis to each have an opportunity to do an
3 opening, do a closing, do an examination, do a
4 cross-examination. They're one counsel. And when
5 you have co-counsel, one person takes a witness or
6 one person takes the motion or one person does the
7 opening. They can switch throughout, but they
8 can't both do it.
9 As a result of that conversation,
10 there was reference in the letter there may be
11 some issues about this, and therefore, we've tried
12 to clarify it by withdrawing. They've
13 unilaterally withdrawn from their respective
14 roles, so that each one of them serves a separate
15 and distinct role from the other, and we would
16 object for multiple reasons.
17 First we think about is the Rule.
18 Second, it's nothing short of an extension, an
19 unnecessary extension, and delay in this case. It
20 will require the trial to last considerably
21 longer, because we truly will have two openings,
22 two closings, two examinations, two
23 cross-examinations, which is even more -- it even
24 gets worse and is even more difficult because of
25 the fact that they both represent the same people.

1 THE COURT: Let me hear from Mr. Boyd
2 real quick again on that.
3 MR. DAN SLOTCHIVER: Thank you.
4 THE COURT: And Mr. Davis, if
5 necessary.
6 MR. BOYD: Your Honor, I would just
7 state in response that throughout this trial, the
8 circumstances in which we were -- which my firm
9 was retained were that Mr. Davis had filed a
10 petition, he asked us to join him on that
11 petition, so from the outset in the trial, we
12 were, in effect, aligned similarly with respect to
13 our clients.
14 However, throughout these proceedings,
15 from the very first motion that we had, as Your
16 Honor will recall, to the numerous times that
17 we've been before the court since then, Mr. Davis
18 and I have both participated in these proceedings,
19 not consistently or not in every instance, but we
20 both participated. That's been true at
21 deposition, that's been true at several hearings
22 that have been taking place in the matter up until
23 the date, up until the present date, and so to
24 raise this issue now, on the eve of trial, I
25 thought was fundamentally unfair.

1 Again, our practice in this matter has
2 been established from the outset. Bret and I both
3 participated in argument, and it's not even, Your
4 Honor, that we would necessarily participate in
5 every argument in every instance, but it's just
6 the way that we --
7 THE COURT: I think, Mr. Boyd --
8 MR. BOYD: It's the way we've
9 addressed the matter thus far.
10 THE COURT: I went back and I looked
11 at the pleadings. They were signed by both of you
12 as attorneys for Dr. and Mrs. Cohen in all of
13 their capacities. I think under the Rule -- I
14 think Mr. Slotchiver's right -- one of you can
15 examine the witnesses, cross-examine, you can
16 switch off however you want to, but I don't think
17 it's appropriate at this time to try to separate
18 your representation with respect to Dr. and
19 Mrs. Cohen and their capacities. And I think
20 y'all need to decide, as you go forward, which one
21 of you is going to examine, cross-examine, argue
22 objections.
23 And certainly, I would give you, as I
24 have with Mr. Slotchiver, an opportunity -- he
25 consults with his co-counsel often to make sure

1 he's covered everything. I think you and
2 Mr. Davis need to do the same.
3 MR. BOYD: Thank you, Your Honor.
4 THE COURT: Thank you. Anything else
5 at this time?
6 MR. DAN SLOTCHIVER: Yes, Your Honor,
7 a few more little housekeeping details.
8 THE COURT: Okay.
9 MR. DAN SLOTCHIVER: And what we tried
10 to do throughout the pretrial issue, as far as
11 discovery and motions, is different than for the
12 trial, obviously. That's why we've given more
13 latitude with both talking at different points.
14 I'm assuming that during the trial, as
15 Lee Moore is represented by Lynette Hedgepath,
16 likewise, we won't have both of them examining and
17 cross-examining and doing opening statements, but
18 instead, it will actually be Lynette Hedgepath.
19 MS. HEDGEPATH: Your Honor, I am
20 appointed to represent Abbie Dorn. Lee Moore is a
21 guardian ad litem for Abbie Dorn. I do not
22 represent Lee, but Abbie.
23 THE COURT: I think that's the case,
24 Mr. Slotchiver.
25 MR. DAN SLOTCHIVER: Your Honor, the

1 last thing that I'll bring up is that -- and it
2 may not be an issue that needs to be brought up at
3 this point, but certainly later on, is that there
4 are -- I anticipate making an argument at some
5 point in the future pertaining to documents that
6 we have not yet received until late Friday
7 afternoon that we anticipate objecting to, and I'm
8 just giving the court some advance notice.
9 A witness who was subpoenaed Friday
10 afternoon who was not listed as a witness in this
11 case, even as of now, has still not been listed as
12 a witness, but certainly was subpoenaed Friday, or
13 we received a copy of the subpoena on Friday, and
14 with reference to those issues and anything else
15 that would come up with new documents we haven't
16 been provided or new witnesses that we haven't
17 been provided in advance, pursuant to the
18 discovery --
19 As you're aware, Your Honor, we've
20 been up here many times on motions to compel
21 discovery, we certainly have pushed for the
22 discovery responses, and we don't believe they're
23 proper, and we will raise that objection if, in
24 fact, evidence is introduced. I only bring it up
25 now because understanding that there can be

1 opening statements, I want to restrict any
2 reference to anybody that hasn't been provided to
3 us in a timely manner.
4 THE COURT: Okay. Thank you.
5 Okay. Any other preliminary matter
6 before we hear opening statements? Mr. Boyd?
7 MR. BOYD: Yes, Your Honor. Just
8 briefly, Your Honor, I would say that with respect
9 to another housekeeping matter, if it please the
10 court, we requested, and specifically, I spoke
11 with Dan several times, trying to come up with a
12 trial plan for the presentation of his case, Your
13 Honor. Nothing elaborate, Your Honor, simply a
14 listing of the witnesses, the order in which the
15 parties intend to call them.
16 As Your Honor knows, the witnesses in
17 this case are spread out, and we're at a
18 disadvantage, Your Honor, in trying to arrange the
19 schedule for our witnesses, knowing when to
20 prepare, how to prepare, how best to prepare for
21 the coming day. I would ask that the court give
22 us some guidance.
23 I'm even more confused, quite frankly,
24 at this moment, based on the ruling of the court,
25 understanding how we're going to proceed. I'd

1 appreciate some guidance from Mr. Slotchiver on
2 simply order in which he intends to call the
3 witnesses, Your Honor, the length of time, to the
4 extent that it can be determined, how long we
5 anticipate each witness will take, so that we can
6 come up with some kind of orderly plan for the
7 trial of this case, because just to say, well, the
8 two of you are going to simultaneously try your
9 case, we've got experts, as Your Honor knows, in
10 Columbia. We've got witnesses from California.
11 We need some guidance from the court,
12 Your Honor, and it's well within the province of
13 the court and your authority to administer the
14 proceedings here, to instruct the parties, to give
15 one another some guidance, so this is just not --
16 this is not going to be a Wild West free-for-all.
17 THE COURT: Well, I'm going to have
18 Mr. Slotchiver go first. He filed his petition
19 first. I'm going to have him present his case
20 first. If, in cross-examining any of
21 Mr. Slotchiver's witnesses, you think it's
22 appropriate to question them with respect to your
23 case, Mr. Boyd, then I think you would need to
24 take that opportunity to do so.
25 I did mention that if you request to

1 re-call a witness that you've examined or
2 cross-examined, then I'll give you the opportunity
3 to do that. I'll hear from Mr. Slotchiver, if
4 he's got an objection to that.
5 And then after he presents his case,
6 then you will present your case, to the extent you
7 have not covered your case with the witnesses that
8 Mr. Slotchiver calls, and also call your witnesses
9 in rebuttal to his case.
10 And then we'll hear from
11 Mr. Kachmarsky with respect to any witnesses he
12 wants to call, and he will likewise cross-examine
13 Mr. Slotchiver's witnesses and your witnesses with
14 respect to your petition and his counterclaim.
15 If it turns out that all that becomes
16 very confusing, and we are not able to do this in
17 an orderly manner, then I'm happy to hear a motion
18 to bifurcate the matter, and let's concentrate on
19 one petition at a time, but I would like to see us
20 be able to try this case both of these petitions
21 at the same time.
22 MR. BOYD: And I don't disagree with
23 that, Your Honor.
24 THE COURT: Ms. Hedgepath?
25 MS. HEDGEPATH: Your Honor, and

1 certainly I'm not arguing against -- arguing
2 bifurcation or anything like that, but it would be
3 of help to me if I just had a witness list for
4 Mr. Boyd or witness list for Mr. Slotchiver in the
5 order that they plan to call them. It would help
6 me in planning, rather than planning tonight for
7 someone that may come up next Thursday.
8 Granted, I know that there have been
9 submission of witnesses, but no witnesses, which
10 I'm aware of, that are actually going to come to
11 trial. So I think it would be time-saving for
12 everybody, including Mr. Slotchiver, if we -- if
13 everybody has a witness list and the order in
14 which they anticipate calling them, realizing that
15 there might need to be deviation from that order,
16 as well as an exhibit list. That way, the parties
17 can get together, they can determine if they all
18 agree on an exhibit coming in or if there might be
19 some objections. That would, I think, save the
20 court's time and all of us some time.
21 THE COURT: Mr. Slotchiver?
22 MR. DAN SLOTCHIVER: Thank you, Your
23 Honor.
24 THE COURT: Thank you, Ms. Hedgepath.
25 MR. DAN SLOTCHIVER: To some extent,

1 Your Honor, there is --
2 THE COURT: And let me just say this:
3 I don't think those are unreasonable requests, at
4 least to have a list of the order in which you
5 plan to call witnesses, because I don't know how
6 long your case is going to take, but I'm assuming
7 it's going to take a number of days, and for
8 opposing counsel to be in a position to be
9 prepared, when we start a day, knowing who the
10 witnesses might be that day. It would be helpful.
11 MR. DAN SLOTCHIVER: Your Honor,
12 normally -- and I'll do whatever you ask me to do,
13 but I will suggest to the court that we believe
14 that we have inherent trial strategies that we
15 have the right to work with, and in that regard,
16 there are documents and there are witnesses who
17 they're asking me to disclose to them now on a
18 witness list, and they're now coming to the court
19 asking for that.
20 Your Honor, there's no discovery
21 that's been sent to us by Lynette Hedgepath or Lee
22 Moore requesting these documents. No discovery
23 was sent to us by Bret Davis requesting these
24 documents. Mr. Boyd sent us discovery requests
25 that are not timely due at this point, and

1 frankly, I've looked at them, and I've worked some
2 drafts, but I haven't gotten through them, and I
3 think this is an attempt to circumvent that, and
4 in order to ask us to provide documents and
5 information which we were not required to do.
6 And as you're aware, Your Honor, this
7 case has gone on for two-and-a-half years. As
8 stated before, we've been up here -- we filed
9 three or four motions to compel. We've been up
10 here arguing over discovery. And if you would
11 like me to provide a list of documents, I'm happy
12 to do it. If you want me to provide witness
13 lists, I'm happy to do it.
14 We've got a little concern with
15 reference to timing with, for example, John
16 Freeman, who's going to testify. He's in
17 Columbia. He's three hours away. And my thought
18 is by the end of today, we would assess how much
19 progress we would make, or we have made, and then
20 we'd talk to you for some guidance on what time we
21 should bring him, and should he be here tomorrow,
22 should he be here tomorrow afternoon.
23 I don't want to bring him at 4:00 in
24 the afternoon to testify for an hour, for example,
25 to have to have him spend the night to go back the

1 next day. But certainly, today we think it really
2 depends on how much progress we make as the trial
3 begins.
4 We have battled almost everything in
5 this case. We can rarely agree to things. And
6 normally, we would be the first ones to say why
7 don't we exchange lists, but my thought is that
8 even if I exchange the list, I'm probably still
9 going to have objection after objection after
10 objection, so why not go through the exhibits, and
11 if there's not an objection, we'll go to the next
12 one. If there is, we'll handle it at that time.
13 THE COURT: And I'm fine to do that.
14 MR. DAN SLOTCHIVER: But however Your
15 Honor wants me to handle it. I'm prepared to do
16 whatever you want me to do. You just give me
17 advice.
18 THE COURT: I'm fine to do that, to
19 hear any objections to the exhibits as they are
20 admitted. I had kind of hoped that maybe there
21 would be a stipulation as to certain exhibits. I
22 thought maybe we talked about at some point a
23 stipulation of some facts. I don't know if that's
24 been done or not. I hope so. But as far as
25 introducing exhibits, providing an exhibit list,

1 hearing out any objections, I'm happy to let you
2 introduce those as you go forward, and I'll hear
3 the objections then.
4 Mr. Boyd?
5 MR. BOYD: Your Honor, I'd have to
6 object to some things that were said. And yes, I
7 have -- we did discuss it in prior proceedings.
8 We did discuss it in a pretrial conference. And
9 Your Honor is well aware we had pretrial
10 teleconference in preparation for these matters,
11 and Mr. Slotchiver, in that teleconference, said
12 that he thought we had been compliant. He thought
13 he had what he needed.
14 Your Honor, we have produced nearly
15 5,000 pages of discovery in this matter. We have
16 been -- we have been kept by this matter under the
17 ongoing supervision of the discovery process for
18 the length of time that the matter's been
19 proceeding, which Your Honor knows is now a
20 substantial amount of time. We've produced -- we
21 have been exceptionally cooperative, generally
22 speaking.
23 We have had disagreements. We
24 certainly have had disagreements. We've had
25 disagreements over the attorney-client privilege.

1 We've raised issues, and as Your Honor well knows,
2 you've ruled in our favor on many issues, Your
3 Honor.
4 So yes, we've been before you, but
5 we've been before you when we were asserting
6 claims to protect our clients' interests, and Your
7 Honor has generally ruled in our favor. I don't
8 want to necessarily walk back through a procedural
9 history of how we got here, but the fact is, we
10 produced nearly 5,000 pages of documentation, Your
11 Honor, and this has been extremely burdensome on
12 the trustees. It's been an extremely burdensome
13 case, Your Honor.
14 And I just got an email Friday from
15 the accountant concerning work on a supplemental
16 accounting, Your Honor. This is an evolving case.
17 And yes, there are documents that have been
18 produced and continue to be produced, and as long
19 as we're under the obligations that we're under,
20 that will continue to happen, Your Honor.
21 The only thing I would say with
22 respect to the witness list, Your Honor, there is
23 no way that we can adequately prepare and
24 efficiently present -- if we are, in fact, going
25 to have arguments, objections to witnesses, Your

1 Honor, we should go ahead and address those.
2 If counsel is not willing to share his
3 witness list, and yet we've disclosed -- we've
4 disclosed our trial subpoenas to the other side,
5 Your Honor. I mean, there's -- in fact,
6 there's -- what's happening is there's unilateral
7 disclosure. So we've disclosed our trial
8 subpoenas as a matter of course. We always do
9 that as a matter of courtesy, Your Honor. And
10 Mr. Dorn's counsel, Dan Slotchiver, did not
11 return -- he's not disclosed to me any indication
12 of exactly when or how he's going to present his
13 case, Your Honor.
14 I've never been to trial in a matter
15 where the opposing counsel said: I'm not going to
16 say word one about who I'm calling and when I'm
17 calling them, Your Honor. We're just asking for a
18 general order from the court saying this is how
19 the matter will be presented, just like to know
20 from Mr. Slotchiver the order of the witnesses
21 that he's going to call, when he's going to call
22 them, how long he anticipates that will take.
23 And then, as Your Honor suggested,
24 exactly as I anticipated, we'll present our
25 case-in-chief. I'll explain to Mr. Slotchiver

1 exactly who I intend to call, exactly how long I
2 anticipate that taking, and we'll exchange those
3 documents.
4 Your Honor, we can go ahead and set a
5 time where we can go ahead and deal with any
6 objections that there may be, and we can deal with
7 that, Your Honor, but to try to deal with these
8 matters in a sort of as-they-come-up basis I don't
9 think is going to be an effective way to try this
10 case, it's not going to be efficient, and who
11 knows how long we'll be here, Your Honor.
12 We're not asking for anything other
13 than just, again, a baseline disclosure, here's
14 how I see this day going. I'm going to call --
15 I'm going to start with Mr. Freeman. I anticipate
16 he'll run into Tuesday. This is how I'm going to
17 run Wednesday, Thursday, et cetera, Your Honor.
18 And I've never participated in a trial at any
19 level where opposing counsel refused to do that,
20 Your Honor.
21 MR. DAN SLOTCHIVER: Your Honor?
22 THE COURT: Yes, sir.
23 MR. DAN SLOTCHIVER: Among the
24 difficulties we've had here, and there are many,
25 last week I received a notice that I was

1 subpoenaed to be in court, that I was to be in
2 court myself, and that was a mistake, and they
3 withdrew that once we referenced it.
4 I received documents Friday from Robin
5 Morris, who said before that they had no
6 documents. She's not listed as a witness, but
7 she's been subpoenaed to show up. And then I
8 receive a letter she wrote. She has stated that
9 her file was commingled with Bret Davis's.
10 I don't understand how all of this can
11 take place. We are prepared to try our case the
12 way that we are set up. We'll do whatever Your
13 Honor requests, but I certainly believe that as
14 far as the pretrial -- but as far as subpoenas go,
15 the only subpoenas I sent out are to the Cohens.
16 Nobody else. There was nothing. It's not a
17 hidden disclosure. There was nothing to disclose.
18 We've done everything, I believe, to the letter of
19 the law, as far as what is required.
20 If you want us to give the exhibit
21 list, we'll give it. I think we still have issues
22 as far as witnesses go. I don't know how long
23 they're going to take because I don't know how
24 long it's going to take for them to respond. And
25 I say that -- it could be that a witness would

1 take two or three hours, and it could be they
2 would take two days. I don't know at this point,
3 so it's very hard for me to estimate.
4 I've got the same concerns that they
5 have with regard to bringing in experts, and how
6 do we notify them. And like I stated before,
7 obviously, we don't plan to get to it today, and I
8 would hope at the end of the day, we can caucus
9 again and determine what we think for tomorrow,
10 how it looks like it's moving, and do we need to
11 bring witnesses.
12 I would ask the court to give
13 everybody -- not just us, but also the other
14 side -- a little bit of latitude with reference to
15 the fact that we have witnesses from out of town,
16 whether it's their counsel from California,
17 whether it's people from Columbia, wherever it is.
18 Certainly, there's not local people, other than
19 the people that are here in this room or
20 potentially four caregivers who have been listed.
21 That's the only locals that I've been advised of.
22 So once again, Your Honor, if you wish
23 for me to take a break and to provide documents,
24 I'm happy to do it. I'm prepared to do it. If
25 you wish for us to go ahead forward with the

1 hearing right now at this point, we're happy to do
2 that at your leisure.
3 THE COURT: I'm not going to require
4 you to provide a list of exhibits. You can
5 introduce those as we go through the trial, and
6 I'll hear any objections at that time.
7 With respect to your witnesses, then I
8 think it would be beneficial for everybody for
9 today for you to provide Mr. Boyd and
10 Ms. Hedgepath and Ms. Moore the list of the
11 witnesses that you anticipate maybe calling today.
12 At the end of the day, you can let them know who
13 you anticipate calling tomorrow. We can see how
14 far we've gone, how far we get with this today.
15 I'm not going to make you itemize all
16 of your witnesses in the order that you're going
17 to call them, but at least give them a heads-up at
18 the end of the day who you anticipate calling the
19 next day. I think they have an opportunity to
20 request this through discovery, and I'm not going
21 to make you go to any lengths other than that.
22 MR. DAN SLOTCHIVER: Your Honor, today
23 we anticipate calling the Cohens.
24 THE COURT: Okay. Thank you.
25 Mr. Boyd?

1 MR. BOYD: Your Honor, let me just say
2 a word about the subpoena. We did subpoena --
3 this document that Dan has just presented to the
4 court is a subpoena. It's actually directed to
5 Dan Slotchiver, as Dan and I agreed, but the
6 individual commanded to testify is his client, Dan
7 Dorn. It's not directed to Dan Slotchiver
8 individually, but the subpoena was issued pursuant
9 to a conversation that I had with Mr. Slotchiver
10 indicating that we would both send subpoenas to
11 one another per our respective clients.
12 MR. DAN SLOTCHIVER: I never got past
13 Page 1. Dear Mr. Slotchiver: Enclosed please
14 find a subpoena for you to testify at trial in
15 relationship to the matter. We look forward to
16 seeing you at the time. Never got past Page 1.
17 THE COURT: Apparently, that was a
18 typographical error.
19 MR. BOYD: Typographical error, Your
20 Honor.
21 THE COURT: Okay. I'm going to give,
22 then, counsel about a five-minute break. I'm
23 going to go get my clock, as I mentioned, so I can
24 keep up with the time, let Mr. Slotchiver speak to
25 his client, if he needs to, and then we'll resume

1 in about five minutes.
2 MR. DAN SLOTCHIVER: Thank you, Judge.
3 MR. BOYD: Thank you, Your Honor.
4 THE COURT: Thank you.
5 (A recess transpired from 10:31 AM to
6 10:39 AM.)
7 THE COURT: We're back on the record
8 in the Dorn matter.
9 Mr. Slotchiver, are you ready to
10 proceed?
11 MR. DAN SLOTCHIVER: I'm sorry, Your
12 Honor?
13 THE COURT: Are you ready to proceed?
14 MR. DAN SLOTCHIVER: I am ready to
15 proceed.
16 THE COURT: Opening statement?
17 MR. DAN SLOTCHIVER: Very briefly.
18 THE COURT: Sure.
19 MR. DAN SLOTCHIVER: I think we've had
20 an opening statement for two-and-a-half years, so
21 it'll be very brief. I'm not going to show you
22 any exhibits. I'm just going to talk briefly and
23 give you kind of an outline of where I think we're
24 going.
25 THE COURT: Thank you.

1 MR. DAN SLOTCHIVER: But may it please
2 the court, Your Honor, we believe that the
3 evidence that will be presented to the court
4 through both live -- through all live witnesses,
5 both through the Cohens and through the expert and
6 through my client and any other witness that
7 testifies, it's going to be rather clear.
8 It's going to show that the Cohens, in
9 their capacity as trustees and -- as trustees and
10 conservators, acted both in an unauthorized manner
11 and also an unreasonable manner, that their
12 actions were contrary to the purpose of the trust,
13 that they did not exercise prudence in making
14 decisions, that -- and the documents are clear as
15 far as the instructions go.
16 We've got two issues. One is did they
17 have authority to do what they did, and we believe
18 the documents clearly state that there was
19 authority to hire counsel under certain
20 circumstances, but there was no authority
21 whatsoever to pay counsel without court approval.
22 It said shall. Shall is not ambiguous. We will
23 argue that it is a very clear word. They shall
24 petition the court to seek approval before they
25 pay them, and that's not what happened, but also,

1 that it wasn't reasonable to do it, it wasn't
2 prudent to do it. There was no prudence exercised
3 in making the determination.
4 We believe the evidence will show that
5 the Cohens acted in a self-dealing manner, that
6 the litigation and the expenses incurred in the
7 litigation in California truly were for the
8 purpose of grandparent visitation. They didn't
9 file the action themselves for grandparent
10 visitation; instead, they used Abbie as a tool to
11 file for grandparent visitation.
12 We believe that the evidence will show
13 that Abbie is not as has been publicized, that
14 it's not a case of a disabled person seeking
15 visitation, but instead, a case of a person who is
16 in a vegetative state seeking visitation, a person
17 who cannot hear, cannot see, cannot comprehend
18 that anybody's around them, that even when the
19 kids visit, she doesn't know and can't know that
20 they are even there, that there is zero benefit at
21 all to Abbie.
22 And there will be discussion about a
23 court order in California, a final court order,
24 which clearly states that there is a lot of
25 credence to the argument of Dan Dorn that, in

1 fact, this is a case about grandparent visitation
2 and a finding based on medical examination of a
3 Dr. Mamelak that Abbie has no -- it's very sad.
4 It's a horrible case. It truly is. And I'm not
5 trying to be insensitive to it, but we've gotten
6 to the point I'm trying to make a concise
7 argument. But she has no benefit, that even were
8 she to see the kids, she wouldn't know and have
9 definitive knowledge of them being there, couldn't
10 understand that they were there, couldn't see
11 them, couldn't hear them, that that part of her
12 brain doesn't work, so there was zero benefit.
13 In fact, the court went so far as to
14 argue or to articulate that there was no benefit
15 to her at all, and that while there may be a
16 benefit to the kids to justify the kids coming,
17 there's no benefit to Abbie.
18 But along the way, Your Honor, the
19 evidence will show that there was expenditures of
20 legal fees which have topped over a million
21 dollars, and you've also got to add to it the
22 damages from all the parties that have been
23 appointed here and the reasonableness of the
24 actions that were taken to file for reformation
25 and all the parties that were gain to it, all in

1 an effort to avoid having to come to court and
2 petition for approval.
3 I believe the evidence will show that
4 the Cohens knew that they had an issue, which lead
5 to an email being sent by their counsel to Your
6 Honor addressing this issue, that they knew they
7 had an issue, which lead to them filing an action
8 for reformation, but they neglected it.
9 And we believe that we will have
10 testimony that you are -- even were there
11 authority to do it, which we dispute, that having
12 the authority and exercising the authority are two
13 very different things. They're not the same.
14 We will -- I believe that throughout
15 the course of this hearing, there will be a lot of
16 evidence put in primarily dealing with payments
17 and monies and checks and legal fees and that have
18 occurred without the approval and that weren't
19 reasonable, and that at the end of the case, we
20 contend that the trust has been damaged not only
21 by the outlay of all the monies that have been
22 spent and all the expenses incurred and the
23 expenses -- my client has been damaged by the
24 outlay of expenses he's incurred related to this
25 and will seek reimbursement, but also that in

1 order to make the trust whole, that we would have
2 to put the money back in and figure out where that
3 money -- what that money would have done had it
4 been properly invested.
5 We intend to call several witnesses to
6 address this. We'll start with the Cohens. It's
7 going to be a rather lengthy trial. We're doing
8 our best to streamline it. I've got an IT person
9 here with us to help with the court and to put the
10 documents on the screen once they've been into
11 evidence, and we'll move forward as quick as we
12 can. Don't know what the time is going to be, but
13 thank you.
14 THE COURT: Thank you.
15 Mr. Boyd or Mr. Davis?
16 MR. DAVIS: Good morning, Your Honor.
17 THE COURT: Good morning.
18 MR. DAVIS: I will say that I arrived
19 a little after 9:40, and I apologize. 9:30, I did
20 have some trouble on 501. That won't happen
21 again. We'll start in the morning at 8:30
22 promptly.
23 I appreciate Mr. Slotchiver's
24 comments; however, I very much disagree with them,
25 Your Honor. This is, as he mentioned, a very

1 tragic case. I mean, we all know the facts, we've
2 been doing this for a couple years now, however,
3 from a legal standpoint, it's a very simple case,
4 Your Honor.
5 The question we have is was
6 preapproval required of the trustees. We'll have
7 testimony that shows first that there's an opinion
8 that, no, preapproval was not required, because
9 the trust authorized them to do it without prior
10 court approval, and then there's also the argument
11 of whether court approval was necessary, and if
12 the courts finds that it was, then we've got proof
13 that the prior approval was obtained, and we've
14 got a California order and we've got a South
15 Carolina order that we talked about numerous
16 times, and we've got reliance on counsel, Your
17 Honor.
18 So that either way we take it, it
19 brings us down to the question of was the actions
20 of the trustees reasonable, and that's, I think,
21 what we're going to spend the majority of our time
22 to prove to this court, which we sincerely believe
23 that the actions of the trustees was reasonable.
24 They're arguing about fees in
25 California. We're generating more fees in South

1 Carolina arguing about fees in California. There
2 are several points that we'll make to the court
3 and prove to the court through testimony and other
4 evidence.
5 One thing I'd like to say, Your Honor,
6 the action that was filed by the Cohens here was
7 filed in an effort to preempt or head off any
8 vindictive or aggressive litigation by Mr. Dorn.
9 Unfortunately, that was not successful because
10 they did file an action seeking to do what they're
11 doing now, Your Honor.
12 But we'll show -- as Mr. Slotchiver
13 mentioned, he said this is a case about
14 grandparent visitation. Well, Your Honor, that's
15 troublesome from a legal standpoint because in
16 California, there's no cause of action for
17 grandparent visitation, so how can it be a case
18 about grandparent visitation when in California,
19 there's not a cause of action for grandparent
20 visitation.
21 That's troublesome from a legal
22 standpoint. They base their argument on -- or
23 really their whole case on that argument, and
24 we'll, of course, flesh that out for the court
25 during the trial.

1 We're also going to show that legal
2 fees for both sides were essentially the same. So
3 they're arguing that the legal fees that were paid
4 by the trustees were too high, yet they were
5 paying their attorney the same amount in legal
6 fees, Your Honor.
7 Also, we're going to show this court
8 that it's going to be -- that it's reasonable for
9 the trustees to seek visitation, that Abbie Dorn
10 does, in fact, appreciate the visitation and
11 acknowledges the presence of her children, and it
12 is reasonable for a mother to have visitation with
13 her children and for the trustees on her behalf to
14 seek that.
15 I'd also remind the court and opposing
16 counsel that this trust is for the sole benefit of
17 Abbie Dorn, not for the benefit of anybody else,
18 but the sole benefit of Abbie Dorn, and she does
19 benefit and appreciate visitation with her
20 children.
21 We're also going to show this court
22 that through the pendency of the California
23 matters, Dan Dorn essentially drove the litigation
24 and was unnecessarily aggressive, and his
25 counsels -- or his counsel -- was unnecessarily

1 aggressive and drove up the fees, Your Honor, and
2 we're going to show that through testimony from
3 counsel from California.
4 We're also going to show that there
5 are certain things that Mr. Dorn did in California
6 that precluded the Cohens from not defending the
7 actions, that had they had not defended, in
8 particular, the child support claim, that Abbie
9 could have lost Medicaid benefits, and she relies
10 on Medicaid benefits to pay for numerous needs and
11 thousands of dollars each month for benefits.
12 And we're also going to show, Your
13 Honor, that the Cohens attempted on numerous
14 occasions to resolve this matter, but those were
15 rebuffed and the matter continued on because of
16 actions of Mr. Dorn.
17 So Your Honor, I would like to, in
18 opening, just say that it would be, I think,
19 helpful to us to realize that the Cohens did
20 have -- if prior approval was necessary, they did,
21 in fact, have it from California and South
22 Carolina, and what they did was absolutely
23 reasonable under the circumstances.
24 Thank you.
25 THE COURT: Thank you.

1 Ms. Hedgepath, anything from you,
2 ma'am?
3 MS. HEDGEPATH: Just briefly, Your
4 Honor.
5 The testimony that you'll hear that
6 will go into evidence today will be very
7 conflicting from all different sides, as you can
8 imagine, but I think there's one thing that we
9 will all be able to agree on and what you will see
10 when you've heard all the evidence, that the
11 Cohens have dedicated their life to Abbie Dorn.
12 There's no doubt. I hope there will be no doubt
13 in your mind or anyone else once the -- and the
14 evidence will show that, that her best interest is
15 what they put first.
16 And they may have made some mistakes
17 in the way they handled the money, out of not
18 knowing about it, but at any rate, I think there's
19 been, in one of the pleadings of Mr. Slotchiver,
20 is to remove them as trustees. There's no one
21 that the evidence will show you that knows more
22 what Abbie needs than the Cohens themselves.
23 Now, they are asking that part of the
24 relief -- when I say they, Mr. Slotchiver, Dan
25 Dorn -- that some monies be put back into the

1 trust, the special needs trust. Well, the
2 evidence will show you that that is a catch 22
3 that we're dealing with. However much is required
4 to be put in, if something happens to Abbie and
5 Abbie goes through a series of stays in the
6 hospital, medical procedures, and she were to then
7 pass away, Medicaid goes after that special needs
8 trust, so all the money that goes back into the
9 trust will have to go to pay Medicaid, and all
10 that we're here today arguing about will be for
11 naught. Dan Dorn's children, Abbie Dorn's
12 children, could end up with nothing.
13 And furthermore, the monies that will
14 be ordered, if any, to go back into that trust
15 will be taken away, the evidence will show you,
16 from the Cohens' estate that would go to benefit
17 Abbie's children, Dan Dorn's children, and it
18 could all end up in the hands of Medicaid.
19 MR. DAN SLOTCHIVER: Your Honor, I
20 would object to that. There is no evidence
21 whatsoever and I believe it's improper to argue
22 that money taken from the Cohens to reimburse the
23 trust would come out of the pocket of Dan Dorn's
24 children. That's not what this matter is here
25 about today.

1 I've given some latitude with
2 reference to the argument that they provided for
3 her well as guardians. This is not a case about
4 their actions as guardians. The matter before the
5 court now is did they act with authority and
6 prudence and reasonableness in what they've done,
7 and I think it's improper to go beyond the facts
8 of anything that this case has ever been about in
9 any of the filings to address this matter with
10 reference to it's going to come out of his pocket
11 or the Medicare issue and would money be depleted
12 from Medicare. That's not what the case is about.
13 THE COURT: I'll listen to your
14 objections when Ms. Hedgepath presents evidence to
15 the effect. Thank you.
16 MS. HEDGEPATH: And Your Honor, and
17 with respect to Mr. Slotchiver arguing grandparent
18 visitation, this is just a case of grandparent
19 visitation, Mrs. Cohen's testimony will establish
20 beyond a reasonable doubt in your mind, I believe,
21 and the reasonable doubt is not what we're looking
22 at now, that her daughter -- she is the
23 mouthpiece, she and her husband, for her daughter.
24 Mrs. Cohen, nor Dr. Cohen, can know with absolute
25 certainty, nor do they believe any of the doctors

1 can know with absolute certainty, what Abbie knows
2 and what Abbie does not know.
3 And you will hear from Susan Cohen
4 that if there is any possibility that Abbie knows
5 those children, those precious children of hers,
6 are there, then she wanted to fight for every day
7 she could get for those children to be with Abbie.
8 Now, she had no way of knowing how
9 long or -- how long the visitation period would be
10 or how often, but she had the right to use that
11 money if she believed that that would be in
12 Abbie's best interest and believed that that was
13 reasonable. If she did not know, then would it
14 not be better to err on the side of caution.
15 And additionally, the evidence will
16 show that Susan Cohen and Dr. Cohen had to pursue
17 the matter in California because Dan Dorn was
18 trying to get child support from the special needs
19 trust, which would cause the trust, as counsel
20 will set forth, I'm sure, to cease or would
21 destroy the purpose of the trust and defeat her
22 having medical benefits.
23 So though when you hear a million
24 dollars in the California action, yes, ma'am, that
25 is a lot of money, but when you're fighting for

1 what you think is in the best interest of your
2 child, I believe the evidence will show to you
3 that what Susan Cohen did was reasonable for her
4 and Dr. Cohen.
5 THE COURT: Thank you.
6 Ms. Moore, anything?
7 MS. MOORE: No. I have nothing
8 further to add at this point.
9 THE COURT: Thank you.
10 MR. KACHMARSKY: Your Honor?
11 THE COURT: Yes, sir, Mr. Kachmarsky.
12 MR. KACHMARSKY: Mr. Slotchiver has
13 already mentioned something which I think is
14 pretty critical here, and it is the difference
15 between Abbie Dorn being disabled. She is
16 disabled, but she's a lot more than disabled. She
17 is in a vegetative state.
18 And we have a deposition of
19 Dr. Mamelak in California, and he talks in his
20 deposition about what a vegetative state is, and
21 he basically defines it as simply it's a coma, and
22 people transition over some period of time from a
23 coma into a vegetative state, lacking
24 consciousness, as Mr. Slotchiver said, lacking the
25 ability to see, lacking the ability to hear,

1 lacking the ability to interact with their
2 environment or to even know what environment
3 they're in.
4 And I think as you go through this
5 case, if you will focus on that very simple fact
6 and ask yourself paying a million dollars for
7 legal fees for visitation for a person who really
8 cannot comprehend or appreciate anything, because
9 she's not brain dead, but the only reflexes she
10 has, according to this deposition, are brainstem
11 reflexes. She blinks, she breathes, but that's
12 basically it.
13 So when you look at spending a million
14 dollars of legal fees, I mean, it's pretty
15 egregious. And in addition to that, on a monthly
16 basis, we have this annuity, which is like $40,000
17 a month at the current time. There are procedures
18 that are being performed on her cranial sacral. I
19 don't even know what that is. Wikipedia says that
20 its practice is pseudoscience and quackery. These
21 are the procedures on an ongoing basis that are
22 being given to Abbie. She sees a therapist. She
23 has acupuncture. And again, if you focus on the
24 fact that this is a person who lacks
25 consciousness, I just don't see how any of this

1 can be reasonable.
2 I did a chart previously in my
3 statement of my case earlier, I guess last year,
4 and there is a lot of money here. And the
5 physician also said that Abbie's life might be
6 shorter than a normal woman her age, but he said
7 it's not a short life, necessarily, and he said
8 she could live for decades.
9 So I projected out if this trust had
10 been reasonably handled and a lot of money being
11 used for Abbie, a lot of money being used for
12 Abbie, these attorneys fees not being paid, 25
13 years from now, there could easily be 9-,
14 $10 million in this trust, with a Medicaid lien of
15 $2 million.
16 So I think I have a problem with
17 everything that's occurred here, and I think it's
18 been fairly deliberate. I can't tell you the
19 motivation behind it, but it's been
20 systematically -- every dime that has come into
21 this trust has been spent, without exception, and
22 I see no attempt to stop it at any time during the
23 litigation.
24 There's also separate reimbursements
25 for like $85,000 to a hospital in California, and

1 as I understand it, as best I can understand it,
2 they've got her hooked up on an EEG, and they're
3 sending these signals live. And the medical
4 testimony, again, is that if she didn't improve in
5 the first two months, she wasn't -- there really
6 wasn't going to be any improvement, and there was
7 no evidence, no testimony from anybody that I've
8 seen that suggests that she improved at all, other
9 than to transition from a coma into a vegetative
10 state, which is a state of unconsciousness.
11 I cited a case in my statement of case
12 previously with the court. It's Lewis v.
13 Alexander. The case was actually heard a couple
14 days before we had a hearing here. It was -- a
15 decision came down in June, and then the United
16 States Supreme Court, back in January of this
17 year, denied cert on it.
18 And I think the bottom line is what it
19 says is that you look to the congressional intent
20 of the statute, and basically, all you have to do
21 is comply with the statute, and you're going to
22 have a trust that qualifies as a special needs
23 trust, and the states are not going to count it
24 against you for purposes of qualifying for
25 Medicaid.

1 The court goes on to make it very
2 clear that it is the probate court, in fact, and
3 the state agencies, that if they find particular
4 abuses with the trust or anything like that, that
5 it's the court's job to remedy those.
6 So as I see this case, the worst thing
7 that could happen that might disqualify it from
8 Medicaid would be the payment of a million dollars
9 worth of legal fees, if the South Carolina
10 Department of Health and Human Services wanted to
11 come in and take exception to that, but that can't
12 happen unless you allow it to happen, arguably.
13 And I don't think that as I read all this and what
14 interaction we've had with the South Carolina
15 Department of Health and Human Services that
16 they're likely to challenge this trust.
17 So I would -- I've got a copy of the
18 case. I'd like to give it to you later on, if
19 you'd like to take a look at it. And I think
20 that's it.
21 THE COURT: Thank you.
22 MR. KACHMARSKY: Thanks.
23 THE COURT: Mr. Slotchiver, are you
24 ready to proceed with your witnesses?
25 MR. DAN SLOTCHIVER: I am. Call Susan

1 Cohen to the stand.
2 THE COURT: Mrs. Cohen?
3 SUSAN COHEN
4 having first duly affirmed, testified as follows:
5 THE COURT: Yes, sir?
6 MR. DAN SLOTCHIVER: Your Honor, if it
7 would please the court, we've got a good amount of
8 exhibits that we want to go ahead and introduce,
9 and my thought would be that I would have the
10 witness -- I would identify them, see if we can
11 introduce them, and with your permission, what
12 I'll do is I'll put the first page on the screen,
13 make it a little bit easier as we go through the
14 process.
15 THE COURT: I have no objections. I'm
16 happy to hear -- as we go through that process, if
17 there's an objection, then I'll hear it at that
18 time.
19 MR. DAN SLOTCHIVER: Okay.
20 DIRECT EXAMINATION
21 BY MR. DAN SLOTCHIVER:
22 Q. Good morning.
23 A. Good morning.
24 Q. Mrs. Cohen, I want to show you a
25 series of documents and see if you can identify

1 them. If you do, I'll mark them as an exhibit.
2 Fair enough?
3 A. Yes.
4 Q. And then after we get through all
5 these things, then we'll go into more substantive
6 testimony, but I think this will make things move
7 a little clearer and quicker and more concise,
8 okay.
9 A. Okay.
10 (PLF. EXH. 1, Abbie Dorn Special Needs
11 Trust, was marked for identification.)
12 BY MR. DAN SLOTCHIVER:
13 Q. The first one I want to show you is
14 what we have marked as Plaintiff's Exhibit 1,
15 which is a copy of the probate-stamped Abbie Dorn
16 Special Needs Trust. Do you recognize this
17 exhibit?
18 A. This is not the same one I have. I
19 have a different one in my file.
20 THE COURT: Ma'am, if you could pull
21 that microphone in front of you and be sure to
22 speak into the microphone. That will be helpful.
23 THE WITNESS: This is not the same one
24 I have. I have a different one in my file. What
25 is this? Should I go and get the one I have in my

1 file?
2 BY MR. DAN SLOTCHIVER:
3 Q. Sure.
4 A. This doesn't read the same.
5 MR. DAVIS: Your Honor, can I ask you
6 a question?
7 THE COURT: Yes, sir. Did you need
8 something, Mr. Davis?
9 MR. DAVIS: Yes. I understand that
10 both of us are not supposed to question a witness,
11 but with regard to communications with the court,
12 I'm assuming there's no problem if I stand up and
13 ask the court? I want to make sure that I'm clear
14 on that. One of us will question a witness or
15 cross-examine a witness or make statements,
16 opening and closing, but as far as during the
17 pendency of the trial, is there a problem with
18 communications with the court?
19 THE COURT: I have no objections to
20 that. If Mr. Slotchiver does, then I'll hear from
21 him at the time he has an objection.
22 MR. DAVIS: Thank you.
23 THE COURT: Thank you.
24 THE WITNESS: This is the document I
25 have, but we're not talking about the same one.

1 BY MR. DAN SLOTCHIVER:
2 Q. May I see what you have?
3 A. (Witness complies.)
4 Q. Ma'am, the document you handed me is
5 labeled: Order of Transfer of Jurisdiction.
6 A. Right.
7 Q. And the document that I've handed to
8 you is labeled: Special Needs Trust and stamped
9 in this courthouse in Horry County.
10 A. Okay. So it's a different document?
11 Q. Yes, ma'am. We'll come to that one a
12 little bit later. I'm not ready for that one yet.
13 A. So should I take this back or lay it
14 right here?
15 Q. Whatever makes you comfortable. If
16 you want to put it aside, that's fine.
17 All I'm asking you right now is would
18 you identify this as -- can you confirm this is,
19 in fact, a copy of the Abbie Dorn Special Needs
20 Trust?
21 A. Oh, the trust. I'm sorry.
22 Q. That's okay.
23 A. Yes, it appears to be a copy of the
24 trust.
25 MR. DAN SLOTCHIVER: Then I'm going

1 to -- I've already prelabeled it, but I'll
2 introduce this as Exhibit No. 1.
3 THE COURT: Any objections?
4 MR. BOYD: No objection, Your Honor.
5 THE COURT: No objection?
6 MS. HEDGEPATH: No.
7 (PLF. EXH. 1 was admitted into
8 evidence.)
9 THE COURT: Plaintiff's Exhibit No. 1,
10 it's already labeled. Is that correct?
11 MR. DAN SLOTCHIVER: It is, yes, and
12 I'm going to take it for a moment and stick it
13 right here.
14 (PLF. EXH. 2, 9/23/10 email to the
15 Court from Bret Davis, was marked for
16 identification.)
17 BY MR. DAN SLOTCHIVER:
18 Q. The next exhibit that I have that I'd
19 like to show you is a copy of an email sent to the
20 court by your attorney, Bret Davis.
21 A. Yes.
22 Q. Do you recall that exhibit?
23 A. Yes, I do know this.
24 MR. DAN SLOTCHIVER: I'd like to
25 introduce this as evidence, Exhibit No. 2.

1 THE COURT: Any objections?
2 MR. BOYD: No objection, Your Honor.
3 THE COURT: No objection?
4 MS. HEDGEPATH: No, Your Honor.
5 THE COURT: No. 2 without objection.
6 (PLF. EXH. 2 was admitted into
7 evidence.)
8 THE COURT: Do you have a date on
9 that, just real quick?
10 THE REPORTER: September 23rd, 2010.
11 THE COURT: Thank you.
12 (PLF. EXH. 3, Transcript of TRO
13 Hearing, was marked for identification.)
14 BY MR. DAN SLOTCHIVER:
15 Q. The next document I'd like to show you
16 a copy of, premarked as Exhibit No. 3, is a copy
17 of the transcript from the temporary restraining
18 order where you were present and had an
19 opportunity to be heard and see the court. This
20 is the first hearing that we would have had
21 involved in this case where I was involved.
22 Can you confirm that that is, in fact,
23 a true and accurate transcript, to the best of
24 your knowledge, of that hearing?
25 A. How much am I supposed to read?

1 Q. You're welcome to look at as much of
2 it as you would like.
3 A. Yes.
4 MR. DAN SLOTCHIVER: I'd like to
5 introduce that as the next exhibit, which would be
6 Exhibit No. 3, and this is the TRO hearing that
7 was held in this court.
8 THE COURT: Any objection?
9 MR. BOYD: No objection, Your Honor.
10 MS. HEDGEPATH: None.
11 THE COURT: Thank you. Admitted
12 without objection.
13 (PLF. EXH. 3 was admitted into
14 evidence.)
15 (PLF. EXH. 4, 3/12 Check to MOLM in
16 the Amount of $50,000 and 2011 Year-End Summary
17 from MOLM, was marked for identification.)
18 BY MR. DAN SLOTCHIVER:
19 Q. The next exhibit I have, Mrs. Cohen,
20 is a copy of -- this is marked as Plaintiff's
21 Exhibit No. 4. It's a copy of a check written to
22 MOLM, which I understand is litigation counsel in
23 California, for $50,000 in March of 2012, as well
24 as there's some handwriting on it below, which I
25 assume is yours, as well as a copy on the next

1 page of a 2011 year-end summary showing different
2 miscellaneous payments made to Meyer, Olson,
3 Lowy & M, which I understand is the MOLM firm.
4 A. You mean this?
5 Q. On the first page, yes, ma'am, and on
6 the second page, there's a registry from American
7 Express or from -- it's from American Express,
8 prepared for you -- I can't see underneath it, but
9 prepared for Susan Cohen on the second page, and
10 on this page, a check written from the Abbie Dorn
11 Special Needs Trust.
12 A. Right.
13 Q. Do these look to be accurate?
14 A. Yes.
15 Q. Have you seen these documents before?
16 A. I wrote it, yes.
17 Q. Okay. So you confirm that.
18 MR. DAN SLOTCHIVER: I would move to
19 introduce this as Exhibit No. 4.
20 THE COURT: Any objection?
21 MR. BOYD: No objection, Your Honor.
22 MS. HEDGEPATH: None.
23 THE COURT: Entered without objection.
24 (PLF. EXH. 4 was admitted into
25 evidence.)

1 (PLF. EXH. 5, 2/28/10 Bill from MOLM,
2 Bates No. 3440 through 3453, were marked for
3 identification.)
4 BY MR. DAN SLOTCHIVER:
5 Q. The next document is a series of
6 billing increments from the Meyer, Olson, Lowy &
7 Meyers law firm. It's Bates numbered by your
8 attorneys 3440 through 3453, and it appears to be
9 a detailed billing for this particular period of
10 time, which we'll go into a little bit later.
11 Do you agree that that is correctly a
12 copy of a bill that you would have received in
13 your capacity?
14 A. Yes, it seems so, it is.
15 THE COURT: I'm sorry. I can't
16 understand her. Ma'am, you're going to have to
17 speak into the microphone.
18 THE WITNESS: Am I supposed to turn
19 this -- yes.
20 THE COURT: And is that just one bill,
21 Mr. Slotchiver, dated February 28th of 2010?
22 MR. DAN SLOTCHIVER: It's Bates
23 numbered 3440 through 3453, and it shows time
24 increments running from 2/4/10 through 2/28/10.
25 THE COURT: Thank you.

1 MR. DAN SLOTCHIVER: If we can move to
2 introduce this.
3 THE COURT: Any objection?
4 MR. BOYD: No objection, Your Honor.
5 MS. HEDGEPATH: None.
6 THE COURT: No objection. Thank you.
7 (PLF. EXH. 5 was admitted into
8 evidence.)
9 (PLF. EXH. 6, 3/10/10 Bill from MOLM,
10 Bates No. 3454 through 3484, were marked for
11 identification.)
12 BY MR. DAN SLOTCHIVER:
13 Q. Exhibit No. 6 is a copy of bills
14 submitted by Meyer, Olson, Lowy & Meyers, again,
15 looks to run from -- the first Bates number's 3454
16 through 3484.
17 Mrs. Cohen, those are the numbers on
18 the bottom I'm referencing, at the bottom of each
19 page, where they track them, and it appears to be
20 bills from 2/17/10 through 3/10/10, and over that
21 period, it looks like the total due upon receipt
22 is $114,010.61.
23 Have you had an opportunity to see
24 these before, and are these, in fact, accurate
25 copies of bills you would have received?

1 A. Yes.
2 MR. DAN SLOTCHIVER: We would move to
3 introduce this as Exhibit No. 6.
4 THE COURT: Any objection?
5 MR. BOYD: No objection.
6 MS. HEDGEPATH: None.
7 (PLF. EXH. 6 was admitted into
8 evidence.)
9 MS. HEDGEPATH: But I would ask
10 Mr. Slotchiver if he has an extra copy of those
11 exhibits as he's passing them around. It would be
12 nice if we could see a copy of them. If he
13 doesn't, I can get them at the break.
14 MR. DAN SLOTCHIVER: Well, at some
15 point, Your Honor, if we take a short break, what
16 we were going to do, and then we started court, is
17 I've got -- we can bring some more monitors and
18 set them up for you right here, so you can
19 actually see them on the screen, instead of having
20 to look over here.
21 And if you want to take a break now,
22 it would probably take ten minutes to go do it.
23 It might be easier along the line. We're going to
24 do a lot of documents. Whatever you want. We
25 started to do it before, then you came on the

1 bench, so we didn't want to do it right then.
2 THE COURT: Do you have some more
3 documents to introduce here?
4 MR. DAN SLOTCHIVER: I do.
5 THE COURT: Would you like to go ahead
6 and have that set up, Ms. Hedgepath?
7 MS. MOORE: If you wouldn't mind,
8 because it's hard to see.
9 THE COURT: Okay, all right. Then
10 let's take a few minutes to set that up. We'll
11 take a brief break.
12 (A recess transpired from 11:18 AM to
13 11:32 AM.)
14 MR. DAN SLOTCHIVER: May we proceed,
15 Your Honor?
16 THE COURT: Yes, sir.
17 We are back on the record in the Abbie
18 Dorn matter.
19 Mr. Slotchiver?
20 MR. DAN SLOTCHIVER: Thank you, Your
21 Honor.
22 I'm going to have Mr. Hogsette, who's
23 my law clerk, sit here and hand me the documents,
24 to help move it along a little quicker.
25 THE COURT: Sure.

1 MR. DAN SLOTCHIVER: If that's okay.
2 THE COURT: Yes. And I just wanted to
3 welcome Mr. Dorn to Horry County. Good to have
4 you.
5 Mrs. Cohen, could take the stand
6 again, please? Mrs. Cohen, I just want to remind
7 you you're still under oath.
8 THE WITNESS: Thank you.
9 THE COURT: Mr. Slotchiver?
10 MR. DAN SLOTCHIVER: Thank you, Your
11 Honor.
12 (PLF. EXH. 7, 4/30/10 Bill from MOLM,
13 Bates No. 3485 through 3539, was marked for
14 identification.)
15 BY MR. DAN SLOTCHIVER:
16 Q. Exhibit 7 is a copy of a bill from
17 April 30th, 2010, from the Meyer Olson law firm,
18 Bates Nos. 3485 through 3539. It appears to be
19 legal billings from 3/11/10 through 6/4/10, and
20 the invoice appears to be $117,644.40.
21 Have you seen that, and would you
22 verify that as, in fact, an accurate copy of a
23 bill you would have received, redacted, obviously,
24 partially redacted by your counsel? Is that a
25 correct copy?

A. Yes.
MR. DAN SLOTCHIVER: We'd move to introduce this into evidence.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: No objection?
MS. HEDGEPATH: None, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 7 was admitted into evidence.)
(PLF. EXH. 8, 5/31/10 Bill from MOLM, Bates No. 3517 through 3536, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Exhibit No. 8 is a copy of a bill from the Meyer, Olson, Lowy & Meyers firm, Cohen 3517 through 3536, with a billing period of 5/1/10 through, it appears to be, 5/31/10, I guess for about a month, for a total of $169,972.52.
Is this, in fact, a copy of a document that you would have received in your capacity as trustee, one of the bills from the Meyer firm?
A. Yes.
Q. And you would have paid the invoice on that?

A. Yes.
Q. And all the invoices you've received to date -- I haven't asked you, instead of bringing it back, but all of the bills you received from the Meyer firm that we've introduced today would have been paid, correct?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce this as Exhibit No. 8.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: No objection?
MS. HEDGEPATH: None Your Honor.
THE COURT: Thank you.
(PLF. EXH. 8 was admitted into evidence.)
(PLF. EXH. 9, 6/30/10 Bill from MOLM, Bates No. 3537 through 3548, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. The next bill from the Meyer firm from the period of 6/1/10 through 6/30/10, Bates numbered 3537 through 3548, shows a bill on it for $33,175.28.
Would you have had an opportunity to

have seen that bill before?
A. Yes.
Q. And was that bill likewise, like the others, also paid?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce No. 9.
THE COURT: Any objection to No. 9?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 9 was admitted into evidence.)
(PLF. EXH. 10, 7/30/10 Bill from MOLM, Bates No. 3550 through 3564, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. The next bill is a bill from the Meyer firm, Bates numbered 3550 through 3564, from the dates of 7/1/10 through 7/30/10, with a due on receipt amount of $56,464.98.
Just as the others, have you had an opportunity to see that before, and is it an accurate copy?
A. Yes.

Q. And was that, in fact, paid also by you as trustee?
A. Yes.
MR. DAN SLOTCHIVER: If I can have this introduced as an exhibit, No. 10.
THE COURT: No objection.
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: No objection.
THE COURT: Thank you. No. 10 without objection.
(PLF. EXH. 10 was admitted into evidence.)
MR. DAN SLOTCHIVER: Your Honor, during a break at some point, I would like to, with your permission, have the court reporter staple all of these to make sure that they're all marked.
THE COURT: Please.
MR. DAN SLOTCHIVER: They're all marked and they're labeled, but I want to make sure there's no --
THE COURT: Does she have them now?
MR. DAN SLOTCHIVER: She does. I've given her the yellow-tabbed ones so that the court record will have yellow stickies, and the others

1 are black and white.
2 THE COURT: Thank you.
3 (PLF. EXH. 11, 8/31/10 Bill from MOLM,
4 Bates 3565 through 3577, was marked for
5 identification.)
6 BY MR. DAN SLOTCHIVER:
7 Q. The next document is a copy of the
8 MOLM, Meyer Olson firm, bill, Bates No. 3565
9 through 3577, for the period of 8/1/10 through
10 8/31/10, with an amount due upon receipt of
11 $61,011.25.
12 Like the other bills, is that one that
13 you've had an opportunity to see before?
14 A. Yes.
15 Q. And in your capacity as trustee, did
16 you, in fact, pay for that bill?
17 A. Yes.
18 MR. DAN SLOTCHIVER: If I can mark
19 this as -- or if I can have this introduced into
20 evidence as Exhibit No. 11.
21 THE COURT: Any objection?
22 MR. BOYD: No objection, Your Honor.
23 THE COURT: No objection?
24 MS. HEDGEPATH: None.
25 THE COURT: Thank you.

1 (PLF. EXH. 11 was admitted into
2 evidence.)
3 (PLF. EXH. 12, 9/30/10 Bill from MOLM,
4 Bates No. 3578 through 3586, was marked for
5 identification.)
6 BY MR. DAN SLOTCHIVER:
7 Q. The next exhibit premarked as Exhibit
8 No. 12 is a copy of a bill from the Meyer Olson
9 law firm, Bates No. 3578 through 3586, for the
10 billing period of 9/1/10 through what appears to
11 be 9/30/10, for an amount listed as $25,789.51.
12 Same as the other documents, have you
13 had an opportunity to see that before?
14 A. Yes.
15 Q. And is that, in fact, a true and
16 accurate copy of the bill you would have received?
17 A. Yes.
18 Q. And did you, in your capacity as
19 trustee, pay that bill?
20 A. Yes.
21 MR. DAN SLOTCHIVER: I'd like to
22 introduce this as Exhibit No. 12.
23 THE COURT: Any objection?
24 MR. BOYD: No objection, Your Honor.
25 MS. HEDGEPATH: None, Your Honor.

1 THE COURT: Thank you.
2 (PLF. EXH. 12 was admitted into
3 evidence.)
4 (PLF. EXH. 13, 10/31/10 Bill from
5 MOLM, Bates No. 3587 through 3596, was marked for
6 identification.)
7 BY MR. DAN SLOTCHIVER:
8 Q. The next bill, Mrs. Cohen, from the
9 Meyer firm again, is the October 31st billing,
10 2010, Bates numbered 3587 through 3596, showing a
11 billing period of what appears to be 10/1/10
12 through -- I guess it's backwards, through
13 9/30/10. So I guess 9/30/10 through -- I've got
14 10/1/10 on the first page, and then it proceeds --
15 MR. BOYD: Dan, what exhibit number
16 are you reading?
17 MR. DAN SLOTCHIVER: This is
18 Exhibit No. 13. It seems to go backwards.
19 BY MR. DAN SLOTCHIVER:
20 Q. Well, let me do this, to move along:
21 Is this an accurate copy of a bill you would have
22 received from the Meyer Olson firm in your
23 capacity as trustee?
24 A. As you said, I think it's mixed up.
25 Q. Right. I've given it to you in the

1 Bates number order, but disregarding the fact that
2 the billing dates -- well, take your time and make
3 sure that you're comfortable with that document,
4 that you would have received that before. That's
5 a document provided by your counsel, partially
6 redacted.
7 A. Right. Maybe it's all put in wrong or
8 something. Something's wrong with it.
9 Q. Other than the order in which the
10 documents are placed, would you agree with me that
11 that is, in fact, an accurate copy of a bill that
12 you would have received in your capacity as
13 trustee?
14 A. I'm going to have to say probably.
15 It's all mixed up, so I --
16 Q. I'll ask you, Mrs. Cohen, to take a
17 few minutes and look at it and to organize it as
18 you would like to. You're welcome to detach the
19 paper clip and put it in the manner that you would
20 like to do it, because I want to be able to chat
21 about that at some point in the future.
22 MR. DAN SLOTCHIVER: If we can give
23 her a moment, Your Honor.
24 THE WITNESS: Just rearrange it? But
25 the page numbers --

1 MR. BOYD: Your Honor, if I may
2 interrupt them.
3 THE COURT: Yes, sir.
4 MR. BOYD: The exhibit is sequential
5 in Bates numbers. The exhibit is sequential in
6 Bates numbers, but it appears to be from two
7 different documents, so I'm not sure it's a
8 question of order.
9 THE WITNESS: It seems to be mixed up.
10 BY MR. DAN SLOTCHIVER:
11 Q. Well, I didn't create it. I've just
12 given what I was given in the Bates numbers, so I
13 believe that, Mrs. Cohen, if you want to take a
14 little while to look at it --
15 A. It's not going to help me. It's a
16 little confusing. But I guess I could say
17 probably. Is that okay?
18 Q. Well, let me ask you this, then:
19 Would you agree that you would have received a
20 bill from the Meyer firm over this time period?
21 A. I would have received a bill. Whether
22 this is right or it's two different put together,
23 I don't know.
24 Q. But either way, would you agree these
25 are accurate copies of maybe piece and part of

1 bills you would have received from the Meyer firm?
2 A. It could be from different months,
3 though. It could be -- I don't know.
4 Q. And once again, that month would have
5 been paid for also?
6 A. Well, whatever the accurate amount. I
7 don't know if this was mixed up from another bill.
8 Q. Fair enough.
9 A. I just don't know.
10 Q. Fair enough.
11 MR. DAN SLOTCHIVER: I would move to
12 introduce Exhibit No. 13, with the understanding
13 that it may be piece and part of mixed bills, but
14 the document itself stands for the fact that it is
15 a bill from the Meyer firm.
16 THE COURT: Any objection, Mr. Boyd?
17 MR. BOYD: Your Honor, I would object
18 only to the extent that from my review of the
19 documents, it does appear that somehow along the
20 line, it became mixed up. It appears that the
21 first three pages of the exhibit are from a Meyer,
22 Olson, Lowy & Meyers bill, Your Honor. The
23 remainder of the pages of the exhibit appear to be
24 from a similar bill, but not the same bill, a
25 previous bill.

1 As a matter of fact, Your Honor,
2 beginning with Page 3, three and thereafter,
3 what's being attempted to be entered as
4 Exhibit 13, beginning at Page 3, will be identical
5 to what has been admitted as Exhibit 12.
6 THE COURT: So it sounds like to me
7 that this exhibit is not the entire billing
8 statement. This has Invoice No. 8397, running
9 through October 31st, 2010. Does that include
10 time entries through October 31st?
11 MR. DAN SLOTCHIVER: Well, once again,
12 these are documents that I was delivered pursuant
13 to discovery requests that have been Bates
14 numbered by counsel, so it's --
15 THE COURT: I understand.
16 MR. DAN SLOTCHIVER: I'm just trying
17 to identify these. Perhaps we can identify them
18 for the limited purposes of saying these are, in
19 fact, bills received from the Meyer firm,
20 regardless of the order and the numbers attached
21 to the bill on top of it. I've got some other
22 documents that may clarify it as we go along, but
23 I at least want to make sure that whatever
24 documents I've been provided as bills are in the
25 record.

1 THE COURT: And Mr. Boyd, it appears
2 to me that there is some additional billing
3 information included in this one that might belong
4 to another exhibit and that maybe this is not an
5 accurate reflection of this Invoice No. 8397
6 rendered through 10/31/2010. Is there a
7 possibility of correcting that exhibit and --
8 MR. BOYD: Well, Your Honor, if it's
9 offered just to suggest that it's copies of
10 billings that were received from the Meyer firm,
11 then there's no objection with the stipulation
12 that it's apparently pages from two different
13 bills.
14 MR. DAN SLOTCHIVER: That's fine, Your
15 Honor. For the court's information, if I follow
16 3587, the first page, through the last page of
17 this exhibit, there's nothing missing. This is
18 exactly what we were given.
19 THE COURT: I understand.
20 MR. DAN SLOTCHIVER: But I just want
21 to make sure that -- well, perhaps let me ask
22 Mrs. Cohen a follow-up question.
23 THE COURT: All right.
24 BY MR. DAN SLOTCHIVER:
25 Q. Mrs. Cohen, are there any bills that

1 you would have received in 2010 from the Meyer law
2 firm that you did not pay as trustee?
3 A. That I did not pay?
4 Q. Correct.
5 A. No, there weren't any bills I didn't
6 pay, but I don't think that's -- I think that may
7 be part of another bill.
8 Q. Understanding that, would you agree
9 with me that during the period of 2010, whatever
10 bills you would have received from the Meyer Olson
11 law firm were, in fact, paid?
12 A. Yes.
13 MR. DAN SLOTCHIVER: Then I would move
14 it in for the limited purpose of confirming that
15 they are, in fact, copies of bills, though
16 nonsequential in order, and that they were, in
17 fact, paid in one way or another, as all bills
18 received from them in that time period were paid.
19 THE COURT: Any objection, Mr. Boyd?
20 MR. BOYD: No objection, Your Honor.
21 THE COURT: Ms. Hedgepath?
22 MS. HEDGEPATH: Is she admitting that
23 though these may be pages from two different
24 bills, that she did receive both of them?
25 THE WITNESS: I don't know. I mean,

1 this may have been a bill that I paid already, and
2 he's double entering it. I don't know. I'm not
3 saying that's what the fact is. I just don't
4 know.
5 MR. DAN SLOTCHIVER: Your Honor, then
6 I would just ask that any -- that there's plenty
7 of opportunity to cross-examine. I'm just trying
8 to move and get the information in right now.
9 THE COURT: Thank you.
10 Ms. Hedgepath, any objection?
11 MS. HEDGEPATH: No, ma'am.
12 THE COURT: Thank you.
13 (PLF. EXH. 13 was admitted into
14 evidence.)
15 (PLF. EXH. 14, 10/31/10 Bill from
16 MOLM, Bates No. 3597 through 3612, was marked for
17 identification.)
18 BY MR. DAN SLOTCHIVER:
19 Q. Perhaps this bill will help further
20 clarify this particular time period, Bates Nos.
21 3597 through 3612. I've got a copy of a bill from
22 the Meyer Olson law firm from the dates of
23 10/1/10, October 1st of 2010, through October 31st
24 of 2010, including legal research associated with
25 it, for a total of $73,127.53.

1 Does that appear to be a copy of the
2 bill that you would have received from the Meyer
3 law firm and paid in your capacity as trustee?
4 A. This one's in order.
5 Q. I'm sorry?
6 A. Yes, this one's in order.
7 Q. And is that a copy of a bill that you
8 would have received and paid as trustee?
9 A. Well, yes. I'm just not sure -- well,
10 I guess it doesn't matter anymore, right?
11 Q. I'm just trying to make sure that
12 these are accurate copies of bills that you would
13 have received and paid.
14 A. Right. I just -- I don't know -- as I
15 said before, I didn't know if you had duplicate
16 charges on one of them, the other one.
17 Q. This one's cleaner.
18 A. That one's fine.
19 Q. No issues with this one?
20 A. No issues.
21 Q. You would have received this one and
22 paid the bill on this one?
23 A. Right.
24 Q. Thank you.
25 MR. DAN SLOTCHIVER: If I can

1 introduce No. 14, Your Honor.
2 THE COURT: Any objection?
3 MR. BOYD: No objection, Your Honor.
4 MS. HEDGEPATH: None.
5 THE COURT: Thank you.
6 (PLF. EXH. 14 was admitted into
7 evidence.)
8 (PLF. EXH. 15, 11/30/10 Bill from
9 MOLM, Bates No. 3613 through 3628, was marked for
10 identification.)
11 BY MR. DAN SLOTCHIVER:
12 Q. No. 15 is Cohen 3613 through 3628 from
13 Meyer Olson firm, apparently, the dates of 11/1/10
14 through 11/30/10, including research, which shows
15 a due upon receipt of $50,539.87.
16 There's some redacted language in
17 there, but does that appear to be a copy of a bill
18 that you would have received from the Meyer firm
19 to you in your capacity as trustee?
20 A. Yes.
21 Q. And likewise, did you, in fact, pay
22 that bill?
23 A. Yes.
24 MR. DAN SLOTCHIVER: If I can
25 introduce this as Exhibit No. 15.

1 THE COURT: Any objections?
2 MR. BOYD: No objection, Your Honor.
3 MS. HEDGEPATH: None, Your Honor.
4 THE COURT: Thank you.
5 (PLF. EXH. 15 was admitted into
6 evidence.)
7 (PLF. EXH. 16, 12/31/10 Bill from
8 MOLM, Bates No. 3629 through 3649, was marked for
9 identification.)
10 BY MR. DAN SLOTCHIVER:
11 Q. The next is a bill from the Meyer
12 Olson law firm, Bates No. 3629 through 3649, what
13 appears to be the time period of December 1st,
14 2010, through December 31st, 2010, in the amount
15 of $54,097.94, labeled Exhibit -- premarked
16 Exhibit No. 16.
17 Does this appear to accurately reflect
18 a copy of a bill that you would have received, but
19 for the redactions on it, from the Meyer firm?
20 A. Yes.
21 Q. And you would have paid this bill from
22 the trust funds?
23 A. Yes.
24 MR. DAN SLOTCHIVER: No. 16, Your
25 Honor, if I could introduce that.

1 THE COURT: Any objection?
2 MR. BOYD: No objection, Your Honor.
3 MS. HEDGEPATH: None, Your Honor.
4 THE COURT: Thank you.
5 (PLF. EXH. 16 was admitted into
6 evidence.)
7 MR. BOYD: Dan, we didn't get a copy
8 of 16.
9 MR. DAN SLOTCHIVER: You did not?
10 MR. BOYD: No.
11 (PLF. EXH. 17, 1/31/11 Bill from MOLM,
12 Bates No. 3650 through 3675, was marked for
13 identification.)
14 BY MR. DAN SLOTCHIVER:
15 Q. Mrs. Cohen, No. 17 is a copy of a bill
16 from the Meyer firm dated January 1st, 2011, Bates
17 stamped 3650 through 3675. The billing period
18 appears to be from January 3rd of '11 through
19 January 31st of '11, and for a total due upon
20 receipt of $154,979.72.
21 Is this a copy of a bill that you
22 would have received from the Meyer firm and paid
23 with the trust funds?
24 A. Yes.
25 MR. DAN SLOTCHIVER: If I can

1 introduce this as Exhibit No. 17.
2 THE COURT: Any objection?
3 MR. BOYD: No objection, Your Honor.
4 MS. HEDGEPATH: None, Your Honor.
5 THE COURT: Thank you.
6 (PLF. EXH. 17 was admitted into
7 evidence.)
8 (PLF. EXH. 18, 2/28/11 Bill from MOLM,
9 Bates No. 3676 through 3684, was marked for
10 identification.)
11 BY MR. DAN SLOTCHIVER:
12 Q. Exhibit 18 is Bates No. 3676 through
13 3684 for the time period of February 1st of '11
14 through February 28th of '11 for a total of
15 $150,269.16 for that month.
16 Is this a copy of a bill that you
17 would have received from the Meyer firm and paid
18 from the trust funds?
19 A. Yes.
20 MR. DAN SLOTCHIVER: If I can
21 introduce No. 18, Your Honor.
22 THE COURT: No. 18, any objection?
23 MR. BOYD: No objection, Your Honor.
24 MS. HEDGEPATH: None, Your Honor.
25 THE COURT: Thank you.

1 (PLF. EXH. 18 was admitted into
2 evidence.
3 (PLF. EXH. 19, 3/31/11 Bill from MOLM,
4 Bates No. 3685 through 3701, was marked for
5 identification.)
6 BY MR. DAN SLOTCHIVER:
7 Q. No. 19 is Bates Nos. 3685 through 3701
8 and appears to run from March the 2nd, 2011,
9 through March 31st, 2011, and shows a due upon
10 receipt amount of $192,444.46.
11 Is this a copy of a bill that you
12 would have received and paid from the trust funds?
13 A. Yes.
14 MR. DAN SLOTCHIVER: If we could move
15 into evidence Plaintiff's No. 19.
16 THE COURT: Any objection?
17 MR. BOYD: No objection, Your Honor.
18 MS. HEDGEPATH: None, Your Honor.
19 THE COURT: Thank you.
20 (PLF. EXH. 19 was admitted into
21 evidence.)
22 (PLF. EXH. 20, 4/30/11 Bill from MOLM,
23 Bates No. 3702 through 3711, was marked for
24 identification.)
25 BY MR. DAN SLOTCHIVER:

1 Q. The next bill I have from the Meyer
2 firm is premarked as Exhibit No. 20, Cohen 3702
3 through 3711, the billing period of 4/1/11 through
4 what appears to be 4/30/11, and it shows due upon
5 receipt $207,027.18.
6 Is this a copy of a bill you would
7 have received from the Meyer firm and one to which
8 you would have tendered payment from the trust
9 funds?
10 A. Oh, these are accumulated balances,
11 though. These are not separate bills. I didn't
12 have enough money. She was allowing me to pay, at
13 this point, half.
14 Q. So you had run out of funds?
15 A. I hadn't run out of funds, but I
16 didn't want to spend them all. And you'll notice
17 that she's also -- I think it may have been
18 before. It was actually coming out -- she was
19 charging me half those amounts, gave me a
20 professional courtesy discount. This is -- these
21 were balances.
22 I believe the last one you gave me was
23 still a balance, because I was only paying at that
24 time -- so they actually -- the fees billed were
25 only $9,060, and I think that's probably true with

1 some of the others. I didn't catch that before.
2 MR. BOYD: Your Honor, may I briefly
3 ask a question of the nature?
4 THE COURT: Sir? Yes, sir. Ask who a
5 question?
6 MR. BOYD: Well, Your Honor, my
7 understanding is that Mr. Slotchiver is
8 introducing exhibits for the purposes of allowing
9 the witness to authenticate those documents and
10 that we can agree they are the billings that have
11 been provided from the MOLM firm. It wasn't my
12 understanding that he had yet begun to ask her
13 substantive questions about those exhibits, and I
14 feel like they're getting into testimony.
15 I thought what was happening at this
16 moment was we were just authenticating documents
17 and introducing them into evidence. Not really an
18 objection. I'm just trying to clarify what the
19 witness is doing, Your Honor.
20 THE COURT: Mr. Slotchiver?
21 MR. DAN SLOTCHIVER: Yes, Your Honor.
22 THE COURT: Any response?
23 MR. DAN SLOTCHIVER: I'm just asking
24 her if these are copies of bills that she's
25 received at this point and if the bills were paid

1 by the trust. Certainly, we haven't gone into
2 when they were paid or if -- they certainly in
3 their cross-examination will clarify and we will
4 certainly clarify the total amounts of bills that
5 have been paid in total. I'm just confirming
6 these are, in fact, bills that she would have
7 received and bills for which would have been paid
8 from the trust.
9 THE COURT: Okay. Does that clarify
10 for you, Mr. Boyd?
11 MR. BOYD: Yes, Your Honor.
12 THE COURT: Thank you.
13 THE WITNESS: I'm sorry, Judge. I'm a
14 little confused, though.
15 THE COURT: Yes, ma'am.
16 THE WITNESS: When I'm asked and he
17 reads this first number on top to me, will I
18 confirm, well, it's a copy, but the number there
19 of the bill is actually for $9,060.
20 THE COURT: Yes, ma'am.
21 THE WITNESS: So what am I supposed to
22 say?
23 THE COURT: Well, I can't tell you
24 what to say. Counsel has just confirmed that he
25 is just having you to confirm that those are the

1 billing statements, and then they will get into
2 your specific testimony and clarify the amounts
3 that you actually paid and give the court a total
4 amount paid. I understand that some of those
5 balances may carry over from one bill to the next,
6 and I think that's being clarified.
7 THE WITNESS: Okay. So all I'm saying
8 is that yes, this is a copy.
9 THE COURT: Of the bill.
10 THE WITNESS: Not that this is the
11 amount, as really now, for the past several
12 months, these are balances.
13 THE COURT: Yes, ma'am.
14 THE WITNESS: Okay.
15 THE COURT: I think that has been
16 clarified.
17 THE WITNESS: Okay. So this is
18 just -- you're asking me -- let me clarify again.
19 You're just asking me if this is a copy.
20 BY MR. DAN SLOTCHIVER:
21 Q. Is this a copy of a bill that you
22 received?
23 A. Not is this amount --
24 Q. I'm not asking if you paid $207,027
25 according to on this bill. I'm asking you first

1 is this a copy of a bill you would have received?
2 A. Okay.
3 Q. Is the answer yes to that?
4 A. The answer is yes to that.
5 Q. And secondly -- I believe you've
6 confirmed this -- you paid the bills that you had
7 received from the Meyer firm?
8 A. Yes, I did, but not all at one time.
9 Is that what you're asking me?
10 Q. Yes.
11 A. Did I pay it in advance? Not in
12 advance. At that moment?
13 Q. Well, with all due respect, I want to
14 ask the questions right now.
15 A. But I don't know what you're asking
16 me. I don't understand it.
17 Q. All I'm asking you right now, first of
18 all, to confirm this is a copy of a bill that you
19 received?
20 A. And that's yes.
21 MR. DAN SLOTCHIVER: That's enough for
22 right there. While we're there, I'm going to
23 deviate for a moment and come back to the
24 documents.
25 THE COURT: Yes, sir.

1 MR. DAN SLOTCHIVER: And ask a
2 substantive question.
3 THE COURT: All right.
4 BY MR. DAN SLOTCHIVER:
5 Q. You stated that you started to pay
6 less money because you couldn't pay it all at
7 once. Is that right?
8 A. Well, there was still money in the
9 trust, but I didn't want to use it all, and I had
10 spoken to Lisa, and it was actually considerably,
11 so I don't even know how many of these the
12 amounts are -- she started giving me half price.
13 Q. If you had paid the full amounts of
14 the bills when they came due, would it have put
15 you --
16 A. No, it wouldn't have depleted the
17 trust, but I had asked Lisa if that was
18 acceptable, and she said that was fine to just pay
19 $5,000 a month.
20 Q. Why were you concerned about
21 depleting -- or why were you concerned about
22 paying the funds if you would not have gone into
23 the negative?
24 A. If I wouldn't have gone in the
25 negative?

1 Q. Correct. You said there was enough
2 funds available that you could have paid her the
3 full amount, and you said you spoke to her, and
4 she allowed you to pay less, and I'm asking why
5 were you concerned about paying the full amount?
6 A. I wasn't -- she had -- she asked me,
7 or I asked her, as you know, and what -- I
8 don't -- you're asking me why I was concerned? I
9 just wanted to preserve her money for as long as
10 possible, and I said can we work something out,
11 and she said: Yes. You can pay me $5,000 a
12 month.
13 Q. So you were worried that by paying all
14 of the money, you would have less money available
15 in the trust fund?
16 A. Was I worried? No. I thought it was
17 more prudent.
18 Q. And when did that occur, the $5,000 a
19 month?
20 A. We'd have to look at the records. I
21 really don't know.
22 Q. Fair enough.
23 MR. DAN SLOTCHIVER: We'll go on to
24 the next one. Can I introduce this document,
25 No. 20?

1 THE COURT: No. 20, any objection?
2 MR. BOYD: No objection, Your Honor.
3 MS. HEDGEPATH: None, Your Honor.
4 THE COURT: Thank you.
5 (PLF. EXH. 20 was admitted into
6 evidence.)
7 (PLF. EXH. 21, 5/31/11 Bill from MOLM,
8 Bates No. 3712 through 3717, was marked for
9 identification.)
10 BY MR. DAN SLOTCHIVER:
11 Q. The next document is Bates numbered as
12 Exhibit 21, Bates No. 3712 through 3717, which
13 appears to be the legal billing period between
14 5/1/11 and 5/31/11.
15 Is this a true and accurate copy of a
16 bill you would have received from the Meyer firm?
17 A. Yes. It's a copy.
18 Q. And my understanding, once again, and
19 maybe I'll clarify it for all future billings from
20 the Meyer firm, you have -- up to this point
21 today, there are no monies outstandingly owed to
22 the Meyer firm. Is that correct?
23 A. That's correct.
24 Q. And other than, I take it, to some
25 extent -- did you ultimately negotiate a final

payment to the Meyer firm?
A. Did I ultimately negotiate?
Q. Did you negotiate a final payment to the Meyer firm, or did you ultimately pay off the entire balance?
A. No. She gave me a reduced fee to pay it off.
Q. And in exchange for that reduced fee, you paid it off, and it ended?
A. Yes.
MR. DAN SLOTCHIVER: I would tender Exhibit 21.
THE COURT: Any objections?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 21 was admitted into evidence.)
(PLF. EXH. 22, 6/30/11 Bill MOLM, Bates No. 3718 through 3724, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 22 is a copy of a bill from the Meyer firm, 3718 through 3724, for the billing period of 6/1/11 through 6/30/11.

Is this, in fact, an accurate copy of a bill that you would have received from the Meyer firm and ultimately paid, understanding that any -- that I'm not asking about the total amount due upon receipt, if, in fact, that was a balance, but ultimately, you would have paid this bill in one form or another?
A. Yes.
MR. DAN SLOTCHIVER: If we can introduce No. 22, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 22 was admitted into evidence.)
(PLF. EXH. 23, 7/31/11 Bill from MOLM, Bates No. 3725 through 3732, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 23, Bates No. 3725 through 3732, referencing a time period of 7/1/11 through 7/31/11, is this an accurate copy of a bill you would have received from the Meyer firm?
A. Yes.

Q. And on this one I note that on the last page, there is a handwritten note that says payment of $5,000 to MOLM on 8/3/11. Thank you. And it shows a reduction from the balance from 177 to 172. Is this the time period when she would have started to accept the $5,000 payments?
A. You know, I think it was before that, but I don't know.
Q. I haven't seen it on any other bills.
A. Okay. It -- I don't know.
MR. DAN SLOTCHIVER: If we can introduce this as Exhibit No. 23.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None.
THE COURT: Thank you.
(PLF. EXH. 23 was admitted into evidence.)
(PLF. EXH. 24, 8/31/11 Bill from MOLM, Bates No. 3733 through 3740, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Exhibit No. 24 is a copy of a bill from the Meyer firm, Bates No. 3733 through 3740, time period August 1st, '11, through August 31st.

Is this likewise a copy of a bill you would have received from the Meyer firm and ultimately paid, although not necessarily the due upon receipt amount?
A. Yes.
MR. DAN SLOTCHIVER: If we can enter this as No. 24, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 24 was admitted into evidence.)
(PLF. EXH. 25, 9/30/11 Bill from MOLM, Bates No. 3741 through 3747, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. From the Meyer law firm, September 30th, 2011, Bates 3741 through 3747, looks to be the time period of 9/1/11 through 9/30/11. Is this a copy of a bill that you would have received and paid from the Meyer firm? When I say paid, once again, I mean ultimately you paid the bill from them in one way or another?
A. Yes.

1 MR. DAN SLOTCHIVER: We can mark this
2 as Exhibit 25.
3 THE COURT: Any objection?
4 MR. BOYD: No objection, Your Honor.
5 MS. HEDGEPATH: None, Your Honor.
6 THE COURT: Thank you.
7 (PLF. EXH. 25 was admitted into
8 evidence.)
9 (PLF. EXH. 26, 10/31/11 Bill from
10 MOLM, Bates No. 3748 through 3751, was marked for
11 identification.)
12 BY MR. DAN SLOTCHIVER:
13 Q. Meyer Olson bill, Your Honor,
14 Exhibit 26, Bates 3748 through 3751, time period
15 of 9/27/11 through 10/31/11. Is this a copy of a
16 bill that you would have received in your capacity
17 as trustee?
18 A. Pardon? I can pass it to who?
19 Q. In your capacity as trustee and paid?
20 A. Yes.
21 MR. DAN SLOTCHIVER: No. 26, Your
22 Honor.
23 THE COURT: Any objection to No. 26?
24 MR. BOYD: No objection, Your Honor.
25 MS. HEDGEPATH: None, Your Honor.

1 THE COURT: Thank you.
2 (PLF. EXH. 26 was admitted into
3 evidence.)
4 (PLF. EXH. 27, 11/30/11 Bill from
5 MOLM, Bates No. 3752 through 3753, was marked for
6 identification.)
7 BY MR. DAN SLOTCHIVER:
8 Q. No. 27 is Bates No. 3752 through 3753,
9 shows a time period of 11/1/11 through 11/4/11.
10 Is this a copy you would have received and paid?
11 A. Yes.
12 MS. MOORE: I'm sorry, Dan. Did you
13 say through 11/30 or through 11/4?
14 MR. DAN SLOTCHIVER: Looks to be 11/4.
15 It says on the top: Statement of account for
16 services rendered through November 30th, '11.
17 MS. MOORE: I just wanted to make
18 sure.
19 MR. DAN SLOTCHIVER: But the bill that
20 I see on the time sheet shows 11/1/11 through
21 11/4/11.
22 MS. MOORE: Okay.
23 MR. DAN SLOTCHIVER: If we can
24 introduce, Your Honor, No. 27.
25 THE COURT: Any objection?

1 MR. BOYD: No objection, Your Honor.
2 MS. HEDGEPATH: No.
3 THE COURT: Thank you.
4 (PLF. EXH. 27 was admitted into
5 evidence.)
6 (PLF. EXH. 28, 12/31/11 Bill from
7 MOLM, Bates No. 3754 through 3746, was marked for
8 identification.)
9 BY MR. DAN SLOTCHIVER:
10 Q. Exhibit 28 is Bates No. 3754
11 through -56, appears to be a bill from
12 December 1st, '11, through -- according to the
13 top, through December 31st, '11.
14 Is this likewise an accurate copy of a
15 bill you would have received?
16 A. It is. But you asked me if the trust
17 paid it or if we paid this one personally. That I
18 am not sure. If this is after it was resolved, it
19 would have been paid personally. Do you want me
20 to --
21 Q. Would you clarify for me? I'm not
22 really sure what you're referencing.
23 A. Well, once it was resolved, until it
24 was resolved, as you know, you had -- you or Dan
25 had supplied our information that was supposed to

1 be confidential to Vicki Greene, so she was able
2 to get a ruling that Abbie had to pay Dan's half
3 of the childrens' GAL, whatever you call that,
4 childrens' attorney, and that we were forced to do
5 that because of the violation of confidentiality,
6 and when that happened, Abbie would have lost her
7 Medicaid, so we --
8 MR. DAN SLOTCHIVER: Your Honor, I'm
9 going to ask that the witness be instructed to
10 answer the questions we asked her.
11 THE WITNESS: Well, you asked me
12 why --
13 THE COURT: Ma'am, excuse me. When
14 the attorney speaks, if you will stop talking,
15 please, so I can hear his objection.
16 THE WITNESS: Okay.
17 THE COURT: Thank you.
18 MR. DAN SLOTCHIVER: I would ask that
19 she be instructed to answer the question. She can
20 answer anything she wants under cross-examination,
21 but this should not be the opportunity to take the
22 podium and give a speech about everything she
23 wants to talk about at this point. I think that's
24 where we're going.
25 THE WITNESS: Then my answer is I

1 don't know.
2 THE COURT: Ma'am, I'm sorry. Once he
3 makes an objection or your attorney, then I have
4 to hear the objections, I have to respond, and
5 then we'll let you know when you can begin
6 testifying again or speaking.
7 THE WITNESS: Okay. Thank you.
8 MR. DAN SLOTCHIVER: The only
9 question --
10 MR. BOYD: Your Honor, she is entitled
11 to answer his question. I think that's what she
12 was trying to do was to answer the question that
13 he asked her.
14 MR. DAN SLOTCHIVER: The only question
15 I asked, is this a copy of a bill she would have
16 received from the Meyer firm, number one, and
17 number two, is it a copy of a bill that she would
18 have paid in her position as trustee. If the
19 answer is: I don't know how I would have paid it,
20 then we can move on to the next question, but I
21 think she's testified that it is a copy of a bill
22 she received.
23 THE COURT: I believe she did.
24 THE WITNESS: Yes, I did.
25 MR. DAN SLOTCHIVER: Okay. Then I

1 would ask -- and if she doesn't know the answer as
2 to how it was paid, I would ask that this be
3 introduced into evidence for the sole purpose of
4 confirming that this is a copy of a bill that she
5 received in her capacity as trustee. How she paid
6 it we can talk about later on.
7 THE WITNESS: But it wasn't -- if I
8 paid it personally, it wasn't in my capacity.
9 THE COURT: His question was did you
10 receive that bill in your capacity as trustee.
11 Not how you paid it, did you receive it.
12 THE WITNESS: I don't know.
13 THE COURT: Her answer is she doesn't
14 know.
15 BY MR. DAN SLOTCHIVER:
16 Q. Is it, in fact, a copy of a bill that
17 you would have received in one capacity or
18 another?
19 A. Yes.
20 Q. When payments were made to the MOLM
21 firm of $5,000 a month, were they generally made
22 from you or made from the trust?
23 A. They were made from the trust, but I
24 don't know if it was paid --
25 Q. If you look at the last page of this

1 document, there's some handwritten documents that
2 say payment of $5,000 to MOLM on 5/7/12. Would
3 that further indicate --
4 A. Where are you looking?
5 Q. You know what, let me see. I'm sorry.
6 I jumped ahead. Go ahead.
7 MR. DAN SLOTCHIVER: I would move to
8 introduce this document for purposes of confirming
9 it is a copy of a bill that she received in one
10 capacity or another.
11 THE COURT: And is that No. 28?
12 MR. DAN SLOTCHIVER: That is No. 28.
13 I apologize. I got ahead of myself.
14 THE COURT: Thank you. Any objection
15 to No. 28?
16 MR. BOYD: No objection, Your Honor.
17 MS. HEDGEPATH: None, Your Honor.
18 THE COURT: Thank you.
19 MR. DAN SLOTCHIVER: And No. 28 is
20 dated December of 2011.
21 THE COURT: Yes, sir. Entered without
22 objection, No. 28.
23 (PLF. EXH. 28 was admitted into
24 evidence.)
25 (PLF. EXH. 29, 1/31/12 Bill from MOLM,

1 Bates No. 3757 through 3760, was marked for
2 identification.)
3 BY MR. DAN SLOTCHIVER:
4 Q. Let me show you a document, No. 29,
5 which is January 31st, 2012, apparently is Bates
6 numbered 3757 through 3760, which shows a period
7 after the month that we've just discussed, but
8 that shows a billing period of 1/4/12 through
9 1/31/12.
10 Is this a copy of a bill that you
11 would have received?
12 A. Yes, and it looks like it was $5,000
13 from the trust.
14 Q. So if you were still paying from the
15 trust in January, would you agree with me, then,
16 that in December, the month before, you would have
17 still been paying from the trust?
18 A. Yes.
19 MR. DAN SLOTCHIVER: Then I would --
20 before introducing this document, Your Honor, I
21 would move to amend the introduction of Document
22 No. 28 to include that it's being introduced as a
23 document that she has received and one that would
24 have been paid for by the trust, because I believe
25 the issue as to who paid it has now been

1 clarified.
2 THE COURT: Any objection, Mr. Boyd?
3 MR. BOYD: Your Honor, whether or not
4 the document was paid for by the trust, I think
5 the witness has expressed some question about
6 that. Mr. Slotchiver can establish that on
7 further examination.
8 MR. DAN SLOTCHIVER: I don't believe
9 there's any question anymore. She just clearly
10 stated that if January was paid by the trust, then
11 December would have been paid by the trust. Her
12 testimony speaks for itself.
13 THE COURT: Mr. Boyd, I believe it
14 does.
15 MR. BOYD: No objection, Your Honor.
16 THE COURT: Thank you.
17 MR. DAN SLOTCHIVER: And then with
18 reference to Exhibit No. 29, I would move to
19 introduce this into evidence as a copy of a bill
20 that she would have received and was paid for by
21 the trust, based on her testimony.
22 THE COURT: Any objection to No. 29?
23 MR. BOYD: No objection, Your Honor.
24 MS. HEDGEPATH: None.
25 (PLF. EXH. 29 was admitted into

1 evidence.)
2 (PLF. EXH. 30, 12/2/10 Bill from Honey
3 Kessler Amado, Bates No. 3761 through 3763, was
4 marked for identification.)
5 BY MR. DAN SLOTCHIVER:
6 Q. Mrs. Cohen, No. 30 is Bates No. 3761
7 through 3763, and it appears to be a copy of a
8 bill from Honey Kessler Amado.
9 Is this a copy of a bill that you
10 would have seen before and paid through trust
11 funds?
12 A. You're going backwards in dates?
13 Q. Well, the date's October 29th, '10,
14 the way it's billed, through December 2nd, '10,
15 other than a reference to Westlaw Legal Research
16 under that.
17 A. Yes.
18 MR. DAN SLOTCHIVER: If I can
19 introduce this, Your Honor, as Exhibit No. 30.
20 THE COURT: Any objection?
21 MR. BOYD: No objection, Your Honor.
22 MS. HEDGEPATH: None, Your Honor.
23 THE COURT: Thank you.
24 (PLF. EXH. 30 was admitted into
25 evidence.)

1 (PLF. EXH. 31, Second Bill from Honey
2 Kessler Amado, Bates No. 3764, was marked for
3 identification.)
4 BY MR. DAN SLOTCHIVER:
5 Q. I've got a second bill from Honey
6 Kessler Amado listed as Plaintiff's Exhibit 31,
7 Cohen 3764. Is this a copy of a bill, likewise,
8 that you would have received and paid for from the
9 trust?
10 A. Is this the same? Isn't this amount
11 exactly the same?
12 Q. I'm sorry?
13 A. Isn't it the same as the one you just
14 handed me?
15 Q. It's a different Bates number.
16 A. Could it have just been that wasn't
17 paid? Could I see the other one? I don't know.
18 Q. Well, I'm just -- right now we're just
19 identifying these as documents that were provided
20 to me by your counsel. Does this appear to be a
21 copy of a document you would have received?
22 A. It is, but it may have already been
23 paid. I don't know.
24 Q. I will represent to you that
25 Exhibit 30 is a billing date of December 6th,

1 2010.
2 A. And what is the amount?
3 Q. The amount on December 30th's bill is
4 $7,579.95.
5 A. All right. So that was already --
6 that was obviously a second copy of this.
7 Q. But this is a copy of a bill you would
8 have received?
9 A. I don't know. You know, I don't know,
10 unless it was -- it was already -- it was either
11 paid then or -- it was paid then or now at this
12 time.
13 Q. Understanding that, would you agree
14 with me this is a copy of a bill you would have
15 received?
16 A. I don't even know that. You know,
17 probably, but I obviously only paid it once. I
18 didn't pay it twice.
19 Q. And I'm not asking about payment of
20 it. I'm just trying to confirm it's a copy of a
21 bill you would have received, because I don't know
22 how else I would have received it through
23 discovery, so I'm asking you if you know if you
24 can identify this as a copy of a bill that you
25 would have received. Looks to me like it's a

1 second billing.
2 A. It looks like a second bill.
3 MR. DAN SLOTCHIVER: If we can enter
4 this as a second billing she would have received.
5 It references the same amount, and it actually
6 appears to be, more than anything, a receipt, but
7 I would ask to introduce this as Exhibit 31.
8 THE COURT: Any objection to No. 31?
9 MR. BOYD: No objection, Your Honor.
10 THE COURT: Thank you.
11 (PLF. EXH. 31 was admitted into
12 evidence.)
13 (PLF. EXH. 32, 4/6/11 Bill from Honey
14 Kessler Amado, Bates No. 3766, was marked for
15 identification.)
16 BY MR. DAN SLOTCHIVER:
17 Q. No. 32 is a copy of a bill from the
18 Honey Kessler Amado firm referencing the date of
19 March 28th through April 6th, Cohen 3766, with a
20 bill in the amount of $16,563.25.
21 Could you identify this as a document
22 you would have received from Honey Kessler Amado
23 firm and have paid from the trust?
24 A. Yes.
25 MR. DAN SLOTCHIVER: If I can

1 introduce this as Exhibit No. 32, Your Honor.
2 THE COURT: Any objection?
3 MR. BOYD: No objection, Your Honor.
4 MS. HEDGEPATH: None.
5 THE COURT: Thank you.
6 (PLF. EXH. 32 was admitted into
7 evidence.)
8 (PLF. EXH. 33, Receipt from Honey
9 Kessler Amado, Bates No. 3768 and 3769, was marked
10 for identification.)
11 BY MR. DAN SLOTCHIVER:
12 Q. And the next document appears to be,
13 No. 33, Bates 3768 through -69, a copy of a
14 receipt showing that you actually paid the -- or
15 the payment was made for the $16,563.25.
16 Have you seen that before?
17 A. This is a copy of a receipt.
18 Q. Would you have seen that document
19 before?
20 A. Do I -- I don't remember it, but I
21 assume so. I have my receipts.
22 Q. And would the payment have been made
23 through trust funds?
24 A. Yes.
25 MR. DAN SLOTCHIVER: If we can

1 introduce this as Exhibit No. 33.
2 THE COURT: Any objections?
3 MR. BOYD: No objection, Your Honor.
4 MS. HEDGEPATH: None, Your Honor.
5 THE COURT: Thank you.
6 (PLF. EXH. 33 was admitted into
7 evidence.)
8 (PLF. EXH. 34, 8/3/11 Bill from Honey
9 Kessler Amado, Bates No. 3770 through 3771, was
10 marked for identification.)
11 BY MR. DAN SLOTCHIVER:
12 Q. No. 34 is Bates No. 3770 through 3771
13 and is from the Honey Kessler Amado firm. It
14 appears to be June 28th through August 3rd of '11,
15 and it shows total fees of $6,837.90.
16 Is this likewise a copy of a bill that
17 you would have received and that was paid for
18 through trust funds?
19 A. Yes.
20 MR. DAN SLOTCHIVER: If I can
21 introduce this, Your Honor, Exhibit 34.
22 THE COURT: Any objection?
23 MR. BOYD: No objection, Your Honor.
24 MS. HEDGEPATH: None.
25 THE COURT: Thank you.

1 (PLF. EXH. 34 was admitted into
2 evidence.)
3 (PLF. EXH. 35, 9/2/11 Bill from Honey
4 Kessler Amado, Bates No. 3772 and 3773, was marked
5 for identification.)
6 BY MR. DAN SLOTCHIVER:
7 Q. Exhibit 35 is a bill from the Honey
8 Amado firm, July 19th, '11, through September 2nd
9 of '11, referencing a bill of $6,360.65 and
10 balance now due, and it references payment -- it
11 says balance now due of $4,860.65, having made a
12 payment of $8,337.90.
13 I'm asking you to identify this as a
14 copy of a bill that you would have received and
15 for which money would have been paid from the
16 trust to pay for that bill?
17 A. Yes.
18 MR. DAN SLOTCHIVER: No. 35, Your
19 Honor, we'd like to introduce this.
20 THE COURT: Any objection to No. 35?
21 MR. BOYD: No objection, Your Honor.
22 MS. HEDGEPATH: None.
23 THE COURT: Thank you.
24 (PLF. EXH. 35 was admitted into
25 evidence.)

1 (PLF. EXH. 36, Payment Record from
2 Honey Kessler Amado, Bates No. 3755 and 3766, was
3 marked for identification.)
4 BY MR. DAN SLOTCHIVER:
5 Q. No. 36 is Bates No. 3775 through 3776,
6 shows payment from client in the amount of
7 $4,860.65, with a balance of zero owed.
8 Would this be a document that confirms
9 the payment made from the trust to the Honey
10 Kessler Amado firm, one that you've seen before?
11 A. Yes. This is a receipt.
12 MR. DAN SLOTCHIVER: Okay. I would
13 move to introduce this as Exhibit No. 36.
14 THE COURT: Any objections?
15 MR. BOYD: No objection, Your Honor.
16 THE COURT: Thank you.
17 (PLF. EXH. 36 was admitted into
18 evidence.)
19 (PLF. EXH. 37, Document Reflecting
20 Bills Paid from Trust From 1/8/10 through
21 12/31/10, was marked for identification.)
22 BY MR. DAN SLOTCHIVER:
23 Q. This is a document marked as
24 Plaintiff's No. 37. It's a copy of an exhibit
25 which was previously introduced to this court and

1 stamped in the Horry County Probate Court showing
2 this was previously marked as a plaintiff's
3 exhibit, and on 5/18/11, which shows a total of
4 fees in the amount of $668,454.28.
5 A. Yes.
6 Q. So this accurately reflects a document
7 that confirms bills that were paid for by the
8 trust over this time period?
9 A. I've seen the document before.
10 MR. DAN SLOTCHIVER: I would move to
11 introduce this as a document that references bills
12 paid for by the trust from the period of
13 January 8th through 12/31/10 in the amount of
14 $668,454.28.
15 THE COURT: Any objection?
16 MR. BOYD: No objection, Your Honor.
17 MS. HEDGEPATH: None, Your Honor.
18 THE COURT: Thank you.
19 (PLF. EXH. 37 was admitted into
20 evidence.)
21 (PLF. EXH. 38, Horry County State Bank
22 Statement, Bates No. 631 through 635, was marked
23 for identification.)
24 BY MR. DAN SLOTCHIVER:
25 Q. Cohen 631 through 635 is a copy of an

1 Horry County State Bank statement under the Abbie
2 Dorn Special Needs Trust. Is this an accurate --
3 would you confirm this is an accurate copy of the
4 statement on Page 1, and then with reference --
5 and then the checks that are attached thereto and
6 the notations all on the back?
7 A. Yes. What do you want me to say?
8 Q. Is this an accurate document that
9 you've seen before in your capacity?
10 A. Yes.
11 Q. And the handwriting on it, I take it,
12 is yours?
13 A. It's my handwriting.
14 MR. DAN SLOTCHIVER: If I can move to
15 introduce this, Your Honor, as Exhibit No. 38.
16 THE COURT: Any objection?
17 MR. BOYD: No objection, Your Honor.
18 MS. HEDGEPATH: None, Your Honor.
19 THE COURT: Thank you.
20 (PLF. EXH. 38 was admitted into
21 evidence.)
22 (PLF. EXH. 39, Horry County State Bank
23 Statement, Bates No. 636 through 640, was marked
24 for identification.)
25 BY MR. DAN SLOTCHIVER:

1 Q. Exhibit No. 39 is a different bank
2 statement from the Horry County State Bank with
3 the same caption, Abbie Dorn Special Needs Trust,
4 with a lot of handwriting. I'm going to ask you
5 to confirm that you've seen the document and also
6 if this is, in fact, your handwriting that's on
7 it. Appears to be Cohen 636 through 640.
8 A. Yes, this is my handwriting.
9 Q. And this is an accurate copy of the
10 bank statement?
11 A. I assume so, yes.
12 MR. DAN SLOTCHIVER: I move to
13 introduce this as Exhibit No. 39.
14 THE COURT: Any objection?
15 MR. BOYD: No objection, Your Honor.
16 THE COURT: Thank you, without
17 objection.
18 MR. DAN SLOTCHIVER: Thank you, Judge.
19 (PLF. EXH. 39 was admitted into
20 evidence.)
21 (PLF. EXH. 40, Horry County State Bank
22 Statement, Bates No. 641 through 643, was marked
23 for identification.)
24 BY MR. DAN SLOTCHIVER:
25 Q. No. 40 is a copy of an Horry County

1 State Bank statement, 641 through 643. It
2 likewise has some notations on it that looks to be
3 more checkmarks and a little bit of handwriting.
4 Is this a copy of a statement you have
5 seen before, and are the notations, the checks or
6 marks, are you the author of those?
7 A. I don't know if I'm the author of the
8 checks. I can't tell.
9 THE COURT: I'm sorry, ma'am. If you
10 could speak --
11 THE WITNESS: There's no handwriting.
12 THE COURT: Speak up, please.
13 THE WITNESS: I'm sorry. I don't have
14 any idea if I made those checks or not.
15 BY MR. DAN SLOTCHIVER:
16 Q. Did anybody else handle the management
17 of or the maintenance of the check paperwork, the
18 bank statements, or was it you alone, or was it
19 you and your husband, or someone else?
20 A. My husband never did. It would have
21 been Yaakov's. It could have been his checks. I
22 don't know. I can't tell.
23 Q. If we can introduce this as a copy of
24 an accurate bank statement received. That would
25 be fair to say, correct?

1 A. Yes.
2 MR. DAN SLOTCHIVER: For that limited
3 purpose, that it does reflect a bank statement,
4 but with no confirmation as to who made the
5 notations.
6 THE COURT: Any objection?
7 MR. BOYD: No objection, Your Honor.
8 MS. HEDGEPATH: None.
9 THE COURT: Thank you.
10 (PLF. EXH. 40 was admitted into
11 evidence.)
12 (PLF. EXH. 41, Horry County State Bank
13 Statement, Bates No. 644 through 650, was marked
14 for identification.)
15 BY MR. DAN SLOTCHIVER:
16 Q. 41 is another bank statement that has
17 handwriting on this one, so it'd be easier for you
18 to identify, and it is Bates 644 through 650.
19 Is this a copy of a bank statement you
20 would have received relative to the trust, and is
21 the handwriting here your handwriting?
22 A. Yes.
23 Q. I'm sorry?
24 A. Yes.
25 Q. Yes as to both?

1 A. Is it a copy of the statement, and it
2 is my handwriting, yes.
3 MR. DAN SLOTCHIVER: I would move to
4 introduce No. 41, Your Honor.
5 THE COURT: Any objection?
6 MR. BOYD: No objection, Your Honor.
7 THE COURT: Thank you.
8 (PLF. EXH. 41 was admitted into
9 evidence.)
10 (PLF. EXH. 42, Horry County State Bank
11 Statement, Bates No. 651 through 653, was marked
12 for identification.)
13 BY MR. DAN SLOTCHIVER:
14 Q. No. 42, same thing with reference to
15 the handwriting and the bank, Bates 651 through
16 653?
17 A. My handwriting, and yes.
18 MR. DAN SLOTCHIVER: If I could
19 introduce No. 42, Your Honor.
20 THE COURT: Any objection?
21 MR. DAN SLOTCHIVER: No objection,
22 Your Honor.
23 THE COURT: Thank you.
24 (PLF. EXH. 42 was admitted into
25 evidence.)

1 (PLF. EXH. 43, Horry County State Bank
2 Statement, Bates No. 654 through 657, was marked
3 for identification.)
4 BY MR. DAN SLOTCHIVER:
5 Q. Same thing with No. 43, Bates No. 654
6 through 657. If you can confirm that is a
7 statement that you would have received, a copy of
8 a statement, and if you can confirm that the
9 handwriting is your handwriting?
10 A. Yes.
11 Q. Yes as to both?
12 A. Yes, it's my handwriting.
13 MR. DAN SLOTCHIVER: No. 43, Your
14 Honor.
15 THE COURT: Any objection?
16 MR. BOYD: No objection, Your Honor.
17 THE COURT: Thank you.
18 (PLF. EXH. 43 was admitted into
19 evidence.)
20 (PLF. EXH. 44, Horry County State Bank
21 Statement, Bates No. 658 through 675, was marked
22 for identification.)
23 BY MR. DAN SLOTCHIVER:
24 Q. Once again on No. 44, same questions.
25 A. Yes, it's my handwriting.

1 Q. And this is a copy of a document you
2 would have received from the bank?
3 A. Yes.
4 MR. DAN SLOTCHIVER: And this is Bates
5 Nos. 658 through 675. If I could introduce this
6 into evidence, Your Honor.
7 THE COURT: No. 44?
8 MR. DAN SLOTCHIVER: Yes.
9 THE COURT: Any objection?
10 MR. BOYD: No objection, Your Honor.
11 THE COURT: Thank you.
12 (PLF. EXH. 44 was admitted into
13 evidence.)
14 (PLF. EXH. 45, Horry County State Bank
15 Statement, Bates No. 676 through 689, was marked
16 for identification.)
17 BY MR. DAN SLOTCHIVER:
18 Q. No. 45, same questions.
19 A. My handwriting, and this is a
20 statement.
21 Q. And this is Bates No. 676 through 689?
22 A. Yes.
23 MR. DAN SLOTCHIVER: If I can
24 introduce, Your Honor, No. 45.
25 THE COURT: Any objection?

1 MR. BOYD: No objection, Your Honor.
2 THE COURT: Thank you.
3 (PLF. EXH. 45 was admitted into
4 evidence.)
5 (PLF. EXH. 46, Horry County State Bank
6 Statement, Bates No. 690 through 705, was marked
7 for identification.)
8 BY MR. DAN SLOTCHIVER:
9 Q. Mrs. Cohen, No. 46, which is Bates
10 numbered 690 through 705, if you would confirm the
11 same things, please?
12 A. Yes.
13 Q. Your handwriting, and this is a
14 document you would have seen before?
15 A. Yes.
16 MR. DAN SLOTCHIVER: If I can
17 introduce No. 46, Your Honor.
18 THE COURT: Any objection?
19 MR. BOYD: No objection, Your Honor.
20 THE COURT: Thank you.
21 (PLF. EXH. 46 was admitted into
22 evidence.)
23 (PLF. EXH. 47, Horry County State Bank
24 Statement, Bates No. 706 through 721, was marked
25 for identification.)

1 BY MR. DAN SLOTCHIVER:
2 Q. Same thing for 47. This is Bates
3 numbered 706 through 721.
4 A. Yes.
5 Q. So you would confirm this is, in fact,
6 a statement you would have received and a copy
7 of -- this is your handwriting?
8 A. Yes.
9 MR. DAN SLOTCHIVER: If I could mark
10 this as Exhibit No. 47.
11 THE COURT: Any objection?
12 MR. BOYD: No objection, Your Honor.
13 THE COURT: Thank you.
14 (PLF. EXH. 47 was admitted into
15 evidence.)
16 (PLF. EXH. 48, Horry County State Bank
17 Statement, Bates No. 722 through 735, was marked
18 for identification.)
19 BY MR. DAN SLOTCHIVER:
20 Q. No. 48 appears to be the same thing,
21 different Bates numbers, 722 through 735, from the
22 Horry County State Bank.
23 A. Yes.
24 MR. DAN SLOTCHIVER: If I can mark
25 this Exhibit No. 48, Your Honor.

1 THE COURT: Any objection to 48?
2 MR. BOYD: No objection, Your Honor.
3 THE COURT: Thank you.
4 (PLF. EXH. 48 was admitted into
5 evidence.)
6 (PLF. EXH. 49, Horry County State Bank
7 Statement, Bates No. 736 through 747, was marked
8 for identification.)
9 BY MR. DAN SLOTCHIVER:
10 Q. Once again, No. 49, which is 736
11 through 747 Bates numbered, if you could confirm
12 the same things again for me, please?
13 A. Yes.
14 Q. As to both?
15 A. Yes.
16 MR. DAN SLOTCHIVER: Your Honor, if I
17 may introduce No. 49.
18 THE COURT: No objection?
19 MR. BOYD: No objection, Your Honor.
20 THE COURT: Thank you.
21 (PLF. EXH. 49 was admitted into
22 evidence.)
23 (PLF. EXH. 50, Horry County State Bank
24 Statement, Bates No. 788 through 801, was marked
25 for identification.)

1 BY MR. DAN SLOTCHIVER:
2 Q. No. 50, once again, another statement.
3 This is Bates No. 788 through 801, if you could
4 confirm those two items again, that you've both
5 seen this before, and it is your handwriting on
6 the documents?
7 A. Yes.
8 MR. DAN SLOTCHIVER: Move to introduce
9 No. 50, Your Honor.
10 THE COURT: Any objection?
11 MR. BOYD: No objection, Your Honor.
12 THE COURT: Thank you.
13 (PLF. EXH. 50 was admitted into
14 evidence.)
15 (PLF. EXH. 51, Horry County State Bank
16 Statement, Bates No. 802 through 815, was marked
17 for identification.)
18 BY MR. DAN SLOTCHIVER:
19 Q. And with No. 51, Bates numbered 802 to
20 815, the same questions?
21 A. Yes.
22 Q. Yes as to both?
23 A. Yes.
24 MR. DAN SLOTCHIVER: If I can
25 introduce this, Your Honor, No. 51.

1 THE COURT: Any objection?
2 MR. BOYD: No objection, Your Honor.
3 THE COURT: Thank you.
4 (PLF. EXH. 51 was admitted into
5 evidence.)
6 (PLF. EXH. 52, Horry County State Bank
7 Statement, Bates No. 824 through 832, was marked
8 for identification.)
9 BY MR. DAN SLOTCHIVER:
10 Q. No. 52, Bates 824 through 832, same
11 questions.
12 A. Yes.
13 Q. It's your handwriting on this, and
14 you've seen this before?
15 A. Yes.
16 MR. DAN SLOTCHIVER: If I can
17 introduce No. 52, Your Honor.
18 THE COURT: Any objection?
19 MR. BOYD: No objection, Your Honor.
20 THE COURT: Thank you.
21 (PLF. EXH. 52 was admitted into
22 evidence.)
23 (PLF. EXH. 53, Horry County State Bank
24 Statement, Bates No. 833 through 848, was marked
25 for identification.)

1 BY MR. DAN SLOTCHIVER:
2 Q. No. 53, same questions?
3 A. Yes.
4 Q. Yes as to both?
5 A. Yes.
6 MR. DAN SLOTCHIVER: If I can
7 introduce No. 53, Your Honor.
8 THE COURT: Any objection?
9 MR. BOYD: No objection, Your Honor.
10 MS. HEDGEPATH: What numbers are they?
11 MR. DAN SLOTCHIVER: And this is Bates
12 numbered 833 through 848. I think I forgot to say
13 that.
14 THE COURT: Thank you. Without
15 objection.
16 (PLF. EXH. 53 was admitted into
17 evidence.)
18 (PLF. EXH. 54, Horry County State Bank
19 Statement, Bates No. 849 through 862, was marked
20 for identification.)
21 BY MR. DAN SLOTCHIVER:
22 Q. Mrs. Cohen, the same thing with
23 No. 54.
24 A. Yes.
25 Q. Yes as to both?

1 A. Yes.
2 Q. I'm sorry to keep asking that. Can I
3 say -- if you say yes, can I assume it's yes as to
4 both?
5 A. That's correct.
6 Q. Thank you.
7 MR. DAN SLOTCHIVER: Your Honor, I
8 move to introduce No. 54.
9 THE COURT: Any objection?
10 MR. BOYD: No objection.
11 THE COURT: Thank you.
12 MR. DAN SLOTCHIVER: And that was
13 Bates numbered 849 through 862.
14 (PLF. EXH. 54 was admitted into
15 evidence.)
16 (PLF. EXH. 55, Horry County State Bank
17 Statement, Bates No. 863 through 880, was marked
18 for identification.)
19 BY MR. DAN SLOTCHIVER:
20 Q. No. 55 is Bates numbered 863 through
21 880, and the same questions.
22 A. Yes.
23 Q. Thank you.
24 THE COURT: Any objection?
25 MR. BOYD: No objection, Your Honor.

1 THE COURT: Thank you.
2 MR. DAN SLOTCHIVER: So introduced?
3 THE COURT: Yes, sir.
4 MR. DAN SLOTCHIVER: Thank you, Your
5 Honor.
6 (PLF. EXH. 55 was admitted into
7 evidence.)
8 (PLF. EXH. 56, Horry County State Bank
9 Statement, Bates No. 881 through 896, was marked
10 for identification.)
11 BY MR. DAN SLOTCHIVER:
12 Q. No. 56, also the Horry County State
13 Bank, same questions.
14 A. Yes.
15 MR. DAN SLOTCHIVER: And this is Bates
16 numbered 881 through 896.
17 THE COURT: Any objection to No. 56?
18 MR. BOYD: No objection, Your Honor.
19 THE COURT: Without objection.
20 (PLF. EXH. 56 was admitted into
21 evidence.)
22 (PLF. EXH. 57, Horry County State Bank
23 Statement, Bates No. 897 through 908, was marked
24 for identification.)
25 BY MR. DAN SLOTCHIVER:

1 Q. Same thing with No. 57, if you would
2 please confirm for me.
3 A. Yes.
4 MR. DAN SLOTCHIVER: And this is Bates
5 numbered 897 through 908.
6 THE COURT: Any objection to 57?
7 MR. BOYD: No objection, Your Honor.
8 MR. DAN SLOTCHIVER: Thank you, Your
9 Honor.
10 THE COURT: Thank you.
11 (PLF. EXH. 57 was admitted into
12 evidence.)
13 (PLF. EXH. 58, Horry County State Bank
14 Statement, Bates No. 909 through 924, was marked
15 for identification.)
16 BY MR. DAN SLOTCHIVER:
17 Q. 58 is, once again, an Horry County
18 State Bank statement. If you could confirm.
19 This, again, is 58. This is Bates No. 909 through
20 924.
21 A. Yes.
22 Q. Thank you.
23 MR. DAN SLOTCHIVER: If I can
24 introduce No. 58.
25 THE COURT: Any objection?

1 MR. BOYD: No objection.
2 THE COURT: No objection.
3 (PLF. EXH. 58 was admitted into
4 evidence.)
5 (PLF. EXH. 59, Horry County State Bank
6 Statement, Bates No. 925 through 940, was marked
7 for identification.)
8 BY MR. DAN SLOTCHIVER:
9 Q. Same question on 59, Bates No. 925
10 through 940.
11 A. Yes.
12 Q. Thank you.
13 MR. DAN SLOTCHIVER: If I could
14 introduce 59, Your Honor.
15 THE COURT: Any objection?
16 MR. BOYD: No objection, Your Honor.
17 THE COURT: Thank you.
18 (PLF. EXH. 59 was admitted into
19 evidence.)
20 (PLF. EXH. 60, Horry County State Bank
21 Statement, Bates No. 941 through 954, was marked
22 for identification.)
23 BY MR. DAN SLOTCHIVER:
24 Q. Same question on No. 60, which is
25 Bates No. 941 through 954.

1 A. Yes.
2 MR. DAN SLOTCHIVER: If I can
3 introduce this, Your Honor, No. 60.
4 THE COURT: Any objection to No. 60?
5 MR. BOYD: No objection.
6 THE COURT: Thank you.
7 (PLF. EXH. 60 was admitted into
8 evidence.)
9 (PLF. EXH. 61, Horry County State Bank
10 Statement, Bates No. 955 through 970, was marked
11 for identification.)
12 BY MR. DAN SLOTCHIVER:
13 Q. No. 61, same question again, Bates
14 numbered 955 through 970, same questions.
15 A. Yes.
16 MR. DAN SLOTCHIVER: If we could
17 introduce this as 61, Your Honor.
18 THE COURT: Any objection to 61?
19 MR. BOYD: No objection, Your Honor.
20 THE COURT: Thank you.
21 (PLF. EXH. 61 was admitted into
22 evidence.)
23 (PLF. EXH. 62, Horry County State Bank
24 Statement, Bates No. 1675 through 1691, was marked
25 for identification.)

1 BY MR. DAN SLOTCHIVER:
2 Q. Plaintiff's Exhibit No. 62, Bates 1675
3 through 1691, same questions again.
4 A. Yes.
5 MR. DAN SLOTCHIVER: If we could
6 introduce No. 62, Your Honor.
7 THE COURT: Any objection to 62?
8 MR. BOYD: No objection, Your Honor.
9 THE COURT: Thank you.
10 (PLF. EXH. 62 was admitted for
11 evidence.)
12 (PLF. EXH. 63, Horry County State Bank
13 Statement, Bates No. 1698 through 1713, was marked
14 for identification.)
15 BY MR. DAN SLOTCHIVER:
16 Q. I don't believe No. 63 has any
17 handwriting on it, so I'm only going to ask you
18 with reference to the first question: Is this a
19 copy of a statement you would have received? Is
20 this a true and accurate copy of a statement you
21 would have received from the bank, Bates No. 1698
22 through 1713?
23 A. Yes.
24 Q. Thank you.
25 MR. DAN SLOTCHIVER: Your Honor, I'd

1 move to admit No. 63.
2 THE COURT: 63, any objection?
3 MR. BOYD: No objections, Your Honor.
4 THE COURT: Thank you.
5 (PLF. EXH. 63 was admitted into
6 evidence.)
7 (PLF. EXH. 64, Horry County State Bank
8 Statement, Bates No. 1714 through 1731, was marked
9 for identification.)
10 BY MR. DAN SLOTCHIVER:
11 Q. No. 64, Bates No. 1714 through 1731,
12 the only handwriting I see on this is the
13 underlining of a number and some arrows. I'll
14 first ask you if this is an accurate copy of a
15 statement you would have received?
16 A. It is.
17 Q. And then secondly, do you know if you
18 are the author of the arrows?
19 A. I'm not sure. I think it's related to
20 that overdraft, which was a mistake with the
21 reserves. That's the only thing I see that would
22 have --
23 MR. DAN SLOTCHIVER: We would move to
24 introduce No. 64, which was 1714 through 1731.
25 I'd move to introduce No. 64.

1 THE COURT: Any objection?
2 MR. BOYD: No objection, Your Honor.
3 THE COURT: Thank you.
4 (PLF. EXH. 64 was admitted into
5 evidence.)
6 (PLF. EXH. 65, Horry County State Bank
7 Statement, Bates No. 1732 through 1747, was marked
8 for identification.)
9 BY MR. DAN SLOTCHIVER:
10 Q. No. 65 is a copy of -- this is Bates
11 numbered 1732 through 1747. I don't believe
12 there's any handwriting on these. I'll show them
13 to you and ask you the first question: Are these
14 accurate copies of statements you would have
15 received?
16 A. Yes.
17 MR. DAN SLOTCHIVER: I move to
18 introduce No. 65, Your Honor.
19 THE COURT: No. 65, any objection?
20 MR. BOYD: No objections.
21 THE COURT: Thank you.
22 (PLF. EXH. 65 was admitted into
23 evidence.)
24 (PLF. EXH. 66, Horry County State Bank
25 Statement, Bates No. 1748 through 1763, was marked

1 for identification.)
2 BY MR. DAN SLOTCHIVER:
3 Q. And the same thing with No. 66, which
4 is Bates numbered 1748 through 1763, no
5 handwriting other than an arrow, but can you
6 confirm this is a document you would have
7 received?
8 A. Yes.
9 MR. DAN SLOTCHIVER: No. 66.
10 THE COURT: Thank you. Any objection
11 to No. 66?
12 MR. BOYD: No objections, Your Honor.
13 THE COURT: Thank you.
14 (PLF. EXH. 66 was admitted into
15 evidence.)
16 MR. DAN SLOTCHIVER: Can we take a
17 five-minute restroom break? Is that possible?
18 THE COURT: We may. Are you at a
19 place to --
20 MR. DAN SLOTCHIVER: It doesn't --
21 we're going to finish this up at some point
22 shortly, I hope. I've got a few more exhibits to
23 go through, but then I can keep on -- we can keep
24 on going and then break and then come back and do
25 more substantive examination, or we could take a

1 break and come back, and I can quickly run through
2 it. We're moving at -- it doesn't make a
3 difference, whatever you'd -- I just want a
4 restroom break, if I can.
5 THE COURT: Sure. We'll take five
6 minutes, very quickly.
7 MR. DAN SLOTCHIVER: Thank you.
8 THE COURT: Thank you.
9 I instruct the witness not to speak to
10 your counsel about your testimony, and that's an
11 ongoing instruction.
12 (A recess transpired from 12:46 PM to
13 12:52 PM.)
14 THE COURT: Back on the record in the
15 Dorn matter.
16 Mr. Slotchiver, I believe the last
17 Exhibit was No. 66.
18 MR. DAN SLOTCHIVER: Yes, Your Honor.
19 (PLF. EXH. 67, Horry County State Bank
20 Statement, Bates No. 1764 through 1779, was marked
21 for identification.)
22 BY MR. DAN SLOTCHIVER:
23 Q. No. 67, Mrs. Cohen, under the same
24 questions we were asking before. I don't see
25 anything in handwriting, but I see a copy of a

1 bank statement. Could you identify this as an
2 accurate copy of a bank statement that you would
3 have received?
4 A. Yes.
5 MR. DAN SLOTCHIVER: This is No. 67.
6 If I can introduce it, Your Honor.
7 THE COURT: Any objection to No. 67?
8 MR. BOYD: No objections, Your Honor.
9 THE COURT: Thank you.
10 (PLF. EXH. 67 was admitted into
11 evidence.)
12 MS. HEDGEPATH: Do we have some
13 numbers?
14 THE COURT: I'm sorry, Ms. Hedgepath?
15 MS. HEDGEPATH: Some numbers to
16 identify it.
17 THE COURT: Numbers on No. 67? A
18 date, possibly?
19 MR. DAN SLOTCHIVER: I'm sorry.
20 You're asking me, Your Honor?
21 THE COURT: Ms. Hedgepath wanted --
22 MS. HEDGEPATH: A date or a number.
23 MR. DAN SLOTCHIVER: I apologize.
24 Under Cohen, it was 1764 through 1779 is the Bates
25 number.

1 MR. KACHMARSKY: What is the date?
2 MR. DAN SLOTCHIVER: The date on the
3 top of the first page is 6/30/10.
4 THE COURT: Thank you.
5 (PLF. EXH. 68, 7/30/10 Horry County
6 State Bank Statement, Bates No. 1780 through 1795,
7 was marked for identification.)
8 BY MR. DAN SLOTCHIVER:
9 Q. No. 68, the date of the first page is
10 7/30/10, and this is Bates numbered 1780 through
11 1795. I don't see any handwriting on it, so I'll
12 just ask if you can identify this as a copy of a
13 bank statement you would have received?
14 A. Yes.
15 Q. Or that you did receive. Yes?
16 A. Yes.
17 MR. DAN SLOTCHIVER: If we can mark
18 this as Exhibit No. 68.
19 THE COURT: Any objection to 68?
20 MR. BOYD: None, Your Honor.
21 THE COURT: Thank you.
22 (PLF. EXH. 68 was admitted into
23 evidence.)
24 (PLF. EXH. 69, 8/31/10 Horry County
25 State Bank Statement, Bates No. 1796 through 1813,

1 was marked for identification.)
2 BY MR. DAN SLOTCHIVER:
3 Q. No. 69 is marked 8/31/10, and it is
4 Bates numbered 1796 through 1813. If you can
5 identify this. Once again, I don't see any marks
6 on it, but is this a copy of a document that you
7 would have received?
8 A. Yes.
9 MR. DAN SLOTCHIVER: If we can
10 introduce this, Your Honor, as No. 69.
11 THE COURT: Any objections?
12 MR. BOYD: No objection, Your Honor.
13 THE COURT: Thank you.
14 (PLF. EXH. 69 was admitted into
15 evidence.)
16 (PLF. EXH. 70, 9/30/10 Horry County
17 State Bank Statement, Bates No. 1814 through 1829,
18 was marked for identification.)
19 BY MR. DAN SLOTCHIVER:
20 Q. No. 70 is dated 9/30/10, Bates No.
21 1814 through 1829. There doesn't appear to be any
22 handwriting on it. Would you confirm that as a
23 document that you received, copy of one that you
24 received?
25 A. Yes.

1 MR. DAN SLOTCHIVER: I'd introduce
2 this, Your Honor, as No. 70.
3 THE COURT: Any objection?
4 MR. BOYD: None, Your Honor.
5 THE COURT: Thank you.
6 (PLF. EXH. 70 was admitted into
7 evidence.)
8 (PLF. EXH. 71, 10/29/10 Horry County
9 State Bank Statement, Bates No. 1830 through 1849,
10 was marked for identification.)
11 BY MR. DAN SLOTCHIVER:
12 Q. No. 71 is dated 10/29/10, reference
13 1830 through 1849. Once again, no notations. The
14 only notations I'm not referencing are when we see
15 these arrows, which we've seen periodically. But
16 would you agree with me that is an adequate
17 document?
18 A. Yes.
19 MR. DAN SLOTCHIVER: Introduce No. 71,
20 Your Honor.
21 THE COURT: Any objection to 71?
22 MR. BOYD: No objection, Your Honor.
23 THE COURT: Thank you.
24 (PLF. EXH. 71 was admitted into
25 evidence.)

1 (PLF. EXH. 72, 11/30/10 Horry County
2 State Bank Statement, Bates No. 1850 through 1867,
3 was marked for identification.)
4 BY MR. DAN SLOTCHIVER:
5 Q. 72, date is 11/30/10. Other than a
6 couple of arrows, there's a couple of marks.
7 There's no handwritten language. Those are
8 probably copy marks. This is Bates numbered 1850
9 through 1867. Does this appear to be an accurate
10 copy?
11 A. Yes.
12 THE COURT: I'm sorry?
13 THE WITNESS: Yes.
14 THE COURT: Thank you.
15 MR. DAN SLOTCHIVER: I move to
16 introduce No. 72, Your Honor.
17 THE COURT: No. 72, any objection?
18 MR. BOYD: No objections, Your Honor.
19 THE COURT: Thank you.
20 (PLF. EXH. 72 was admitted into
21 evidence.)
22 (PLF. EXH. 73, 12/31/10 Horry County
23 State Bank Statement, Bates No. 1868 through 1887,
24 was marked for identification.)
25 BY MR. DAN SLOTCHIVER:

1 Q. Date 12/31/10, Cohen 1868 through
2 1887. No noticeable marks on this one. Does this
3 appear to be an accurate copy?
4 A. Yes.
5 Q. Thank you.
6 MR. DAN SLOTCHIVER: If we can
7 introduce No. 73, Your Honor.
8 THE COURT: Any objection?
9 MR. BOYD: No objection, Your Honor.
10 THE COURT: Thank you.
11 (PLF. EXH. 73 was admitted into
12 evidence.)
13 (PLF. EXH. 74, 1/31/11 Horry County
14 State Bank Statement, Bates No. 2082 through 2124,
15 was marked for identification.)
16 BY MR. DAN SLOTCHIVER:
17 Q. 74, dated 1/31/11, Bates 2082 through
18 2124. Doesn't appear to be any markings on it.
19 Is this, in fact, an accurate copy that you would
20 have received?
21 A. Yes.
22 MR. DAN SLOTCHIVER: If we can
23 introduce No. 74.
24 THE COURT: Any objection to 74?
25 MR. BOYD: No objection, Your Honor.

1 THE COURT: Thank you.
2 (PLF. EXH. 74 was admitted into
3 evidence.)
4 (PLF. EXH. 75, 2/28/11 Horry County
5 State Bank Statement, Bates No. 2139 through 2153,
6 was marked for identification.)
7 BY MR. DAN SLOTCHIVER:
8 Q. No. 75 is dated 2/28/11, Bates 2139
9 through -53, no discernible markings I see. Is
10 this an accurate copy of a document you received
11 in your capacity?
12 A. Yes.
13 MR. DAN SLOTCHIVER: If I can
14 introduce 75, Your Honor.
15 THE COURT: Any objection?
16 MR. BOYD: No objections, Your Honor.
17 THE COURT: Thank you.
18 (PLF. EXH. 75 was admitted into
19 evidence.)
20 (PLF. EXH. 76, 3/31/11 Horry County
21 State Bank Statement, Bates No. 2731 through 2741,
22 was marked for identification.)
23 BY MR. DAN SLOTCHIVER:
24 Q. No. 76 begins 3/31/11, Bates 2731
25 through -41. If you can confirm this as a copy of

1 a document you would have received?
2 A. Yes.
3 MR. DAN SLOTCHIVER: Can we introduce
4 this as No. 76, Your Honor?
5 THE COURT: Any objection?
6 MR. BOYD: No objections, Your Honor.
7 THE COURT: Thank you.
8 (PLF. EXH. 76 was admitted into
9 evidence.)
10 (PLF. EXH. 77, 4/29/11 Horry County
11 State Bank Statement, Bates No. 2742 through 2749,
12 was marked for identification.)
13 BY MR. DAN SLOTCHIVER:
14 Q. No. 77, dated 4/29/11, Cohen 2742
15 through 2749. I don't see any discernible marks
16 on it. Is this a copy of one that you received
17 also?
18 A. Yes.
19 THE COURT: Any objection to No. 77?
20 MR. BOYD: No objection, Your Honor.
21 THE COURT: Thank you.
22 (PLF. EXH. 77 was admitted into
23 evidence.)
24 (PLF. EXH. 78, 5/31/11 Horry County
25 State Bank Statement, Bates No. 2750 through 2759,

1 was marked for identification.)
2 BY MR. DAN SLOTCHIVER:
3 Q. No. 78, dated 5/31/11, Bates 2750
4 through 2759. Same question on this one.
5 A. Yes.
6 MR. DAN SLOTCHIVER: If we can
7 introduce?
8 THE COURT: Any objection to No. 78?
9 MR. BOYD: No objections, Your Honor.
10 THE COURT: Thank you.
11 (PLF. EXH. 78 was admitted into
12 evidence.)
13 (PLF. EXH. 79, 6/30/11 Horry County
14 State Bank Statement, Bates No. 2760 through 2770,
15 was marked for identification.)
16 BY MR. DAN SLOTCHIVER:
17 Q. 79, dated 6/30/11, Cohen 2760 through
18 2770. Same question on this one.
19 A. Yes.
20 THE COURT: Any objection to No. 79?
21 MR. BOYD: No objections.
22 THE COURT: Thank you.
23 (PLF. EXH. 79 was admitted into
24 evidence.)
25 (PLF. EXH. 80, 7/29/11 Horry County

1 State Bank Statement, Bates No. 2771 through 2779,
2 was marked for identification.)
3 BY MR. DAN SLOTCHIVER:
4 Q. No. 80, dated 7/29/11, Bates 2771
5 through 2779. Is this an accurate copy?
6 A. Yes.
7 Q. Thank you.
8 THE COURT: No. 80, any objection?
9 MR. BOYD: No objections, Your Honor.
10 THE COURT: Thank you.
11 (PLF. EXH. 80 was admitted into
12 evidence.)
13 (PLF. EXH. 81, 8/31/11 Horry County
14 State Bank Statement, Bates No. 2780 through 2789,
15 was marked for identification.)
16 BY MR. DAN SLOTCHIVER:
17 Q. 81 is Bates No. 2780 through -89, date
18 is 8/31/11. Is this an accurate copy?
19 A. Yes.
20 THE COURT: Any objection to No. --
21 MR. BOYD: No objections.
22 THE COURT: Pardon me?
23 MR. BOYD: No objections, Your Honor.
24 THE COURT: Thank you.
25 (PLF. EXH. 81 was admitted into

1 evidence.)
2 (PLF. EXH. 82, 10/31/11 Horry County
3 State Bank Statement, Bates No. 2800 through 2810,
4 was marked for identification.)
5 BY MR. DAN SLOTCHIVER:
6 Q. No. 82, Bates No. 2800 through 2810,
7 date 10/31/11. Same question.
8 A. Yes.
9 THE COURT: Any objection to 82?
10 MR. BOYD: No objections, Your Honor.
11 THE COURT: Thank you.
12 (PLF. EXH. 82 was admitted into
13 evidence.)
14 (PLF. EXH. 83, 9/30/11 Horry County
15 State Bank Statement, Bates No. 2790 through 2799,
16 was marked for identification.)
17 BY MR. DAN SLOTCHIVER:
18 Q. No. 83, dated 9/30/11, Bates 2790
19 through -99.
20 A. Yes.
21 Q. Same question. Same answer?
22 A. Yes.
23 Q. This is a copy of one that you've seen
24 before?
25 A. Yes.

1 THE COURT: Any objection to 83?
2 MR. BOYD: No objections, Your Honor.
3 THE COURT: Thank you.
4 (PLF. EXH. 83 was admitted into
5 evidence.)
6 MR. DAN SLOTCHIVER: And Your Honor,
7 just for clarity, I'm not going to -- unless you
8 want me to state we're going to put it in
9 evidence, I'm assuming that when you say any
10 objections, it's in evidence.
11 THE COURT: Yes, sir.
12 MR. DAN SLOTCHIVER: Okay. Thank you.
13 THE COURT: Thank you.
14 (PLF. EXH. 84, 11/30/11 Horry County
15 State Bank Statement, Bates No. 2811 through 2819,
16 was marked for identification.)
17 BY MR. DAN SLOTCHIVER:
18 Q. Next number, Mrs. Cohen,
19 Plaintiff's 84, Cohen 2811 through 2819, and the
20 date on it is 11/30/11. Is that a copy, accurate
21 copy, of a document you received?
22 A. Yes.
23 THE COURT: No. 84?
24 MR. DAN SLOTCHIVER: Yes, Your Honor.
25 THE COURT: Any objection?

1 MR. BOYD: No objections, Your Honor.
2 THE COURT: Thank you.
3 (PLF. EXH. 84 was admitted into
4 evidence.)
5 (PLF. EXH. 85, 12/30/11 Horry County
6 State Bank Statement, Bates No. 2820 through 2829,
7 was marked for identification.)
8 BY MR. DAN SLOTCHIVER:
9 Q. 85, dated 12/30/11, 2820 through 2829.
10 Is this an accurate copy of one that you received?
11 A. Yes.
12 MR. DAN SLOTCHIVER: Any objections to
13 No. 85?
14 MR. BOYD: None Your Honor.
15 THE COURT: Thank you.
16 (PLF. EXH. 85 was admitted into
17 evidence.)
18 (PLF. EXH. 86, Judgment by Court in
19 Dissolution of Marriage, was marked for
20 identification.)
21 BY MR. DAN SLOTCHIVER:
22 Q. No. 86 is a copy of a document
23 labeled: Case No. BD478403, Abbie Ilene Dorn
24 versus Daniel Dorn, filing date January 11th,
25 2008, case type, dissolution of marriage general

1 jurisdiction, status, judgment by court, 8/20/08,
2 statement of decision.
3 Is this a copy of an order that you
4 have seen before?
5 A. Yes.
6 MR. DAN SLOTCHIVER: If the record
7 could reflect this is a ten-page document.
8 Your Honor, I'd moved to admit this
9 into evidence as Exhibit No. 86.
10 THE COURT: Any objection?
11 MR. BOYD: Just a second, Your Honor.
12 No objection, Your Honor.
13 THE COURT: Thank you. Without
14 objection.
15 (PLF. EXH. 86 was admitted into
16 evidence.)
17 (PLF. EXH. 87, Order of Transfer of
18 Jurisdiction, was marked for identification.)
19 BY MR. DAN SLOTCHIVER:
20 Q. Mrs. Cohen, the next document is one
21 that I believe you thought I was referring to at
22 the very first question I asked you today when you
23 brought your document up which dealt with the
24 transfer of order of jurisdiction. I'm going to
25 show you a copy of a document marked as

1 Exhibit 87, which purports to be the order of
2 transfer of jurisdiction.
3 Have you seen this document before,
4 and is it an accurate copy of the one that you
5 would have seen before?
6 A. I don't know. This has more to it
7 than the document I have.
8 THE COURT: I'm sorry, ma'am?
9 THE WITNESS: I'm sorry. It's not
10 exactly the same as the document I have. I don't
11 know if I just have a partial document. I don't
12 have -- the one I have, the copy I have, doesn't
13 go through 16.
14 THE COURT: Is that 16 pages, ma'am?
15 THE WITNESS: No.
16 THE COURT: Or paragraph numbers?
17 THE WITNESS: Paragraph numbers. I
18 only have 'til Paragraph 11.
19 BY MR. DAN SLOTCHIVER:
20 Q. Do you have the signature page of the
21 Honorable Dundee Carter?
22 A. I have -- on this, yes.
23 Q. Your last page.
24 A. No, I guess I don't.
25 Q. Well, I understand it's not the same

1 as the copy you brought up in front of you, but
2 have you had an opportunity to see a copy of this
3 order? And I'll represent to you, Mrs. Cohen,
4 this is a copy of the order that's been filed with
5 this court back in 2008 and again in 2011.
6 A. Right.
7 Q. Do you have any reason to dispute that
8 this is, in fact, an accurate copy of the order?
9 A. I need to read some of these
10 paragraphs and make sure that it says the same
11 thing.
12 Q. Take your time.
13 A. Well, the one that I have matches up
14 until 11.
15 Q. Other than the ones that match, if you
16 look at Page -- at the last two pages, which is
17 nine and the order page from the judge, have you
18 had an opportunity to review that language before?
19 A. Oh, yes, yes.
20 Q. Do you have any reason to dispute the
21 fact that this is, in fact, an accurate copy of
22 the order of transfer of jurisdiction?
23 A. Okay. This back page was the order of
24 transfer, okay. No, I don't dispute it.
25 MR. DAN SLOTCHIVER: Then I would move

1 Plaintiff's 87 into evidence as a copy of the
2 order of transfer of jurisdiction.
3 THE COURT: Any objection?
4 MR. BOYD: No objection, Your Honor.
5 THE COURT: Thank you.
6 (PLF. EXH. 87 was admitted into
7 evidence.)
8 (PLF. EXH. 88, Billings of Jeffrey
9 Cohen, was marked for identification.)
10 BY MR. DAN SLOTCHIVER:
11 Q. Mrs. Cohen, I'm going to show you a
12 document that I have created and ask you if it
13 appears to accurately reflect the billings of
14 Jeffrey Cohen based on your recollection. I will
15 tell you that -- and we referenced here on the
16 beginning that it says the amounts that Jeffrey
17 Cohen was paid according to discovery documents.
18 Some amounts reflect after-tax amounts and others
19 reflect before-tax amounts.
20 I'm just asking if these, to the best
21 of your recollection, reflect the payments that he
22 would have been receiving from 2008 through July
23 of 2012, understanding that there may be payments
24 that took place after July that are not included
25 in this list?

1 THE COURT: Is that No. 88?
2 MR. DAN SLOTCHIVER: This is No. 88,
3 yes, Your Honor. We have about 15 more.
4 MR. BOYD: Your Honor, I'm just going
5 to object. I'm not sure how the witness is -- are
6 you asking her to accept this document for its
7 accuracy or accept it as a summary that you've
8 prepared?
9 MR. DAN SLOTCHIVER: I'm merely asking
10 her if the numbers notated on these documents
11 appear to coincide with the numbers -- with the
12 payments made to Jeffrey Cohen in this matter.
13 Later on, we'll go through and we'll validate the
14 document, but I'm just asking if at this point it
15 appears to be consistent with the numbers that she
16 remembers paying to her son in this case.
17 THE WITNESS: Well, it's probably
18 accurate, but can I remember? I don't remember.
19 BY MR. DAN SLOTCHIVER:
20 Q. And understand that I'm not -- does it
21 appear to be accurate? We'll go through it in a
22 little more detail later on. I'm just asking if
23 it appears to be accurate?
24 A. Okay. I will say it could be
25 accurate.

1 MR. DAN SLOTCHIVER: Well, we would
2 introduce it as an exhibit with the limitation
3 that it needs to be verified as far as the
4 accuracy, but it'll help us in moving forward
5 later on with the case if we can introduce it for
6 that purpose, Your Honor.
7 THE COURT: Any objections based on
8 that limitation, Mr. Boyd?
9 MR. BOYD: No objection, Your Honor.
10 THE COURT: Thank you.
11 MR. DAN SLOTCHIVER: This is No. 88.
12 MS. MOORE: Your Honor, that's an
13 exhibit that I don't have a copy of. If he could
14 provide a copy, instead of simply limiting us to
15 what we see on the screen.
16 MR. DAN SLOTCHIVER: Be happy to do
17 it. Can we provide that to you during the break?
18 I'll get it printed up.
19 MS. MOORE: That would be fine.
20 THE COURT: So No. 88 without
21 objection?
22 MR. BOYD: No objection, Your Honor.
23 THE COURT: With the limitation so
24 noted.
25 MR. BOYD: Yes.

1 THE COURT: Thank you.
2 (PLF. EXH. 88 was admitted into
3 evidence.)
4 MR. DAN SLOTCHIVER: Thank you, Your
5 Honor.
6 (PLF. EXH. 89, Abbie Ilene Dorn
7 Special Needs Trust General Ledger, Bates No. 2993
8 through 2996, was marked for identification.)
9 BY MR. DAN SLOTCHIVER:
10 Q. This is a copy of Bates No. 2993
11 through 2996, which appears to be the Abbie Ilene
12 Dorn Special Needs Trust general ledger, and I'm
13 going to ask if this is, in fact, a correct,
14 accurate copy of a ledger that was created by the
15 trust or on behalf of the trust?
16 A. I would have no idea. I never worked
17 with ledgers. I'm not even -- I'm not familiar
18 with ledgers.
19 THE COURT: Ma'am, I'm sorry. I need
20 to ask you --
21 THE WITNESS: I'm sorry. I'm sorry.
22 I said I've never worked on a ledger. I couldn't
23 say.
24 BY MR. DAN SLOTCHIVER:
25 Q. Well, taking a few minutes, then, to

1 look at -- I will represent to you this is a
2 document provided to us by your counsel. Taking a
3 few moments to look at the different items and the
4 payments and the balances, does it appear to be
5 accurate as to its representations, even if you've
6 never seen this particular ledger before?
7 A. As an educated guess, I would say
8 possibly.
9 Q. If this ledger was not compiled for
10 you or at your instruction, do you know who would
11 have ordered this ledger to have been compiled?
12 A. What year is it? Probably Yaakov. I
13 don't have the ledgers.
14 Q. You don't know?
15 A. So I don't know. I've never done a
16 ledger.
17 Q. You've never seen this before?
18 A. I've never done a ledger.
19 MR. DAN SLOTCHIVER: Then I will not
20 introduce this, Your Honor. We're going to skip
21 No. 89, but the record can reflect that we would
22 like to not have to renumber the others.
23 THE COURT: Yes, definitely.
24 So we'll not introduce at this time
25 No. 89.

1 BY MR. DAN SLOTCHIVER:
2 Q. And would it likewise be your
3 position, then, that you haven't seen any ledgers
4 whatsoever in your capacity as conservator or
5 trustee? I've got more I was going to show you.
6 Let me show it to you and see if you recall.
7 A. I don't know how to do ledgers, so I
8 wouldn't have looked at them. I don't understand
9 them.
10 MR. DAN SLOTCHIVER: Well, then we
11 will move past No. 90 and No. -- we will move
12 forward, then, Your Honor, to No. 94.
13 THE COURT: All right.
14 (PLF. EXH. 94, Conservatorship Annual
15 Accounting, was marked for identification.)
16 BY MR. DAN SLOTCHIVER:
17 Q. Mrs. Cohen, is this a copy of the
18 conservatorship annual accounting that was filed
19 and appears to have both your signature and Paul
20 Cohen's signature in February of 2011? This is to
21 be offered as Exhibit No. 94.
22 A. Where am I supposed to look for the
23 date?
24 Q. I'm looking at the date it was sworn,
25 February 2nd, 2011, under the notary spot. Is

1 this a copy of the accounting that would have been
2 filed by you and your husband with this court
3 showing receipt of $910,275.20?
4 A. Receipt?
5 Q. Yes, under No. 2, plus monies received
6 for all sources, $910,275.20.
7 A. That's true, but this was -- that was
8 in 2008, so what are you asking me?
9 THE COURT: Mr. Slotchiver, if you
10 might could clarify that in No. 1-A up there, it
11 has the date of the period that that covers, is
12 that a problem, 1 January of '07?
13 BY MR. DAN SLOTCHIVER:
14 Q. Covering the period of January 1, '07
15 through the 31st day of December of '07.
16 A. Oh.
17 Q. I'm just asking you to confirm this
18 is, in fact, a copy of the accounting that you
19 filed with the court.
20 A. Oh, okay. Yes.
21 MR. DAN SLOTCHIVER: We can introduce
22 this, Your Honor, as No. 94.
23 THE COURT: Any objection?
24 MR. BOYD: No objection, Your Honor.
25 THE COURT: Thank you.

1 (PLF. EXH. 94 was admitted into
2 evidence.)
3 (PLF. EXH. 95, Special Needs Trust
4 Annual Accounting, was marked for identification.)
5 BY MR. DAN SLOTCHIVER:
6 Q. 95, Your Honor, Mrs. Cohen, is a copy
7 of an exhibit filed with this court in February of
8 2011, which appears to be a special needs trust
9 annual accounting signed with your signature on it
10 and your husband's signature on it, which was
11 sworn to on the 2nd day of February '11. Is this
12 also a copy of a document that you would have
13 signed?
14 A. Signed.
15 Q. A copy of a filing that would have
16 been made?
17 A. Yes, we signed it.
18 Q. Is this a copy of the accounting that
19 was filed with the court under your instruction or
20 guise?
21 A. Well, if it's got the stamp on it, it
22 would have been filed, correct?
23 Q. Well, is this one that you -- it's not
24 my point to tell what happened.
25 A. I'm sorry.

1 Q. Is this a copy of a document that you
2 would have signed, understanding that --
3 A. It's a copy of a document we would
4 have signed.
5 Q. And this is an accurate -- okay. Fair
6 enough.
7 MR. DAN SLOTCHIVER: If I can
8 introduce this, then, as Exhibit No. 95?
9 THE COURT: Any objection?
10 MR. BOYD: No objection, Your Honor.
11 THE COURT: Thank you.
12 (PLF. EXH. 95 was admitted into
13 evidence.)
14 (PLF. EXH. 96, Special Needs Trust
15 Annual Accounting for 1/1/09 through 12/31/09, was
16 marked for identification.)
17 BY MR. DAN SLOTCHIVER:
18 Q. The next one, 96, is a copy of a
19 special needs annual accounting signed by you
20 representing the period of January '09 through the
21 31st day of December. Is this a copy of one that
22 was created for you in order to file the
23 accounting and for which you actually signed?
24 A. Yes, I did sign it. We did sign it.
25 But your question is is it for me?

1 Q. Is it an accurate copy of a document
2 that you had filed in the court?
3 A. That I had filed, yes.
4 Q. Thank you.
5 MR. DAN SLOTCHIVER: If we can
6 introduce No. 96.
7 THE COURT: Any objection?
8 MR. BOYD: No objection, Your Honor.
9 THE COURT: Thank you.
10 (PLF. EXH. 96 was admitted into
11 evidence.)
12 (PLF. EXH. 97, Special Needs Trust
13 Annual Accounting for 1/1/10 through 12/31/10, was
14 marked for identification.)
15 BY MR. DAN SLOTCHIVER:
16 Q. No. 97 is a copy of an accounting that
17 appears to have your signature on it with your
18 husband's with a period of January 1st, 2010,
19 through December 31st, 2010. Same question. Is
20 this a copy of a document that you would have
21 signed and had filed in the court?
22 A. Yes.
23 MR. DAN SLOTCHIVER: I would move to
24 introduce No. 97 into evidence.
25 THE COURT: Any objection?

1 MR. BOYD: No objection, Your Honor.
2 THE COURT: Thank you.
3 (PLF. EXH. 97 was admitted into
4 evidence.)
5 (PLF. EXH. 98, 1/1/11 through 12/31/11
6 Conservatorship Annual Accounting, was marked for
7 identification.)
8 BY MR. DAN SLOTCHIVER:
9 Q. No. 98 is a copy of a document, a
10 conservatorship annual accounting, that appears to
11 be from the date of January 1st, 2011, through the
12 31st of December 2011, signed by you and your
13 husband Paul.
14 Is this a copy of a document that you
15 would have signed and had filed with the court?
16 A. Yes.
17 MR. DAN SLOTCHIVER: If we can
18 introduce No. 98.
19 THE COURT: Any objections?
20 MR. BOYD: No objection, Your Honor.
21 THE COURT: Thank you.
22 (PLF. EXH. 98 was admitted into
23 evidence.)
24 MR. DAN SLOTCHIVER: No. 99.
25 MR. DAVIS: Your Honor, may I say one

1 thing?
2 THE COURT: Yes, sir.
3 MR. DAVIS: The forms on the probate
4 Website for conservatorship annual accounting is
5 not one for a special needs trust. The prior
6 versions have it typed in: Special Needs Trust.
7 This is for the special needs trust also. It's
8 not noted on this one, however.
9 THE COURT: Any objection to that?
10 MR. DAN SLOTCHIVER: Yes. I don't --
11 he can argue later on and explain it, but just the
12 statement, I don't necessarily -- I'm not in a
13 position to agree or disagree with at this point.
14 THE COURT: Thank you. So noted.
15 (PLF. EXH. 99, 1/1/12 through 11/30/12
16 Conservatorship Annual Accounting, was marked for
17 identification.)
18 BY MR. DAN SLOTCHIVER:
19 Q. The next one, Mrs. Cohen, is a copy of
20 a conservatorship annual accounting listing you
21 and your husband Paul as co-trustees for the
22 period of January 1st, 2012, through the 30th day
23 of November 2012.
24 Likewise, is this one that you signed
25 to have filed in the court?

1 A. Yes.
2 MR. DAN SLOTCHIVER: If I can
3 introduce this as No. 99, Your Honor.
4 THE COURT: Any objection?
5 MR. BOYD: No objection, Your Honor.
6 THE COURT: Thank you.
7 (PLF. EXH. 99 was admitted into
8 evidence.)
9 (PLF. EXH. 100, Amended Petition to
10 Affirm Payment of Fees to a Special Needs Trust
11 and to Reform Terms of the Trust, was marked for
12 identification.)
13 BY MR. DAN SLOTCHIVER:
14 Q. Mrs. Cohen, No. 100 is a copy of a
15 document which appears to have been filed in the
16 probate court in March of 2011 which is listed as
17 Amended Petition to Affirm Payment of Fees to a
18 Special Needs Trust and to Reform Terms of the
19 Trust.
20 Are you familiar with that document?
21 I believe if you look at the last page, it shows a
22 verification signed by you.
23 A. Yes.
24 Q. Is this an accurate copy of a document
25 that you and your husband had filed in this court?

1 A. I assume so.
2 Q. I'm sorry, but is that a yes? Take
3 your time.
4 A. Yeah, I believe it's correct.
5 MR. DAN SLOTCHIVER: I would ask to
6 admit this as No. 100.
7 THE COURT: Any objection?
8 MR. BOYD: No objection, Your Honor.
9 THE COURT: Thank you.
10 (PLF. EXH. 100 was admitted into
11 evidence.)
12 (PLF. EXH. 101, Paperwork for Creation
13 of Conservatorship, was marked for
14 identification.)
15 BY MR. DAN SLOTCHIVER:
16 Q. No. 101, Mrs. Cohen, purports to be a
17 copy of the paperwork for the creation of the
18 conservatorship. Is this an accurate copy?
19 A. You're not talking about this anymore?
20 Q. No, I'm not. This was a document done
21 in California.
22 MR. BOYD: I'm sorry. Your Honor, I
23 can't hear the witness.
24 THE WITNESS: I'm sorry. I was just
25 checking to make sure that they weren't similar.

1 I'm sorry. You just want me to
2 confirm the document is signed by me?
3 BY MR. DAN SLOTCHIVER:
4 Q. Well, is this an accurate copy of a
5 document signed by you?
6 A. No, it wasn't signed by me.
7 Q. Or filed on your behalf?
8 A. Yes, filed on our behalf.
9 Q. And I believe it's verified by Paul
10 Cohen?
11 A. That's correct.
12 MR. DAN SLOTCHIVER: If I can
13 introduce this, Your Honor, as Exhibit No. 101.
14 THE COURT: Any objections?
15 MR. BOYD: No objection, Your Honor.
16 THE COURT: Thank you.
17 (PLF. EXH. 101 was admitted into
18 evidence.)
19 (PLF. EXH. 102, Court Ruling Ordering
20 Dissolution of Marriage, was marked for
21 identification.)
22 BY MR. DAN SLOTCHIVER:
23 Q. Mrs. Cohen, I'm going to show you the
24 next document labeled Plaintiff's Exhibit No. 102,
25 which purports to be a court ruling ordering the

1 dissolution of marriage effective September 11th,
2 2008. Have you had an opportunity to see this
3 document before? And if you look under 4-A, it
4 states: Judgment of dissolution is entered.
5 A. Yes.
6 MR. DAN SLOTCHIVER: If I can
7 introduce this as Exhibit No. 102.
8 THE COURT: Any objection to 102?
9 MR. BOYD: No objection, Your Honor.
10 (PLF. EXH. 102 was admitted into
11 evidence.)
12 MR. DAVIS: Your Honor, can we clarify
13 one thing real quick before we move on with this
14 last exhibit?
15 THE COURT: What is that, sir?
16 Mr. Davis?
17 MR. DAVIS: Just one minute, if we
18 can. I just want to look at the attachment and
19 see if the attachment for this 102 is the correct
20 attachment.
21 THE COURT: Give him just --
22 MR. DAN SLOTCHIVER: I'll be happy,
23 Your Honor, but they can cross-examine her on it.
24 She's identified it, but whatever you want to do
25 with it.

1 THE COURT: Well, I think they're
2 asking whether there's an attachment to that
3 exhibit.
4 MR. DAN SLOTCHIVER: Your Honor, we're
5 going to pass on 103.
6 THE COURT: Pass on 103. Thank you.
7 MR. DAN SLOTCHIVER: Your Honor, while
8 they're looking.
9 THE COURT: Yes, sir.
10 MR. DAN SLOTCHIVER: I want to advise
11 the court that we have two more exhibits, one of
12 which mistakenly wasn't printed. It's going to
13 take a few minutes to print it. If it would be
14 okay with the court, if we can print that over the
15 lunch break and then come back, just for
16 expediency.
17 THE COURT: That's fine.
18 MR. DAN SLOTCHIVER: But other than
19 that, I've only got one other document to
20 introduce.
21 THE COURT: If you want to go ahead
22 and -- you want to print it, then introduce it
23 after lunch or --
24 MR. DAN SLOTCHIVER: It might be the
25 best.

1 MR. AKERMAN: I've got one copy if you
2 want.
3 MR. DAN SLOTCHIVER: Well, we can show
4 the original, if that'll work out.
5 THE COURT: I don't mind showing the
6 original, let her acknowledge it if she can, and
7 then you can print it and submit the copy of --
8 MR. DAN SLOTCHIVER: That would be
9 fine. Thank you.
10 THE COURT: Mr. Davis, 102?
11 MR. DAVIS: Yes, Your Honor. And
12 maybe Mr. Slotchiver can help me. On the exhibit,
13 Attachment 3-D, Page 2, my understanding is that
14 that -- and I could be wrong. Let's see if we can
15 clarify it. That attachment belonged to a
16 different document from California that did not
17 belong to that document that was filed. It
18 belonged to one that was actually his Exhibit 101,
19 I believe, is my understanding. I don't think
20 that attachment should be filed with this exhibit,
21 because it doesn't go along with it. It was
22 not -- my understanding, it was not attached to
23 the court's order.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 have no problem withdrawing the attachment. I'm

1 not familiar with that, but it's not necessary for
2 what I'm putting forward today.
3 THE COURT: Okay. So can you confirm
4 with Mr. Davis exactly what your exhibit looks
5 like?
6 MR. DAN SLOTCHIVER: Well, we're going
7 to redact this, so it's only one page on 102,
8 instead of two pages.
9 MR. DAVIS: Just take the second page
10 off, okay. Fair enough.
11 THE COURT: One page for No. 102.
12 Thank you.
13 Skipping 103.
14 MR. DAN SLOTCHIVER: We're skipping
15 103 because we misnumbered. We're going to go to
16 104.
17 (PLF. EXH. 104, Emergency Petition,
18 was marked for identification.)
19 BY MR. DAN SLOTCHIVER:
20 Q. Mrs. Cohen, I'm going to show you what
21 has been filed as -- it was a copy of an emergency
22 petition filed which started the South Carolina
23 action, and it's been marked as Exhibit 104. I
24 believe you appeared in court for this.
25 Have you had an opportunity to review

1 this before?
2 A. How can I tell if that was the end of
3 it?
4 Q. I'm sorry?
5 A. How do I know if that was the end of
6 it if it doesn't have a signature at the end? Is
7 this it?
8 Q. The petition has attachments to it.
9 If you look at Page 4, that's the signature. The
10 rest of them are attachments.
11 A. Page 4? This page?
12 Q. Page 4, fourth page. Page 4 of the
13 document.
14 A. That says four.
15 Q. Of the document.
16 A. Can you find it? That says four. I
17 don't see a signature there. Oh, there are two
18 Page 4's in this. This is your signature.
19 Q. Right. There's other documents. Have
20 you had an opportunity to review this document
21 before? Is this, in fact, a truthful and accurate
22 copy of a document you would have had a chance to
23 see --
24 A. I would have seen it.
25 Q. -- filed with this court?

1 A. I'm sorry. I would have seen it, but
2 I didn't sign it. Is that what you're asking me?
3 Q. No, not if you signed it, just if you
4 had an opportunity to see it.
5 A. Yes.
6 Q. And you appeared in court relative to
7 this?
8 A. Yes.
9 Q. Thank you.
10 MR. DAN SLOTCHIVER: I would move to
11 introduce this as Exhibit 104.
12 THE COURT: Any objection?
13 MR. BOYD: No objection.
14 THE COURT: Thank you.
15 (PLF. EXH. 104 was admitted into
16 evidence.)
17 MR. DAN SLOTCHIVER: I don't have an
18 extra copy of this, Your Honor, but I'm going to
19 ask Mrs. Cohen about it, and we can make copies
20 afterwards.
21 THE COURT: To submit it as 105?
22 MR. DAN SLOTCHIVER: 105, yes, Your
23 Honor.
24 THE COURT: Thank you.
25 (PLF. EXH. 105, Deposition of Adam

1 Mamelak, was marked for identification.)
2 BY MR. DAN SLOTCHIVER:
3 Q. Mrs. Cohen, this is a copy of a
4 deposition of Adam Mamelak. You're familiar with
5 Adam Mamelak?
6 A. Yes, I am.
7 Q. And have you had an opportunity to
8 review his deposition?
9 A. No, I did not.
10 Q. Or his testimony?
11 A. I chose not to.
12 Q. Are you familiar with what his
13 testimony --
14 A. I am familiar.
15 Q. Any reason to believe that this
16 transcript here that I'm holding in my hand is not
17 a truthful and accurate copy of his transcript?
18 A. I would have no idea.
19 Q. If you're familiar with his testimony,
20 would you like to take a few minutes to review
21 it --
22 A. No.
23 Q. -- and to see if it's consistent?
24 A. I didn't read it. I've heard that he,
25 after not -- seeing her only for the three months

1 after she left the hospital, he never saw her
2 again, that he actually got up in court and would
3 have the nerve to say something without examining
4 her. I will not read it.
5 Q. Are you familiar with his testimony,
6 what it was about?
7 A. I'm familiar with what it's about.
8 Q. And are you familiar with his
9 testimony about the inability of Abbie to
10 recognize that people are there or to have the
11 capacity to --
12 A. It is complete nonsense.
13 Q. -- know or to hear you're there or to
14 visit you or to have any benefit whatsoever?
15 A. We've had numerous amounts of proof
16 since then. She just had an eye test that shows
17 her vision is 20/30. It's nonsense.
18 Q. Are you familiar with the fact that
19 the court in California referenced the deposition
20 of Dr. Mamelak in their --
21 A. I'm familiar with that.
22 Q. If I may finish. I'm sorry.
23 A. I'm sorry.
24 Q. I know this upsets you, and I'm not
25 trying to do that. I'm just trying to preserve

1 the record.
2 Are you familiar with the fact that
3 the court in California, in issuing its order,
4 relied heavily on the deposition of Dr. Mamelak?
5 A. Incorrectly, I am.
6 Q. Understanding that you do not want to
7 read it, I would like -- and you have never read
8 this document. Is that correct?
9 A. I have never read it.
10 MR. DAN SLOTCHIVER: I would like to
11 introduce this document, Your Honor, only to the
12 extent that it purports to be a deposition of
13 Dr. Mamelak. Understanding that Mrs. Cohen never
14 reviewed it and hasn't looked at it, but
15 understands to some extent what it says, with that
16 limited purpose, I'd like to introduce it into
17 evidence.
18 MR. BOYD: Your Honor, I would object
19 because the witness has said that she's never read
20 the deposition. It's not a deposition in this
21 proceeding. There's no sealed copy that I'm aware
22 that's available. There's no way to verify
23 whether the deposition transcript is accurate in
24 fact or not, and she's just indicated that she
25 really has no idea. The only thing she can attest

1 to at this moment is that it's a stack of papers.
2 MR. DAN SLOTCHIVER: Your Honor, if
3 that is the case, then what I will do is I'll be
4 happy to read excerpts of the deposition to see if
5 it's consistent with her understanding of what
6 Dr. Mamelak said. Acknowledging her desire not to
7 do that, I was trying to just introduce it at this
8 juncture, but I can go about it differently if
9 you're not inclined to allow it to be introduced
10 at this time.
11 THE COURT: Mr. Boyd?
12 MR. BOYD: Your Honor, she said she's
13 got a general understanding of what Dr. Mamelak's
14 testimony is. She's also indicated she had
15 problems with Dr. Mamelak's approach to the case.
16 I'm not sure if she's going to be able to
17 ascertain one way or the other, if he reads her a
18 passage, whether he actually said that or not.
19 Basically, she's indicated that she doesn't have
20 the knowledge to do that or not.
21 MR. DAN SLOTCHIVER: That's not my
22 understanding. What she's indicated is she
23 doesn't want to hear it. She doesn't want to read
24 it. But I can -- I won't admit this. I'll go
25 about it differently.

1 THE COURT: Thank you. There's an
2 objection, and I sustain the objection.
3 MR. DAN SLOTCHIVER: Fair enough.
4 That's the last document that I anticipate
5 offering at this -- or that I'm going to offer at
6 this time. I believe that gets me to the position
7 to being able to move into more substantive
8 testimony, and I don't know if Your Honor wants to
9 take a little break at this point.
10 THE COURT: No. 5, then, has not yet
11 been admitted?
12 MR. BOYD: 105.
13 THE COURT: I mean 105. I'm sorry.
14 MR. DAN SLOTCHIVER: Correct.
15 THE COURT: Thank you. 105 is not
16 admitted into evidence.
17 All right. At this time it is almost
18 20 'til 2:00. I propose we break for lunch. If
19 everybody can be back at 3:00, we'll resume the
20 hearing at that time.
21 I did want to just very briefly go
22 over -- I have some documents here just for my
23 purposes, and I didn't want there to be any
24 concern about what I have. I have a copy of the
25 initial summons and petition that Dan Dorn filed

1 and the response from the Cohens. I have a copy
2 of the amended summons. These were taken from the
3 record, so I didn't have to bring the entire file
4 in here. The amended summons and amended petition
5 to affirm payment of fees, the response and
6 counterclaim by Mr. Kachmarsky, and then the
7 response from the Cohens to that. I have a copy
8 of the Abbie Dorn Special Needs Trust, I believe,
9 that's been introduced, the order of transfer of
10 jurisdiction, and the statement of decision
11 dissolution of marriage dated 4/7/11 that has been
12 introduced.
13 I've got a couple of things that I
14 just had for my purposes, which were the letters
15 of conservatorship and some things that a long
16 time ago was submitted, but at this point, those
17 have not been introduced. I'm not going to deal
18 with those. But I wanted to let everyone know
19 that the documents I have here are basically the
20 pleadings, the special needs trust order for
21 transfer, and another exhibit that was admitted.
22 MR. DAN SLOTCHIVER: Thank you, Judge.
23 THE COURT: I take it there's no
24 objection to that?
25 MR. DAN SLOTCHIVER: Not from us, Your

1 Honor.
2 THE COURT: Thank you.
3 MR. DAN SLOTCHIVER: The only thing I
4 was going to ask is this --
5 THE COURT: We will lock the
6 courtroom.
7 MR. DAN SLOTCHIVER: You anticipated
8 my question.
9 THE COURT: Yes, sir. We'll have a
10 deputy lock the courtroom, and then we'll ask that
11 he unlock the courtroom. Whenever someone comes
12 up, if you find the door locked, if you could just
13 have a deputy unlock the door so you can get back
14 in, and leave all your stuff in here.
15 Thank you. We'll be back at 3:00, but
16 we will stop promptly no later than 5:00 today.
17 (A luncheon recess transpired from
18 1:40 PM to 3:07 PM.)
19 THE COURT: We're back on the record
20 in the Abbie Dorn matter.
21 Mr. Slotchiver?
22 MR. DAN SLOTCHIVER: We would ask that
23 we recall Susan Cohen, or continue to call her to
24 the stand.
25 THE COURT: Mrs. Cohen? I remind you

1 you're still under oath. Thank you.
2 BY MR. DAN SLOTCHIVER:
3 Q. Mrs. Cohen, we previously have
4 admitted a tremendous amount of documents into
5 evidence, and now that we've admitted them, we can
6 move forward a little more expediently with
7 reference to talking about this case.
8 The first thing I want to ask you is
9 do you have any idea what the total amount of
10 legal fees were spent from the trust?
11 A. Well, as I testified, in May of 2011,
12 it was 963 for us and 964 for Don.
13 MR. DAN SLOTCHIVER: Well, I want
14 to -- Your Honor, I'm going to ask that she be
15 restricted to the answer. The amount of money
16 that was spent by Dan Dorn is not before the court
17 this morning.
18 THE COURT: If you'll just answer his
19 question. And please, ma'am, speak into the
20 microphone.
21 THE WITNESS: I'm sorry. Should I
22 repeat the answer? Can you hear me?
23 THE COURT: I can hear you now. If
24 you will just answer his question and don't add
25 anything else to your answer.

1 THE WITNESS: Okay.
2 THE COURT: Thank you.
3 BY MR. DAN SLOTCHIVER:
4 Q. Do you know approximately how much
5 legal fees have been paid from the trust from the
6 time that the money was deposited until present?
7 A. Until the present? Well, as I said,
8 in May it was 963, and probably there was another
9 $50,000, so a little over a million.
10 Q. And would it surprise you to learn
11 that actually the fees incurred were over
12 $1.2 million?
13 A. Well, I believe one you may have added
14 twice.
15 Q. I said it wrong. Over $1.1 million.
16 I apologize.
17 A. I don't know if that's accurate. I
18 had noticed when I went over the accounting, I
19 looked at the numbers, I believed it was added in
20 my payment -- when we came to the 963, that's
21 what -- the money I still owed, and then it was
22 added in the 150 later, so I'm not sure. I don't
23 know. Let me just say I don't know. It looked
24 like an error to me.
25 Q. Fair enough, and let's discuss that.

1 MR. DAN SLOTCHIVER: Before we do, one
2 other matter, Your Honor, I meant to bring up when
3 we first started. I am going to ask that you
4 strike from the record the reference and the
5 statement made earlier in response to a question
6 wherein she stated that vision -- she stated as to
7 the vision of Abbie Dorn, and I don't believe
8 that's before the court, and I would ask that that
9 also be stricken at this point.
10 THE COURT: Also?
11 MR. DAN SLOTCHIVER: That language,
12 yes. There was no -- it wasn't a question that
13 was asked. There's no foundation. There's no
14 support. Obviously, we can argue that later on,
15 but right now, for the record to be clear, I
16 wanted to have that stricken.
17 THE COURT: Mr. Boyd?
18 MR. BOYD: Your Honor, if
19 Mr. Slotchiver wanted that answer stricken, the
20 time to address it would have been
21 contemporaneously when it was -- I think it's hard
22 for the court to say strike or not strike at this
23 point, simply because I don't recall exactly what
24 the question was and exactly what the answer was.
25 I mean, she was testifying as to her direct

1 knowledge.
2 MR. DAN SLOTCHIVER: Her direct
3 knowledge does not respond to a question, and
4 there's no foundation for it.
5 MR. BOYD: Your Honor --
6 MR. DAN SLOTCHIVER: If I may finish.
7 And the procedure, Judge, that we're
8 involved in right now, there's been an exchange of
9 documents. There's no foundation, there's no
10 basis to give that opinion, and I think it would
11 be improper to put it in front of the court
12 without a foundation for that opinion.
13 THE COURT: Mr. Boyd?
14 MR. BOYD: Your Honor, that was the
15 basis. That was the basis for my question, when
16 Mr. Slotchiver was presenting the documents,
17 whether he was simply admitting -- he initially
18 said: I just want to admit these documents into
19 evidence, and then we're going to get into the
20 substance of what these documents mean.
21 Well, in the process of admitting
22 those documents, he began to ask the witness
23 questions. If he wanted to get into substantive
24 questions with the witness, he proceeds at his
25 peril, because that wasn't my impression of what

1 we were doing. He started to ask substantive
2 questions.
3 The court will recall I asked a
4 question about that. And in fact, he got into
5 substantive questions with the witness, which is
6 not what he said he was doing, and so if she said
7 something in reply to a substantive question and
8 he wanted it stricken from the record, the time to
9 address that was then, not now.
10 THE COURT: I'm going to deny your
11 request. You asked her questions about it. She
12 explained her answer.
13 MR. DAN SLOTCHIVER: Thank you, Your
14 Honor.
15 THE COURT: Thank you.
16 BY MR. DAN SLOTCHIVER:
17 Q. I'm going to show you a document, not
18 for introduction at this point, but just to see if
19 this -- if we could put this on the board also.
20 This is a document that I believe tallies all the
21 legal bills that have been paid from a yearly
22 basis based on the conservator annual accountings.
23 And if you'd like, I'll be happy to pull up each
24 accounting and to show you the reference to the
25 attorneys fees listed in that accounting in order

1 to confirm your agreement this is a correct total.
2 If you can agree to it on your own testimony, that
3 would be fine also.
4 A. I can't agree. I'm not sure at this
5 point whether that 150 was counted twice.
6 Q. Well, let's do this: Why don't we go
7 ahead on the 2008 and pull it out.
8 A. It wasn't in 2008.
9 Q. We've already introduced the
10 accounting records or the records submitted from
11 the conservator annual accountings. They've
12 already been admitted without any objection. So
13 what I'll do is we'll put up the 2008 year
14 conservator annual accounting, and we'll look and
15 see where it references the legal bills, and we
16 can walk through that for each one of these years
17 and see if we agree on the numbers.
18 MR. DAVIS: Can I ask a question, Your
19 Honor?
20 THE COURT: Yes, sir.
21 MR. DAVIS: Is this California only?
22 Is that the legal fees for the California matter
23 only? It's not clear on that document. Pull that
24 document back up.
25 MR. DAN SLOTCHIVER: This is based on

1 the filings in the conservator annual accounting,
2 and I'm asking particularly about legal fees paid
3 from the trust.
4 THE COURT: I guess we'll see from the
5 accountings, Mr. Davis, who the payments are to.
6 MR. DAVIS: Okay. The reason I bring
7 that up is as you know, some monies were paid and
8 reimbursed as far as legal fees. They've paid
9 personally our legal fees for Mr. Boyd and me, and
10 I don't think that was clear from that.
11 THE COURT: You'll have an opportunity
12 to cross-examine the witness with regard to that.
13 BY MR. DAN SLOTCHIVER:
14 Q. So on the 2008 accounting, we show
15 legal bills of $17,097.98, professional fees.
16 Would you agree with that? If we can just go
17 through item by item on the list I gave you,
18 there's eight through 12.
19 A. Are you saying that was the result of
20 one bill?
21 Q. That's the legal bills referenced in
22 the conservator annual accounting.
23 MR. DAVIS: I'm going to have to
24 object, Your Honor. These are done by Webster
25 Rogers, and it's got professional fees, as you see

1 there, 2.21. There's another statement that
2 breaks down 2.21. It breaks down what those are.
3 That doesn't say they're legal fees or accounting
4 fees or what, so I don't know if it's fair to ask
5 her are these legal fees for the year 2008. She
6 can't -- how could she say that? You need more
7 detail, and the accountings provide more detail.
8 THE COURT: Do you have -- the
9 attachments to the accounting, were they admitted
10 as part of the exhibits?
11 MR. DAN SLOTCHIVER: They weren't
12 provided to us for those years, Your Honor.
13 MR. DAVIS: Your Honor, with all due
14 respect, these are filed in the public record, and
15 I don't know -- and I believe they were provided.
16 It's not -- these are filed in this court.
17 MR. DAN SLOTCHIVER: Your Honor, back
18 discovery. From 2009 forward, the detailed
19 breakdowns were provided; for 2007 and 2008, they
20 weren't. Just like the Bates-numbered stamps,
21 we're working off of the documents they provided
22 to us. I can't read into things that they don't
23 give us. But in the same way that they referenced
24 the professional fees here, the breakdowns come in
25 the other years, the later years, the 2009, '10,

1 and '11, but for those two years, they don't.
2 MR. BOYD: Your Honor, if the court
3 will recall, we had a conference regarding the
4 electronic versions of the accountings being
5 prepared and provided to petitioners. We provided
6 2008, 2009, 2010, 2011, and the then-available
7 2012 in an electronic format, so the breakdowns
8 have been made available.
9 MR. DAN SLOTCHIVER: No. And we can
10 discuss it through the ledgers that they provided
11 through discovery, except for the fact that
12 Mrs. Cohen cannot affirm one way or the other with
13 reference to the ledgers. She says she's never
14 seen them or looked at them.
15 THE COURT: Mr. Boyd is saying that he
16 provided the attachments to the accounting to you,
17 Mr. Slotchiver, as part of discovery in electronic
18 format.
19 MS. MOORE: Judge, I have a copy of
20 the actual attachment in the file.
21 MR. DAN SLOTCHIVER: Your Honor, if we
22 look at the ledger -- if you allow us to look at
23 the ledger, it confirms the numbers over here.
24 THE COURT: Are these the ledgers that
25 were attached to the accountings?

1 MR. DAN SLOTCHIVER: Yes.
2 MS. MOORE: Right. They were attached
3 to the accounting.
4 THE COURT: So Ms. Moore says they're
5 part of the accounting that was filed with the
6 court. Those are the accountings I guess,
7 Mr. Slotchiver, that you referenced with the
8 witness, who could not identify them.
9 MR. DAN SLOTCHIVER: Correct, so --
10 THE COURT: Mr. Boyd, if y'all will
11 stipulate to the ledger sheets that were attached
12 to the accountings that were filed with the court.
13 Your client was unable to identify them, but
14 Ms. Moore is confirming that these are attached to
15 the accounting, the 2008 accounting, that was
16 filed with the court, and I'm assuming that's what
17 Mr. Davis was referring to.
18 MR. BOYD: And Your Honor, if I may,
19 let me just -- I did want to clarify that on --
20 because there was an earlier exchange about the
21 electronic version. On January 14 and January 15,
22 subsequent to the court direction and the pretrial
23 teleconference between the parties and the court,
24 we did provide, on the 14th and the 15th of
25 January, electronic versions of all the

1 accountings, beginning with 2009, continuing 2011,
2 and on the 15th, we provided 2012.
3 Exhibit 89, Your Honor, which has been
4 admitted --
5 THE COURT: No, sir, it was not
6 admitted because Mrs. Cohen could not identify it.
7 MR. DAVIS: What are they referring
8 to, Your Honor, on this general ledger? I'm
9 trying to find the part about the professional
10 fees. Is that a different page? It's on Page 4.
11 MR. DAN SLOTCHIVER: This is on the
12 ledger. It's showing the professional fees -
13 legal.
14 MR. DAVIS: Okay. Well, that first
15 page didn't have it. So the next page, four.
16 MR. DAN SLOTCHIVER: It adds up to the
17 same number, Your Honor, that we submitted that I
18 showed to Mrs. Cohen earlier. We can do this,
19 but --
20 MR. BOYD: Your Honor, I don't see --
21 I don't see a breakdown for --
22 MR. DAVIS: On Page 4. They have
23 Page 1 up.
24 THE COURT: Is this the amount,
25 $17,097.98, that's on the accounting for

1 professional fees?
2 MR. DAN SLOTCHIVER: Yes, it is.
3 THE COURT: And this is the ledger
4 that was attached to the accounting that was filed
5 with the court?
6 MR. DAN SLOTCHIVER: Yes, it is.
7 THE COURT: Will the parties stipulate
8 that this Exhibit 89 can be admitted into evidence
9 as part of the accounting, the 2008 accounting?
10 MR. DAVIS: Your Honor, is he saying
11 he's wanting Mrs. Cohen to say that the MOLM firm
12 was paid $17,140.58 or $17,097 in 2008, or he
13 wants to -- I'm not exactly sure what he's trying
14 to establish.
15 THE COURT: Mr. Slotchiver, if you
16 would go over your question for Mr. Davis, please.
17 MR. DAN SLOTCHIVER: I'd be happy to,
18 Your Honor. What I'm trying to establish is the
19 total amount of attorneys fees, based on the
20 documents that have been provided to us, that were
21 paid from the trust from 2008 through the records
22 we received in 2012.
23 THE COURT: So we were going to go
24 over these one year at a time?
25 MR. DAN SLOTCHIVER: I can go through

1 them one year at a time if we need to, and I can
2 show the documents to support it and -- because
3 she doesn't recall this and doesn't necessarily
4 agree or disagree, and I want to make sure we're
5 all comfortable with the same numbers. So we can
6 do it one at a time if that's what we want to do.
7 I'm happy to do it.
8 If we can stipulate -- if they can
9 stipulate to the ledgers that were attached to the
10 accountings, which I believe this court, by its
11 very nature, has the right to look at, then it'll
12 move a little quicker, but I'll do it however you
13 want.
14 THE COURT: Mr. Davis, Mr. Boyd, can
15 you stipulate that that Exhibit 89 is the ledger
16 that was attached to --
17 MR. DAVIS: Yes. I believe that one
18 is fine.
19 THE COURT: -- the 2008 accounting?
20 MR. DAVIS: Yes, Your Honor,
21 and one -- yes. It's going to be a little more
22 confusing as we go along because different law
23 firms were involved.
24 THE COURT: I understand.
25 MR. DAVIS: And some monies were

1 reimbursed for our fees.
2 THE COURT: I understand. You can
3 cross-examine the witness with regards to that.
4 Ms. Moore?
5 MS. MOORE: Judge, I just don't
6 understand. That isn't the ledger that was
7 attached.
8 THE COURT: It's not?
9 MS. MOORE: No, it's not.
10 MR. DAVIS: Is that 2008?
11 MS. MOORE: That was not the type of
12 ledger that was attached, the one that he has
13 displayed.
14 MR. DAVIS: Your Honor, and I
15 apologize. I've got my whole file with all the
16 accountings in my vehicle, because I've got so
17 many files, and I didn't think we were going to
18 get to that point today. I'll be more than happy
19 to get all the accountings. The court has a copy
20 as well.
21 MS. MOORE: The ledger that was
22 actually attached was just like the computerized
23 version that had each one of the categories of
24 expenses by different spreadsheet. It was not
25 developed like this.

1 MR. DAN SLOTCHIVER: This came from
2 the general ledger that we were provided by the
3 Cohens in discovery. I can show you the ledger.
4 MS. MOORE: I understand that, but the
5 question was whether or not that is what was
6 attached to the accounting.
7 THE COURT: Exactly.
8 MS. MOORE: That is not what was
9 attached to the accounting, so I don't understand
10 why we don't simply take judicial notice of the
11 accounting that is actually in the record. We can
12 look at it.
13 MR. DAN SLOTCHIVER: I'd be happy to
14 do that.
15 THE COURT: Let me take just a break,
16 and I'll get that file. I did not bring in all
17 the court files. What is the date of the filing
18 on that, Ms. Moore? Do you have that?
19 MS. MOORE: February 3rd, 2011.
20 MR. DAVIS: Your Honor, will I have
21 time to go get my file of the accountings in the
22 parking lot and come back? Will I have time to do
23 that?
24 THE COURT: You can go. I'm going to
25 go ahead and start once I get back.

1 MR. DAN SLOTCHIVER: Your Honor, when
2 you look, you'll see there are five years of
3 ledgers that we had attempted to admit earlier,
4 but you should have all of those.
5 THE COURT: I don't have those because
6 we didn't admit those into evidence.
7 MR. DAN SLOTCHIVER: I understand.
8 THE COURT: What is the date,
9 Ms. Moore?
10 MS. MOORE: February 3rd, 2011.
11 THE COURT: Let me take just a moment.
12 Let me get those.
13 (A recess transpired from 3:22 PM to
14 3:26 PM.)
15 THE COURT: All right. We're back on
16 the record in the Abbie Dorn matter. I have the
17 accounting file February 3rd, 2011, dated
18 January 1st of '08 through December 31st of '08,
19 and another accounting file the same date for
20 January 1st of '09 through December 31st of '09,
21 with attachments.
22 If you would like to review that,
23 Mr. Slotchiver. There is a schedule and
24 supporting documents attached.
25 MR. STEVE SLOTCHIVER: Your Honor,

1 might I approach to review?
2 THE COURT: Yes, sir. They are
3 clipped right there.
4 Ms. Moore, did you have the other
5 accountings for 2010 and 2011 with a date of
6 filing? And I might could find those.
7 MS. MOORE: They should be right in
8 order, Judge, February 3rd for the 2009. Should
9 have been immediately thereafter.
10 THE COURT: Yeah, I had the '09.
11 MS. MOORE: Oh, I'm sorry. Which one
12 were you looking for?
13 THE COURT: 2010. I'm not sure when
14 that was filed. Let me see. I have some notes.
15 MS. MOORE: 2010 is March 29th.
16 THE COURT: Of '11?
17 MS. MOORE: 2012.
18 THE COURT: What date?
19 MS. MOORE: March 29, 2012.
20 MR. DAN SLOTCHIVER: Have we decided
21 to take judicial notice on this one, Your Honor?
22 THE COURT: Mr. Boyd, I assume --
23 MR. BOYD: I think the court can take
24 judicial notice of that document, Your Honor.
25 It's in the file.

1 MR. DAN SLOTCHIVER: Well, why don't I
2 show the witness.
3 THE COURT: I have no objection to
4 you -- Mr. Boyd, no objection?
5 MR. BOYD: No objection, Your Honor.
6 THE COURT: That is the 2008
7 accounting that was filed by the court on
8 February 2nd, 2011, for the year 2008?
9 MS. MOORE: It's February 3rd, Your
10 Honor.
11 THE COURT: February 3rd.
12 MR. DAN SLOTCHIVER: May I proceed?
13 THE COURT: Yes, sir.
14 BY MR. DAN SLOTCHIVER:
15 Q. Mrs. Cohen, I'm going to show you a
16 document that is in the court's file, submitted by
17 your counsel, and it references this is the -- in
18 the accounting that was submitted.
19 MR. DAN SLOTCHIVER: You said
20 February 3rd, 2008. Is that right?
21 MS. MOORE: No. February 3rd, 2011,
22 is the date of filing.
23 BY MR. DAN SLOTCHIVER:
24 Q. 2011, there is a reference sheet to
25 legal and professional fees under Schedule 2.21,

1 and it represents bills to Robin Morris, Louis
2 Michelson, clerk, Louis Michelson, Webster Rogers,
3 Robin Morris, Robin Morris, Moore Law Firm, Louis
4 Michelson, Korol, Robin Morris, Korol, Louis
5 Michelson, and Marina Korol.
6 What is the total amount?
7 A. The total amount also included Webster
8 Rogers and clerk fees, so should I subtract that?
9 Q. Well, the clerk fees are three bills
10 for $17 apiece, correct?
11 A. Webster Rogers is $1,362.37.
12 Q. So we're about $1,500. That amount
13 would be correct at the bottom?
14 A. Minus $1,500, so it would be 15 five.
15 Q. About 15 five, okay.
16 THE COURT: And I'm sorry. Give me
17 that number, and what was that?
18 MR. DAN SLOTCHIVER: Why don't we get
19 the exact number, Your Honor. It's $17,097.98,
20 and we're going to subtract from it $17 on three
21 occasions, and we'll subtract from it the Webster
22 Rogers bill, which is $441.90.
23 THE WITNESS: No. There's another
24 one. There's a second bill for Webster Rogers for
25 $1,300.

1 BY MR. DAN SLOTCHIVER:
2 Q. I see a Webster Rogers bill for
3 $441.90 and a Webster Rogers bill for $235, and I
4 don't see a third one.
5 A. Oh, you're right. Okay. I gave you
6 the wrong one.
7 Q. So those are the numbers, would you
8 agree with me, based on the board, that the total
9 was $16,370.08 in legal fees?
10 A. I didn't watch him, but that sounds
11 right.
12 THE COURT: And that was based on the
13 2008 accounting?
14 MR. DAN SLOTCHIVER: Yes, Your Honor.
15 THE COURT: Thank you.
16 BY MR. DAN SLOTCHIVER:
17 Q. Now, 2009 year, we represent the
18 amount in legal bills are $45,107.34. Do you
19 agree with that, or do you want us to put it on
20 the board and take a look at it?
21 A. The judge has it, so I don't know -- I
22 assume we should defer to the judge.
23 Q. I just want to make sure that that's
24 the number, that we all agree that's the number.
25 So if you'll agree to it, great. If not, we can

1 put it on the board.
2 A. I guess we have --
3 MR. BOYD: Objection.
4 THE WITNESS: I don't know how I would
5 agree to something that I don't know.
6 MR. BOYD: Dan, what document are you
7 asking her about?
8 MR. DAN SLOTCHIVER: 2009 legal
9 expenses.
10 MR. STEVE SLOTCHIVER: That's No. 96.
11 MR. DAVIS: Dan, are you -- it may be
12 helpful just to go through these. Are they at
13 2.24?
14 BY MR. DAN SLOTCHIVER:
15 Q. And under this document, we show
16 that -- well, let's break this down for you,
17 because we show the professional fees at
18 $50,078.68, but then we have to withdraw some
19 accounting expenses, which if you'll look at the
20 board and follow with us, let's make sure we agree
21 as to which ones we have to withdraw, and we come
22 up with a total of $45,107.34.
23 MR. DAVIS: Your Honor, we might as
24 well go pull up Schedule 2.24 and just go through
25 them, because that's not accurate. For instance,

1 he's got some fees here paid to my firm which were
2 reimbursed.
3 MR. DAN SLOTCHIVER: Your Honor, we
4 would object at this point.
5 MR. DAVIS: The Horry County Probate
6 Court.
7 THE COURT: Mr. Davis, you have an
8 opportunity to cross-examine your client as to any
9 fees that were reimbursed and paid back into the
10 trust.
11 MR. DAVIS: Yes, Your Honor. I
12 understand. He's asking our client to agree that
13 those are accurate figures when --
14 THE COURT: Can you pull up the
15 schedule, Mr. Slotchiver?
16 MR. DAN SLOTCHIVER: Be happy to, Your
17 Honor.
18 BY MR. DAN SLOTCHIVER:
19 Q. Do you recall this as being the
20 schedule of the checks? This is a document that
21 was submitted to the court.
22 A. Is that the one you said I signed? Is
23 it the same one, or is it a different one?
24 Q. This is attached to the accounting
25 that was submitted to the court that you already

1 referenced as an exhibit.
2 A. You just said that --
3 MR. DAVIS: Your Honor, what he's
4 done -- and I don't disagree with you -- that's
5 not what was filed. They've taken the information
6 and put it on a spreadsheet, which is great, and
7 it's easy to manipulate the data, but what she
8 signed is different. It's what we filed in the
9 court. I don't know the most efficient way to do
10 it. We're not trying to refute what's been filed.
11 MR. DAN SLOTCHIVER: Your Honor, we
12 have not created any of these documents. These
13 exhibits have already been introduced. They have
14 not been objected to. We're working off of the
15 exhibits that we introduced earlier today to come
16 up with the totals. We're discounting the numbers
17 that are not legal fees, and what we're attempting
18 to do is to come up with a total amount of the
19 expenditures.
20 MR. DAVIS: We're on the same page.
21 Would it make sense just to give her a copy of
22 what was filed and just go through them?
23 MR. DAN SLOTCHIVER: I was showing it
24 on the board, but I just want to make sure the
25 record's clear that a moment ago it was stated

1 that we had created the spreadsheet, and now it's
2 not. I wanted to clarify that issue, so there's
3 no dispute.
4 THE COURT: Is that your
5 understanding, Mr. Davis?
6 MR. DAVIS: As to what?
7 THE COURT: They have not created
8 these attachments to the exhibit.
9 MR. DAVIS: I don't think there's
10 fundamentally a problem. However, he's asking our
11 client to identify things that she's not seen.
12 She saw the final version of the accounting,
13 signed it, filed it.
14 MR. DAN SLOTCHIVER: Your Honor, I
15 object. He is putting words -- she has testified
16 that this is a copy of the accounting that she had
17 and she filed, and it's in evidence at this point,
18 and now to say that she hadn't seen it would be
19 inappropriate.
20 MR. DAVIS: That's not what I said.
21 She did see this. This is what's filed.
22 THE COURT: And that exhibit is what
23 she identified, Mr. Davis, was it not?
24 MR. DAVIS: It is. It's in a little
25 different format, but it is, basically.

1 MR. DAN SLOTCHIVER: We haven't
2 changed any format, Your Honor.
3 THE COURT: Can you present her with
4 the exhibit?
5 BY MR. DAN SLOTCHIVER:
6 Q. It should look in the same format as
7 the one that's here, but if you would take a look
8 at this document.
9 A. This is the one with the stamp, right?
10 Q. Correct.
11 A. Was this the one you showed me?
12 Q. It's the same one that's on the board
13 right now.
14 A. Where's the stamp?
15 Q. I'll get the one with the stamp.
16 A. I just want to know if this is the one
17 you asked me about.
18 Q. I'm going to show it to you right now.
19 If I can take this one back, and I'll get you 96,
20 and I'll show you the same one that we showed you.
21 This is the one with the stamp.
22 A. What numbers am I looking at? What am
23 I supposed to look at?
24 Q. Let me turn to the page, if I may.
25 Under the section listed as Schedule 2.24, would

1 you agree with me that this is the schedule that
2 references the attorneys fees paid from the trust?
3 A. I'd have to subtract out all those
4 other numbers.
5 Q. Well, why don't we put the total
6 number up and subtract the ones -- and let's talk
7 about the ones that you want to subtract out. So
8 the total number on this page shows $60,076.66?
9 A. Huh? 60,000? 50,000.
10 Q. Excuse me, $50,000 -- my eyes are
11 tired -- $50,078.68. And from there we can
12 subtract out.
13 You believe that QuickBooks would not
14 be appropriate, correct?
15 A. Right.
16 Q. So we're going to subtract out $10.65,
17 and we'll subtract it out again for the $10.75.
18 MR. DAN SLOTCHIVER: Can we go ahead
19 and put it on the board, so there's no confusion?
20 BY MR. DAN SLOTCHIVER:
21 Q. We're going to show you right on the
22 board so you can see the numbers as they go.
23 We'll subtract out the $10.65, and we'll subtract
24 out the -- let's do one at a time. Let's go to
25 the $10.75 for the QuickBooks. Is that the next

1 one? You would agree with that?
2 A. The next QuickBooks? Yeah.
3 Q. No, the next issue to subtract out.
4 A. And Webster Rogers.
5 Q. Webster Rogers would be $1,039.10, the
6 next would be the $20 to the probate court, and
7 then Webster Rogers again. Is that correct?
8 A. Right, $2,820.21.
9 Q. I take it we'd subtract out the $200
10 to Susan Cohen?
11 A. Yes.
12 Q. And the $10.75 for QuickBooks. We'll
13 subtract out the $162.50 to the Horry County
14 Probate Court, we'll subtract out the $637.40 to
15 Webster Rogers, and we'll subtract out the $442.48
16 to Webster Rogers.
17 A. What about that $1,072.11?
18 Q. The journal entry?
19 A. I guess that's what it is, bank
20 statement.
21 Q. The rest of these expenses would have
22 all been legal fees, so the total we come to is --
23 then we have to add back in the $32.15 from
24 Webster Rogers, based on the sheet that shows it
25 was a negative, so it goes back in.

1 MR. DAVIS: What is that?
2 BY MR. DAN SLOTCHIVER:
3 Q. So the total we have there is
4 $46,935.95. Would you agree with that as an
5 appropriate number for the year 2009?
6 A. I guess it's close. I don't
7 understand why you didn't take out the $1,072.11.
8 Q. Let's go to 2010. I think 2010 will
9 be a little bit easier to work with because the
10 documents are different, a little easier to
11 follow. 2010, we show expenses -- I'm going to
12 take this document and put it back with the rest,
13 unless you want to keep it. I'll put it back here
14 with the exhibits.
15 A. Did I already not -- I don't know what
16 you're wanting from me.
17 Q. Well, I'm not asking a question yet.
18 I will in a moment.
19 2010, my numbers show that the legal
20 fees are $747,640.50.
21 MR. DAVIS: Your Honor, I hate to stop
22 his momentum, but I want to clarify. He had a
23 document that he wanted to admit in as evidence,
24 but we've now altered that document, so what are
25 we doing now?

1 MR. DAN SLOTCHIVER: I have not moved
2 to enter any document into evidence. I was going
3 through the numbers with her in order to get a
4 total.
5 MR. DAVIS: I thought he was trying to
6 get her to agree to the summary on that document
7 that he created. Are we not doing that?
8 THE COURT: He hasn't done that yet.
9 MR. DAVIS: But the document has --
10 the numbers have been changed, so we've got to --
11 MR. DAN SLOTCHIVER: I'm just going
12 through the numbers to understand her opinion on
13 the numbers.
14 MR. BOYD: Dan, can you clarify what
15 number you reached for 2009?
16 MR. DAN SLOTCHIVER: 2009, the number
17 was $46,935.95.
18 BY MR. DAN SLOTCHIVER:
19 Q. 2010, my understanding is that the
20 legal fees are $747,640.50. This is based on the
21 filing. And if you'll look at the board, it shows
22 professional fees - legal for that amount of
23 money. Do you have any reason to dispute that
24 that is an accurate number?
25 A. No.

1 Q. For 2011 --
2 MR. DAVIS: Are we not going to go
3 through 2.21 again --
4 MR. DAN SLOTCHIVER: No.
5 MR. DAVIS: -- for 2010?
6 BY MR. DAN SLOTCHIVER:
7 Q. For 2011, my understanding is the
8 numbers are $121,799.76. Any reason to dispute
9 that that is an accurate number? And on the
10 board, if you like -- this is on Exhibit 98 -- you
11 can see a copy, and I'll show you the original if
12 you want, that was stamped, but a copy of the
13 document that's been submitted that references
14 this bill, with the billing amounts.
15 A. I can't see that, if you're asking me
16 about it. I don't know if it was 2011 or 2012
17 where I think you counted it twice.
18 Q. Well, I can show you the top of this
19 document. Why don't we show you the top. Can you
20 see where you've already admitted this is a
21 correct document? It was filed. The document
22 shows $121,799.76. Let's show you the year on the
23 document, based on the document itself.
24 MR. DAVIS: Your Honor, I'm going to
25 have to object. On the Schedule 2.21 for 2010,

1 there's clearly some items that are not legal
2 fees. He just skipped right over that. Why are
3 we skipping over 2010 when we did 2008 and '09?
4 We've got items on here, doctors --
5 MR. DAN SLOTCHIVER: Your Honor --
6 MR. DAVIS: We need to go through it
7 and figure out what the legal fees are. That
8 number's not accurate because it says it right
9 here on the court filings.
10 THE COURT: Mr. Slotchiver?
11 MR. DAN SLOTCHIVER: I am going
12 through the documents provided to us. She's
13 already admitted them. I'm asking her her
14 understanding and her opinions about them, and I'm
15 giving her an opportunity to tell me if she agrees
16 or disagrees. If she disagrees, then I will show
17 the substantiating documents, but if she doesn't
18 disagree, I don't believe it would be proper for
19 her counsel to disagree on her behalf when she's
20 told me that she agrees with these things.
21 And I'll be happy to provide the
22 supporting documents. But the numbers got clearer
23 in 2010, '11, and '12, based on the format they
24 were provided, which is why I'm able to go
25 directly to them and to show it.

1 And clearly, this is an accounting she
2 filed, and if you'll look at the accounting, it
3 shows professional fees - legal. I am assuming
4 that when they provide an accounting that says
5 professional fees - legal, that it's for
6 professional fees that are legal, not medical, and
7 if she disputes that, I'm happy to go through it
8 with her, but I'm just trying to right now confirm
9 what the amounts are.
10 THE COURT: Mr. Davis?
11 MR. DAVIS: Yeah. I mean, I
12 appreciate the -- in an effort to get through this
13 thing quickly, but we just went through the
14 schedules on the previous years, and all of a
15 sudden we just hydroplaned right over the schedule
16 for this 2010 when the same issues apply. We need
17 to deduct some of these. I don't think it's fair
18 for her just to kind of hydroplane right past it.
19 We got to go back and look at Schedule 2.21, legal
20 fees. Let's go and look at that number and break
21 them down. Some of these are not legal fees.
22 THE COURT: Mr. Davis, could you not
23 cross your client on that?
24 MR. DAVIS: Well, we just -- what he's
25 doing now is inconsistent with what we just did

1 with the two previous years.
2 MR. DAN SLOTCHIVER: Your Honor, if we
3 talk about fairness, it's not fair for me to have
4 to look at a document submitted and filed by the
5 Cohens with this court that references these are
6 legal fees and then to hear an argument maybe
7 they're not legal fees, because it gives me
8 further concern -- if we're going to make a filing
9 and make certain statements and certain
10 representations, then I believe we should be bound
11 by those representations, and what I'm hearing now
12 from Mr. Davis is that perhaps the filings we've
13 made have been in error and inaccurate.
14 MR. DAVIS: No.
15 MR. DAN SLOTCHIVER: And in that
16 regard, I don't -- there's certain things we've
17 taken as a given, one of which is if you represent
18 this is a legal fee, we're going to assume the
19 filing with the court is accurate and that it's a
20 legal fee. Now what we're hearing is it's not.
21 I don't believe that he, Mr. Davis,
22 can control how I ask my questions. I think I'm
23 allowed to ask them as I want to. He can ask on
24 cross-examination, but certainly, if he wants to
25 impeach his client based on the documents she

1 submitted, he's welcome to do it.
2 MR. DAVIS: Your Honor, I think we've
3 gotten off track. I think Dan and I are saying
4 the same things. I don't know why we deviated
5 from our current track. We were taking the
6 breakdown and going through it, and then all of a
7 sudden we got to 2010, and that changed for some
8 reason, and the question in front of Mrs. Cohen
9 said are these -- and just kind of hydroplaned
10 right over it. Let's just do the same thing we
11 did with 2008 and 2009 with 2.21.
12 THE COURT: Mr. Davis, I think you can
13 cover that on cross if you would like. This is
14 Mr. Slotchiver's witness, so I'm going to let him
15 proceed as he would like to with questioning
16 Mrs. Cohen, and I'll be happy to allow you to
17 cover that on your cross-examination.
18 BY MR. DAN SLOTCHIVER:
19 Q. Mrs. Cohen, I'm going to show you --
20 I'm going to ask you about the legal bills paid in
21 2012 referenced on the accounting that was filed.
22 THE COURT: I'm not sure that she did
23 2011.
24 MR. DAN SLOTCHIVER: Oh, I'm sorry.
25 Thank you, Your Honor.

1 BY MR. DAN SLOTCHIVER:
2 Q. On 2011, would you agree with me that
3 the form that you submitted had particular
4 reference to legal fees in 2011 being in the
5 amount of $121,799.76?
6 A. Well, I'd like you to do that same
7 thing, because someplace I think we put in a fee
8 twice.
9 Q. Well, Mrs. Cohen, I'm looking at a
10 document that you filed that's been entered into
11 evidence, and unlike the earlier years that talked
12 about professional fees, this one talks about
13 legal fees. Are you suggesting to me that perhaps
14 the document that you filed in 2011, which states
15 legal fees in that amount of 121, was incorrect?
16 A. I don't understand. I know that when
17 that figure of 963 was come in -- was made --
18 MR. DAN SLOTCHIVER: I'm going to ask,
19 Your Honor, that she be instructed to answer the
20 question.
21 THE WITNESS: I don't know the answer.
22 BY MR. DAN SLOTCHIVER:
23 Q. Would you have filed paperwork with
24 the court if you believed it to be inaccurate?
25 A. If I believed it to be inaccurate?

1 Q. Yes.
2 A. Well, I know that I don't know very
3 much about how to figure these things out.
4 Q. But would you have filed paperwork
5 with the court --
6 A. Well, not deliberately.
7 Q. -- in your accountings if you believed
8 it to be inaccurate?
9 A. Not deliberately, but I think
10 something may have been put in twice, but I don't
11 know that it was this year.
12 Q. When you filed the accountings with
13 the court, would you have filed them if you
14 thought they were wrong or if you had any
15 questions?
16 A. If I thought -- it wasn't until I went
17 through the numbers later on that it seemed to me
18 that something may have been put in twice, but I
19 don't know very much about what you're talking
20 about.
21 Q. You understand that as a trustee, you
22 have a fiduciary obligation?
23 A. That's why I have other people do
24 these.
25 Q. I'm sorry?

1 A. That's why I have somebody
2 professional do them, because I don't understand
3 them.
4 Q. Do you believe you would have filed
5 paperwork with the court if you thought it was
6 wrong?
7 MR. BOYD: Your Honor, that's been
8 asked and answered.
9 MR. DAN SLOTCHIVER: I haven't gotten
10 an answer.
11 MR. BOYD: Well, your Honor, she's
12 answered. She said she didn't know to his
13 previous question, but she said certainly not.
14 THE COURT: I think she said she would
15 not intentionally.
16 BY MR. DAN SLOTCHIVER:
17 Q. Have you filed any amendments with the
18 court on the accountings since they were filed?
19 A. It just was the other day when I was
20 going through the sheet with Reese that it struck
21 me that it may have been filed twice.
22 Q. How long ago was that, how many days
23 ago?
24 A. It was Sunday, which is -- today's
25 Monday -- yesterday.

1 Q. And based on that, did you file
2 anything or represent anything to the court today
3 when you appeared? Did you make any reference to
4 the court about the fact that you thought there
5 was an error in the accounting?
6 A. Yes, right now, but I don't know that.
7 I just asked you to go through the sheet.
8 Q. Would you agree with me that the legal
9 fees, as referenced on this document, state that
10 in the year 2011, they were $121,799.76?
11 A. That the document says that?
12 Q. Yes.
13 A. Yes, I would agree with that.
14 Q. 2012, there was a filing made, and my
15 understanding is that the legal fees were
16 $186,485.97, as referenced on that filing. I'll
17 pull it up on the computer. And this is for the
18 period January 1st through the 30th of
19 November 2012.
20 The paperwork that was filed and
21 signed by you, you've referenced earlier,
22 references that the legal fees were in the amount
23 of $186,485.97. Do you have any reason -- or do
24 you dispute that this is what you filed and
25 represented to the court in your filings?

1 A. I don't dispute it's what I filed.
2 Q. Do you have any reason to dispute that
3 that is a correct amount of legal fees incurred in
4 that calendar year?
5 A. As I said, it may have been that that
6 150 was counted twice, but I don't know whether it
7 was '11 or '12.
8 THE COURT: And ma'am, I'm sorry, when
9 you say 150, $150?
10 THE WITNESS: No, $150,000.
11 THE COURT: Thank you.
12 MR. DAN SLOTCHIVER: May I beg the
13 court's indulgence one moment?
14 THE COURT: Yes, sir.
15 BY MR. DAN SLOTCHIVER:
16 Q. So based on the numbers that we've
17 just discussed, if we add them together,
18 referencing the numbers that we talked about,
19 these are the calendar years, and it looks to me
20 like the total of expenditures for legal fees is
21 $1,119,232.26. Would you agree with that
22 calculation?
23 A. If it's correct.
24 Q. If the numbers inputted are correct
25 and not mistaken by what you uncovered yesterday

1 that might be a problem?
2 A. Right.
3 MR. DAVIS: Your Honor, may I make one
4 quick point? In the accountings, there are
5 some --
6 MR. DAN SLOTCHIVER: Your Honor, I
7 would object if he's going to articulate his
8 cross-examination.
9 THE COURT: Unless you have an
10 objection, Mr. Davis.
11 MR. DAVIS: Okay. I'll do it on
12 cross.
13 THE COURT: Thank you.
14 BY MR. DAN SLOTCHIVER:
15 Q. Mrs. Cohen, I'd like to chat with you
16 a little bit about your understanding of the
17 representations and opinions of Dr. Mamelak. I
18 believe you testified earlier that you purposely
19 did not read his deposition, but that you were
20 aware of his opinions. Do you still agree with
21 that statement?
22 A. I was aware of one of his opinions.
23 Q. Which opinion were you aware of?
24 A. I was aware of his opinion that he
25 claimed that she was in a vegetative state.

1 Q. Are you aware -- or do you agree with
2 me that he is a doctor at Cedars-Sinai in
3 California?
4 A. He is a doctor at Cedars-Sinai, yes.
5 Q. And that he evaluated your daughter
6 and was involved with her care while -- or before
7 she was transferred to South Carolina?
8 A. Only for the first three months, when
9 she was critically ill.
10 Q. And you yourself had the opportunity
11 to chat with him if you wished to?
12 A. No, I did not. Now? At the time of
13 the deposition? Absolutely not.
14 Q. At the time that he was the care
15 provider while your daughter was still at
16 Cedars-Sinai.
17 A. Yes.
18 Q. Are you aware that in connection with
19 his opinion about her being in a vegetative state,
20 that he opined that she had no awareness of her
21 surroundings and had no ability to hear or see?
22 Are you familiar that that was within the
23 parameters of her being in a vegetative state in
24 his opinion?
25 A. In his opinion, I didn't read it.

1 Q. Is that what you understand about his
2 opinion?
3 A. No. I didn't read it, so I don't
4 understand anything about his opinion except that
5 he was unethical in making that opinion.
6 MR. DAN SLOTCHIVER: I'm going to ask,
7 Your Honor, that that portion be stricken from the
8 record. There's no support for that. I'm asking
9 her questions about the doctor and what she
10 understands about his opinion. She stated that
11 she understands that he claimed that her daughter
12 was in a vegetative state, but the other comments
13 are not responsive, and they're not supported by
14 any factual record, and they're not supported by
15 any documents provided to me through discovery,
16 and I would ask that they be stricken.
17 THE COURT: Mr. Boyd?
18 MR. BOYD: Your Honor, he's asking the
19 witness repeatedly about reading the deposition.
20 She had reasons for not reading the deposition.
21 She's entitled to give an answer.
22 MR. DAN SLOTCHIVER: I have not asked
23 her about reading the deposition since she told me
24 that she had not read the deposition, but she
25 offered that she was aware of his opinion, and I'm

1 trying to get clarity about what she understood
2 with reference to his opinion.
3 THE COURT: I will strike her
4 statement regarding her opinion that it was
5 unethical.
6 MR. DAN SLOTCHIVER: Thank you, Your
7 Honor.
8 THE COURT: If you can answer
9 specifically Mr. Slotchiver's questions and
10 refrain from your own comments at this time.
11 THE WITNESS: Okay.
12 THE COURT: Thank you.
13 BY MR. DAN SLOTCHIVER:
14 Q. Are you aware of Dr. Mamelak opining
15 about the lack of any meaningful understanding of
16 Abbie when it came to blinking or eye tracking,
17 but instead stated that these are merely
18 involuntary movements regulated by brainstem
19 activity?
20 A. No, I'm not aware of it.
21 Q. Did you not -- strike that.
22 Would you agree with me that as a
23 fiduciary undertaking the role of protecting
24 Abbie -- or the assets of Abbie, the monies of
25 Abbie, that it would be important to familiarize

1 yourself with all the opinions that were out there
2 by the different experts who have been involved in
3 Abbie's care and have given deposition or opinion
4 testimony?
5 A. The experts that examined her at the
6 current time I was aware of. Those are all that
7 mattered.
8 Q. You stated that you did not read the
9 deposition of Dr. Mamelak because you did not want
10 to. Is that correct?
11 A. Because it -- you told me I can't make
12 an opinion, so are you excusing me from that?
13 Q. No. I'm trying to understand from you
14 if you considered it important to understand the
15 basis of what opinion Dr. Mamelak would offer,
16 even if you don't agree with it?
17 A. If a physician or an attorney or
18 anybody else opines on something that they have no
19 business opining on, then I don't need to read
20 their opinion. It's unethical. He violated his
21 Hippocratic oath.
22 MR. DAN SLOTCHIVER: I'm going to ask,
23 Your Honor, this be stricken from the record
24 again.
25 THE WITNESS: You asked me. You asked

1 me.
2 MR. DAN SLOTCHIVER: Again, he was a
3 treating physician, as testified to by Mrs. Cohen,
4 and he gave an opinion, and her personal opinion
5 that he's unethical is unfounded in this case,
6 it's not supported by documentation, there's no
7 foundation for it, and it's inappropriate, and I
8 would ask that be stricken from the record.
9 MR. BOYD: Your Honor, I'm going to
10 object. She's probing why she may not have
11 considered the opinion to the degree that perhaps
12 his client wanted to consider it. When she
13 answers the question, he moves to strike. Either
14 she can answer the question or she can't.
15 MR. DAN SLOTCHIVER: I believe she
16 testified not that she didn't consider it to the
17 degree that my client would. She testified she
18 wouldn't consider it at all. She wouldn't even
19 read his deposition, even though he was a treating
20 physician for some period of time.
21 MR. BOYD: Your Honor, where is the
22 requirement written that the trustee has to sit
23 around and read every deposition? Who reads every
24 deposition? That's not even relevant.
25 THE COURT: I think Mr. Slotchiver

1 asked her as to whether she had a fiduciary duty
2 to read the deposition as the trustee of the
3 trust. I believe she's trying to explain why she
4 did not read the deposition. I'll allow it for
5 that purpose only.
6 Mr. Slotchiver, if you could move on.
7 She stated why she did not read the deposition.
8 MR. DAN SLOTCHIVER: Thank you, Your
9 Honor.
10 THE COURT: Thank you.
11 BY MR. DAN SLOTCHIVER:
12 Q. Are you familiar with the fact that --
13 Judge Shaller, I believe is his name. Mrs. Cohen,
14 you're aware of the fact that Judge Frederick
15 Shaller, in rendering his opinion, his final
16 order, called a statement of decision, in the
17 visitation matter in California --
18 A. It wasn't a final order.
19 Q. We've already admitted this as Exhibit
20 No. 86. Are you familiar with the fact that he
21 himself relied on the testimony of Dr. Mamelak?
22 A. Am I familiar with it?
23 Q. Yes.
24 A. I am familiar with it.
25 Q. And you don't dispute the fact that

1 that was an unappealed order? You agree that it
2 was an unappealed order, correct?
3 A. I agree because you're suing me for
4 spending the money. It doesn't mean it was
5 correct. It's not correct. It was unethical. It
6 was --
7 THE COURT: I'm sorry.
8 THE WITNESS: I'm sorry.
9 THE COURT: Thank you.
10 BY MR. DAN SLOTCHIVER:
11 Q. Have you had a chance -- and I know
12 you've identified this document, but have you had
13 a chance to read --
14 A. Yes.
15 Q. -- the deposition -- or the order of
16 Judge Shaller?
17 A. Yes.
18 MR. DAN SLOTCHIVER: Give me one
19 moment, Your Honor, please.
20 THE COURT: Yes, sir.
21 BY MR. DAN SLOTCHIVER:
22 Q. And are you familiar with a Dr. Hays?
23 A. I certainly am, yes.
24 Q. And do you dispute the fact that the
25 court, in rendering its decision, said as follows:

1 In determining Abbie's degree of disability, the
2 court is not permitted to make decisions on the
3 basis of possibilities or a wishful desire to find
4 that Abbie possesses sufficient degree of
5 awareness to be able to see the beautiful children
6 she has created?
7 A. That's not from Dr. Hays's report.
8 Q. From the court's order.
9 A. You asked me about Dr. Hays.
10 Q. I asked if you're familiar with
11 Dr. Hays.
12 A. Yes, I am. What does that have to do
13 with that?
14 Q. I'll come to it in a moment.
15 A. Okay.
16 Q. That the videotape deposition of Abbie
17 Dorn and the testimony of Abbie's evaluating
18 neurologist, Dr. Hays, must be viewed under the
19 preponderance of the evidence standard and that
20 given the standard, the court concludes that it is
21 more likely than not that Abbie Dorn does not have
22 any significant cognitive function, that her eye
23 blinking and smiling and movements are involuntary
24 movements described by Dr. Hays as brainstem
25 reflexes.

1 Do you remember that language?
2 A. You're quoting out of context, though.
3 That's not what Dr. Hays said. That was what he
4 said, but it's not what she said in her entirety.
5 Q. Do you not agree with that opinion
6 from Dr. Hays?
7 A. That's not her full opinion. I don't
8 know what I'm supposed to say, so you tell me.
9 Should I continue or not?
10 Q. I'll go to the next question.
11 MR. BOYD: Your Honor, I am just going
12 to state I think the witness should be given some
13 latitude to answer the questions fully and
14 completely.
15 THE COURT: I think she answered,
16 granted a limited answer. She asked: Should I go
17 on? Mr. Slotchiver didn't seem to want her to. I
18 instructed her no.
19 THE WITNESS: Excuse me, Judge.
20 Should I ask you?
21 THE COURT: No, ma'am, not directly.
22 If I need to get involved, I will, ma'am.
23 THE WITNESS: Okay. Thank you.
24 THE COURT: Thank you.
25 BY MR. DAN SLOTCHIVER:

1 Q. Mrs. Cohen, I want to move along and
2 discuss some activities in your capacity as
3 trustee with you, okay. I'm assuming in that
4 capacity, you've been following -- you followed
5 both the cases in South Carolina and in California
6 very closely?
7 A. I followed them?
8 Q. Yes.
9 A. You mean I was aware of everything.
10 Yes.
11 Q. Are you familiar with an argument that
12 was made with reference to -- at first in a
13 petition -- you know who John Kachmarsky is in
14 this case?
15 A. Yes.
16 Q. Are you familiar with who he is?
17 A. Yes.
18 Q. And are you familiar that he submitted
19 a bill for his time, and an argument was made by
20 your counsel that it would be unreasonable or that
21 it would be inappropriate to pay a lawyer for
22 research? Are you familiar with that?
23 A. Yes.
24 Q. I believe we have a transcript, if it
25 helps to put up, but you're familiar with that.

1 And the argument being, I take it,
2 that it's unreasonable to pay research because
3 lawyers, that's their -- they're hired to know the
4 knowledge, correct?
5 MR. BOYD: Objection, Your Honor.
6 THE WITNESS: I don't know.
7 THE COURT: Excuse me.
8 MR. BOYD: I'm really befuddled by the
9 relevance of any of this.
10 MR. DAN SLOTCHIVER: I'll show the
11 relevance, Your Honor, if I can have a little bit
12 of latitude.
13 THE COURT: I'll let him proceed.
14 BY MR. DAN SLOTCHIVER:
15 Q. For example, on the board you'll see a
16 copy of the transcript that shows an argument that
17 I take it everything that was done by your counsel
18 was on your behalf, but it says: I have issues
19 with billing clients for research when the
20 research becomes extraordinary. I take it you
21 agree with that position? Your lawyer made the
22 argument on your behalf.
23 A. Yes, the lawyer made the argument on
24 my behalf, but I don't know what extraordinary
25 means in legal research.

1 Q. I'm sorry?
2 A. I don't know what extraordinary means
3 in legal research.
4 Q. But would you agree with the statement
5 that your lawyer made?
6 MR. BOYD: Your Honor, whether --
7 objection. My client wasn't in the room, and we
8 never discussed my statement in court. My
9 statement in court is not something that
10 Mr. Slotchiver can use to impeach any credibility
11 on the part of my client.
12 MR. DAN SLOTCHIVER: Your Honor, if I
13 could have some latitude or if we could approach
14 the bench.
15 THE COURT: Approach, please.
16 (Bench conference was held out of the
17 hearing of the court reporter.)
18 BY MR. DAN SLOTCHIVER:
19 Q. Mrs. Cohen, are you likewise familiar
20 with the fact that in the deposition taken of John
21 Freeman, he was asked about the issue of research?
22 John Freeman is the expert that we listed, that
23 Dan Dorn listed, in this case.
24 A. Right.
25 Q. Are you familiar with the fact that he

1 also was asked about research and -- if we could
2 put it up there. With reference to him, the
3 question was asked: I agree with you that the
4 matter has been resolved, but would you agree with
5 my statement that extraordinary research is
6 something that, in any fee petition scenario, the
7 court ought to take a look at?
8 Once again, this was done on your
9 behalf as a fiduciary. Do you agree that research
10 is something that has to be looked at before it's
11 paid?
12 A. That it should be looked at?
13 Q. Before you pay legal research,
14 especially extraordinary research, that you have
15 to really look at it and make sure that it's
16 something that should be paid as part of legal
17 fees. That's the argument that was rendered with
18 reference to Mr. Kachmarsky, it's the argument
19 that was rendered with reference to John Freeman.
20 Would you agree with that statement that counsel
21 made on your behalf?
22 A. I don't have enough information. I
23 don't know. I'm not a lawyer. I don't understand
24 what you're asking me.
25 Q. Well, what I'm asking you is do you

1 agree that paying a lawyer for his time is
2 distinguished from paying a lawyer for his
3 research?
4 A. I have no idea. I don't know. I
5 don't understand.
6 Q. Well, you're familiar with the fact
7 that your lawyer has made these arguments. Did
8 you disagree with him when you learned that?
9 A. No. I didn't -- I didn't read them.
10 He just talked to what's-his-name.
11 MR. BOYD: Your Honor, again, I'm
12 going to --
13 MR. DAN SLOTCHIVER: She can answer
14 the question.
15 MR. BOYD: She's answered the
16 question, Your Honor.
17 THE COURT: I think she's answered.
18 She doesn't understand him.
19 MR. BOYD: And I'm going to renew my
20 objection. She was not in either room when either
21 statement was made.
22 THE COURT: Thank you, Mr. Boyd.
23 She's answered she doesn't understand.
24 BY MR. DAN SLOTCHIVER:
25 Q. Have you reviewed legal fees submitted

1 by counsel in your capacity as trustee?
2 A. Submitted by counsel with Abbie?
3 Q. Submitted by your lawyers. Have you
4 reviewed the legal fees submitted by lawyers hired
5 by you as a trustee?
6 A. Wait a minute. You mean back in --
7 what Abbie -- what I was doing for Abbie?
8 Q. Yes. We've already put into the
9 record that over a million dollars was spent from
10 the trust in legal fees. Did you review the legal
11 fees?
12 A. For Abbie, yes.
13 Q. Well, you say for Abbie. As a trustee
14 who would receive the bills and then pay the bills
15 that you've already talked about and admitted into
16 evidence, did you review those bills?
17 A. Abbie's bills, yes.
18 Q. The bills submitted to the trust?
19 A. The bills submitted to the trust, yes.
20 Q. I'm going to suggest to you that the
21 research fees that I've seen related to attorneys
22 bills are in excess of $125,000, which looks to me
23 to be over 10 percent -- $118,000. Looks to me to
24 be over 10 percent of the amount of monies that
25 were spent. Would you consider that to be an

1 extraordinary amount of money for research?
2 A. I have no idea.
3 Q. Did you ever question counsel, any
4 counsel that was retained by the trust, about the
5 fact they were billing so much money for research?
6 A. For research?
7 Q. Yes, for legal research.
8 A. I don't know what the difference is.
9 I don't understand what you're asking me at all.
10 I don't know where one draws a line. I don't
11 understand any of this.
12 Q. Let's talk about it. Legal research,
13 under my scenario that I'm suggesting to you,
14 would be when a lawyer sits down with the books or
15 on a computer and looks at the law and researches
16 cases or researches the law or researches
17 precedent, as distinguished from the lawyer being
18 on the telephone, going to court, taking a
19 deposition, meeting with the client, reviewing his
20 file. That is one category. A different category
21 would be research, where you're actually
22 researching an issue. You're going to the books.
23 That is what I'm referring to as research. Does
24 that make it a little clearer?
25 A. Yes.

1 Q. Understanding that to be a definition
2 of research, did you ever pay attention to the
3 fact that close to $120,000 was spent related to
4 research?
5 MR. DAVIS: Your Honor, I'll have to
6 object. How can we say that this number was
7 exactly what he's talking about, legal research?
8 He's trying to make her say that this is an
9 unreasonable amount of money. We haven't looked
10 at that.
11 MR. DAN SLOTCHIVER: I'll be happy to
12 do it. I'll be happy to show them.
13 THE COURT: Thank you.
14 BY MR. DAN SLOTCHIVER:
15 Q. Let's take a look. The year 2010,
16 these are copies of billings that have already
17 been submitted by -- submitted into evidence
18 without objection, and what I've done to help
19 facilitate this is everywhere that research shows
20 up, we went ahead and showed it, showed the
21 numbers.
22 So why don't we start, and we can show
23 the numbers. So we have, for example, under this
24 bill, Cohen 3440, we show a total of $501.50.
25 MR. DAVIS: Your Honor, the objection

1 is this: He's got -- this entry says review of,
2 and it's got pleadings, and it's got research
3 memoranda. Clearly, 1.5 was not spent on legal
4 research for this entry, so I'm not sure if
5 Mr. Slotchiver's saying that he takes 1.5, $442,
6 and attributes that to legal research. That's not
7 accurate. I mean, we need -- this looks like it
8 may be five minutes or ten minutes. This could be
9 the majority of the time. How can we pull that
10 number from that?
11 MR. DAN SLOTCHIVER: Your Honor, we
12 don't have speaking objections. Were we in front
13 of the jury, I would object and ask that they be
14 excused to argue this matter, because the speaking
15 objections, I would argue, are being promoted to
16 advise the client.
17 Here we're using the documents we've
18 been provided. They chose to redact these
19 documents. We did not. And what I can show
20 Mrs. Cohen, if you'll let me proceed, is
21 everywhere that we saw the word legal research, we
22 tallied it up. We tallied the bill. And the
23 court can take it for -- take the value of it
24 however they want to, but I just want to be able
25 to show the amount of times that we saw research

1 and show the numbers attributed to the research.
2 THE COURT: I'm going to overrule the
3 objection. I think you can --
4 MR. BOYD: Your Honor, can I just make
5 one point --
6 THE COURT: Yes, sir.
7 MR. BOYD: -- in furtherance of this
8 objection? The comparison is Mr. Kachmarsky
9 submitted a fee petition that was wholly out of
10 step with the fees of the other attorneys involved
11 in the case at the time. We filed an objection.
12 We, in our arguments, mentioned the extraordinary
13 amount of research that we felt had been billed in
14 that fee petition. The court has ruled on that
15 matter. The client -- the witness was not
16 involved --
17 THE COURT: I understand.
18 MR. BOYD: -- in that discussion, the
19 witness was not participating in that argument,
20 the witness did not draft the brief, the witness
21 was not present when either of these statements
22 were made that she's now being judged by.
23 And Mr. Davis's point is that there's
24 many items referenced in the billing entry from
25 EAS, the 1.5 hours, the $442. There are many

1 things that were included that were --
2 essentially, the majority of the bill for that
3 entry was redacted, and Mr. Slotchiver wants to
4 attribute $442.50 to research and asks the witness
5 if she agrees with it. There's no foundation for
6 that, Your Honor.
7 MR. DAN SLOTCHIVER: Your Honor --
8 THE COURT: Mr. Boyd, I'm going to
9 allow him to go forward with this manner of
10 questioning. I can certainly review the exhibits
11 and see what has been redacted, and then I will
12 take into consideration your arguments in
13 determining whether I think those are appropriate
14 or whether there are things left out of it, as you
15 point out.
16 MR. DAN SLOTCHIVER: And if I may have
17 one more point, Your Honor.
18 THE COURT: Yes, sir.
19 MR. DAN SLOTCHIVER: Counsel for the
20 Cohens has subpoenaed and listed as a witness
21 their litigation counsel in California. When
22 their litigation counsel comes to testify, I would
23 assume that would waive any attorney-client
24 privilege. If they intend to provide their
25 litigation counsel to testify and they intend that

1 the privilege be waived, then they certainly have
2 the opportunity, if they so desired, to unredact
3 all of these documents, but they chose not to do
4 that.
5 And once again, I'm seeking discovery,
6 and I'm using the information that I've been
7 provided with. I haven't been supplemented new
8 issues or new numbers or anything else since then,
9 so I'm using the best I can with what I've been
10 given in light of the entire situation.
11 THE COURT: Certainly. I understand.
12 Mr. Kachmarsky?
13 MR. KACHMARSKY: First, Your Honor,
14 I'd like to object. We had made it clear that it
15 was either going to be Mr. Boyd or Mr. Davis, and
16 not both, and I think we've heard from both of
17 them now multiple times during Mrs Cohen's
18 testimony, so one or the other would be my
19 objection to both of them.
20 Secondly, with regard to this issue,
21 this is not about my bill, it's only about the
22 issue of the legal research, and it's not
23 appropriate for me to charge for it, but it seems
24 to be appropriate for California counsel to charge
25 for it.

1 THE COURT: Thank you. I understand
2 that.
3 Mr. Boyd, if you could clarify which
4 one of you might be raising objections. I would
5 encourage that we only hear from one of you.
6 MR. BOYD: Your Honor, my
7 understanding of your ruling was that we could
8 both comment.
9 THE COURT: You're right, you're
10 right, but it's 4:30, and we have barely started,
11 so --
12 MR. BOYD: I understand that. We'll
13 try to rein that in, Your Honor, within the spirit
14 of your order.
15 THE COURT: If you could do that, I
16 would appreciate it.
17 MR. BOYD: Thank you.
18 THE COURT: Thank you.
19 Mr. Slotchiver?
20 THE WITNESS: Do you want to ask me
21 the question again?
22 BY MR. DAN SLOTCHIVER:
23 Q. If you look at the total of the
24 numbers running on the side, would you agree that
25 they total up to be $501.50?

1 A. The numbers?
2 Q. Yes, the numbers.
3 A. Yes, the numbers add up.
4 Q. Let's go to the next one. Here's the
5 next entry, which has been submitted, and this is
6 Cohen 3440. Continue legal research on, leaves
7 blank what the on is. That number is $88.50.
8 Would you agree that the total adds up to be $590?
9 A. Yes.
10 Q. And we can keep going through these
11 one at a time, if you like, we'll tally as we go,
12 or if counsel will stipulate, we'll be happy to
13 that do that also.
14 The next reference on February 28th,
15 2010, review law review articles regarding
16 something for $737.50. Running total, $1,327.50.
17 You'll agree with that?
18 A. You're asking me about math? Yeah.
19 Q. We can go to the next one. Finish
20 review of law review article, three-and-a-half
21 hours, $1,032.50. Now we're at $2,360. Do you
22 agree with that number?
23 A. Yes.
24 Q. The next one. That was $221. The
25 next one is February 29th, 2010, research re

1 something -- I don't know what it was for -- $59.
2 Now we're at $2,419. Do you agree with that?
3 A. Yes.
4 Q. The next one, research something,
5 draft an email, $59, running total $2,478. Do you
6 agree with that number?
7 A. Yes.
8 Q. The next one, several entries in
9 March 2010 related to research, running total
10 $2,655. Would you agree with that?
11 A. Yes.
12 Q. Would you like me to keep going
13 through each one of these?
14 A. No. I've forgotten the question,
15 though.
16 Q. Well, I'm confirming -- I have asked
17 you if you would agree with the fact that there
18 were $118,000 worth of entries referencing
19 research, and you said --
20 A. Referencing research?
21 Q. -- you don't know if you can agree
22 with that, so I'm going through them one by one.
23 A. Well, I think that they reference
24 research, but I know, with all the nonsense that
25 Vicki -- the mud Vicki kept throwing, that most of

1 it had to do with pleadings, so I don't
2 understand.
3 MR. DAN SLOTCHIVER: Your Honor, I
4 would ask to strike the record with reference to
5 the comment about the nonsense of Vicki. It's not
6 responsive to the question, it brings in evidence
7 that's not before the court, and it's
8 inappropriate.
9 THE WITNESS: Okay. Then you just
10 want my answer?
11 THE COURT: Ma'am, let me --
12 THE WITNESS: I'm sorry.
13 THE COURT: I'll strike the answer.
14 MR. DAN SLOTCHIVER: Thank you, Your
15 Honor.
16 BY MR. DAN SLOTCHIVER:
17 Q. Would you agree with the fact that the
18 number of $118,640.82 is, in fact, a correct
19 number with regard to the tally of entries for
20 research?
21 A. Not if you're only going to say
22 research, no. I wouldn't agree with that.
23 Q. Well, said differently, with regard to
24 the tally of entries wherein research was
25 referenced? We can keep showing. Let's go to the

1 next one.
2 A. Yes, it was referenced, but all of it
3 was not about research, so no, but the math is
4 right.
5 Q. Do you know what else this one was
6 about, for example, March 31st, 2010, two hours,
7 $800?
8 A. Do I know what it was about, are you
9 asking?
10 Q. What this research or this billing
11 would have been about, can you advise the court?
12 A. I can't advise the court on anything.
13 Q. Well, you say that it's not all about
14 research. I'm curious what did you know about
15 this bill.
16 A. About that particular bill? All I
17 know is that there were always -- in California,
18 you have to respond to anything that's thrown at
19 you, and most of it was just responding to this --
20 I won't use the word junk, but the things that
21 were thrown at us. It was defensive.
22 Q. My question is not about responding to
23 pleadings or responding to motions or going to
24 court. My questions right now are solely limited
25 to the issue of research.

1 A. But it also involved other things.
2 Q. This particular billing, two hours,
3 what else did this one -- what else was included
4 in this one, if you know?
5 A. I don't know. I don't even know what
6 that means by all that. Related to cases and law
7 review articles, obviously, they had to defend
8 something that was sent to them, so she had to
9 write something.
10 Q. What were they defending with
11 reference to this legal research?
12 A. How would I know? I don't know what
13 you're -- how am I supposed to know these answers?
14 Q. I'm trying to ascertain the total
15 amount -- I'm trying to ascertain if you agree
16 with me that there are $118,000 worth of
17 expenditures, in one way or another, based on
18 billing entries, related to research, and that's
19 the question.
20 A. I'd say no. I don't know how much of
21 it was that. How can I say yes when I don't know
22 what you're --
23 Q. Based on this entry, we've got a
24 running tally of $3,455.
25 A. You have a running tally, but we don't

1 know what's for what.
2 MR. BOYD: Your Honor, I'm going to
3 object. She's given her opinion on each item.
4 THE WITNESS: I don't know.
5 THE COURT: Mr. Slotchiver?
6 BY MR. DAN SLOTCHIVER:
7 Q. Based on the numbers on the column
8 without the blacked-out information there, do you
9 agree with me so far the running total is $3,455?
10 MS. HEDGEPATH: Your Honor, she has
11 answered that. She's told him no.
12 MR. DAN SLOTCHIVER: She has not.
13 THE WITNESS: No, no, I won't agree
14 with you.
15 THE COURT: Okay. Mr. Slotchiver?
16 BY MR. DAN SLOTCHIVER:
17 Q. Well, let's go to the last one.
18 A. Last one what?
19 Q. The one before this one. We showed a
20 running tally before of $3,655, that we agreed
21 that was the number -- or $2,655, and the next
22 number we're going to add to it is going to be the
23 $800 number. Would you agree that the $800 number
24 plus the $2,655 is, in fact, $3,455?
25 A. The number?

1 Q. Yes, the running total.
2 A. I will agree that the numbers add up.
3 Q. Let's go to the next one. The next
4 number we show is $1,180.
5 MR. BOYD: Your Honor, I'm going to
6 object again. He can stand here all day,
7 Mr. Slotchiver, and present numbers to her and ask
8 her if the numbers add up, but she's not agreed to
9 the underlying substantive question, so we're
10 wasting everybody's time.
11 MR. DAN SLOTCHIVER: Your Honor, as a
12 fiduciary, she is not insulated by the activities
13 or the comments or the representations of her
14 counsel. The mere fact that her counsel told her
15 she could do something, for example, does not
16 protect her from it. It's not -- it doesn't give
17 you carte blanche to do whatever you want to do.
18 Now, additionally, when you hire
19 counsel, as a fiduciary, you have the same
20 responsibility, but more than I would have as an
21 individual hiring a counsel, because you're not
22 spending your money, you're spending somebody
23 else's money.
24 THE COURT: Certainly.
25 MR. DAN SLOTCHIVER: And in this case,

1 I believe that it is incredibly important to go
2 through the billings, and if she can't -- if she
3 won't acknowledge that in one way or another the
4 billings on the bill sheets that were submitted
5 are related -- or total up to the $118,000 number,
6 which we would argue by supporting documents that
7 her counsel has articulated not once, but twice,
8 both in the hearing with Kachmarsky and in the
9 deposition of Freeman, both times that
10 extraordinary expenses are inappropriate.
11 Now, her counsel would be an extension
12 of her, and as an extension of her, these are
13 representations made by her counsel about views
14 that obviously he's taking on her behalf. So I'm
15 trying to understand if she's acting consistently,
16 with the arguments that were put forth both in
17 this court and in the deposition testimony, or if
18 she's acting inconsistently with the arguments.
19 In other words, when it's good for her, it's good.
20 When it's not good for her, it's not.
21 And in order to understand that, I
22 think it is relevant to go through these fees and
23 to understand if she agrees with me, at the very
24 least, that the total amount of monies related in
25 one way or another, based on billing statements,

1 is $118,000, understanding, based on your earlier
2 ruling, that you will give it the credence you
3 believe it appropriately deserves based on the
4 limited information you have.
5 And when you couple it, Your Honor,
6 with the comment that we made earlier, which was
7 that I don't have the ability to see what's
8 unredacted, and it would be unfair, I believe, to
9 cloak yourself by redacting documents and then
10 saying, well, you can't tell me what it's for, and
11 therefore, you can't question us about these,
12 especially in light of the fact they're bringing
13 in counsel to testify. They've listed her as a
14 witness. So that's why I want to go forward with
15 the questions.
16 MR. BOYD: Your Honor, if I may
17 respond, some of these entries are not redacted,
18 and we could make the same argument. Just the
19 mere fact that the matter was raised, he's
20 attributing -- he's holding the witness
21 responsible for my statements. The mere fact that
22 the matter was raised in the John Freeman
23 deposition had nothing to do with my statements
24 about John Kachmarsky's billings. The matter was
25 raised in the expert deposition of Mr. Dorn,

1 because for whatever reason, Mr. Dorn's counsel
2 asked Mr. Freeman to do research in support of
3 John Kachmarsky's petition.
4 MR. KACHMARSKY: I object to that.
5 That is not what he said in his deposition.
6 MR. BOYD: Well, Your Honor, we can
7 pull the deposition. We can go look at the
8 deposition if we need to, but that's --
9 MR. DAN SLOTCHIVER: Mr. Freeman will
10 be here to testify.
11 MR. BOYD: So, Your Honor, the point
12 is Mr. Freeman raised the issue in his expert
13 opinion. We did not raise the issue in the
14 Freeman deposition. I was not there to talk to
15 Mr. Freeman about extraordinary legal research. I
16 asked him about his opinions.
17 He raised the opinion regarding
18 research. I asked him why that was relevant, and
19 he referenced the reference that I made in
20 connection with the Kachmarsky fee petition. But
21 again, the witness knew nothing about either of
22 those statements, had no connection to either of
23 those statements, and she's testified as to her
24 opinion. She's answered the question. She's
25 given him his understanding.

1 We can go through each one of these
2 entries -- we can go through each one of these
3 entries, and the only thing she can agree to at
4 this point is arithmetic, whether the numbers, in
5 her opinion, agree.
6 MR. DAN SLOTCHIVER: And that's what
7 I've asked her to do. I've asked if she'll agree
8 that the numbers do add up, and if she won't, we
9 can go through them and add them up one by one.
10 With reference to the comment that it
11 wasn't asked, it was clearly asked. He asked
12 Mr. Freeman directly that question at the
13 deposition. We can highlight it right here and
14 show it to the court, question by Reese Boyd: But
15 would you agree with my statement that
16 extraordinary research is something that in any
17 fee petition scenario, the court ought to take a
18 look at it?
19 And Your Honor, this is not an
20 individual's right, no different than a fee
21 petition by somebody submitted who's been
22 appointed by the court and regulated by the court.
23 In the same manner, the trustee, they're regulated
24 by the court. It's not really a big hop and jump.
25 So I think they really are -- we're talking the

1 same thing.
2 THE COURT: Mr. Boyd, I think I should
3 allow the questions by Mr. Slotchiver. She's
4 answered. She can tally them up. That's all he's
5 asking her right now.
6 MR. BOYD: Thank you, Your Honor.
7 THE COURT: Mr. Slotchiver?
8 MR. DAN SLOTCHIVER: Thank you, Your
9 Honor.
10 BY MR. DAN SLOTCHIVER:
11 Q. Mrs. Cohen, I'll show you the next
12 one. If you want, we'll take the --
13 A. Let's go back to the last one where it
14 talked about court appearance, appearance in
15 court.
16 Q. Right.
17 A. That I happen to know that every time
18 they went to court, they sat for hours, so
19 probably three hours and 35 minutes or 45 minutes
20 was sitting in court waiting to appear.
21 Q. So is it your opinion, then, that
22 every single time they went to court, they would
23 sit in court for three hours and 45 minutes?
24 A. I don't know every time. I know there
25 were many times when they were there most of the

1 day.
2 Q. And are there other times when they go
3 there briefly?
4 A. No. There was never a time when they
5 went there briefly.
6 Q. Do you have any evidence to support
7 your position that on March -- that the bill
8 referenced on March 31st, 2010, this particular
9 entry, that three hours and 45 minutes of the four
10 hours was spent sitting in court?
11 A. I can't say that it was that long, but
12 I know how long it takes to drive back and forth,
13 et cetera, et cetera. There's no way it was --
14 Q. Would you agree with me that the
15 tally, if we take the number, since we don't know
16 what portion of it was related to anything,
17 because it's not on the sheet of paper, would you
18 agree with me that the tally, adding this number,
19 the running total is now $4,635?
20 A. Yes.
21 Q. Let's go to the next one. Would you
22 agree with the running tally on this one?
23 A. Yes.
24 Q. Now up to $4,835?
25 A. Yes.

1 Q. Let's go to the next one. Legal
2 research regarding something, review of statutes,
3 analogous cases. Would you agree that the tally,
4 adding this number, is now $6,435?
5 A. Yes.
6 Q. Adding $90, tally is now $6,525. Do
7 you agree with that?
8 A. What is the date on that?
9 Q. The date on this one is from the
10 statement through March 31st, 2010.
11 A. I'll agree with the math.
12 Q. And this billing shows -- I can't see
13 the date on it.
14 A. It doesn't -- I'll agree with the
15 math.
16 Q. Do you agree with the math?
17 A. I'll agree with the math.
18 Q. Do you want me to continue going
19 through them one by one?
20 A. No. What do you want from me?
21 Q. I'm asking if you would agree with me
22 that the total amount, total tally of references
23 which stated research in one place or another,
24 referenced a total tally of $118,640.82?
25 MR. BOYD: And Your Honor, again,

1 objection. That question has now been asked a
2 total of five times.
3 MR. DAN SLOTCHIVER: We can keep going
4 through them one by one, if you like, Your Honor.
5 I was trying to see -- she said that she'll agree.
6 If she wants to agree, great. If not, I can do
7 them one by one.
8 THE COURT: I'll see if she wants to
9 answer the question.
10 THE WITNESS: I thought I already
11 answered the question. I agree with your math.
12 BY MR. DAN SLOTCHIVER:
13 Q. So to be clear, you agree with the
14 math as to the $118,640, you don't agree that all
15 the time was necessarily related to legal
16 research?
17 A. That's right. I don't agree with
18 that.
19 Q. But you agree with the first part?
20 A. I agree with that you can -- you have
21 a good accountant. You can add.
22 Q. Do you agree with the numbers? That
23 wasn't really responsive. You said we have a good
24 accountant. We can add. Thank you, but I'm just
25 trying to make sure that we've got a clear record.

1 A. Yes, the numbers --
2 Q. You agree with the $118,640.82 --
3 A. -- appear to be correct.
4 Q. -- limited in fact --
5 A. The math appears to be correct.
6 MR. DAN SLOTCHIVER: Your Honor, can
7 we proceed until 5:00? Is that my understanding?
8 I want to move to another issue, but I wanted to
9 make sure.
10 THE COURT: 5:00, we must stop.
11 MR. DAN SLOTCHIVER: Would you like me
12 to continue at this point or to take a break and
13 start anew tomorrow?
14 THE COURT: 15 minutes, I mean. It's
15 up to you.
16 MR. DAN SLOTCHIVER: I'm happy to go.
17 Whatever you prefer.
18 THE COURT: I don't have an objection
19 if you've got a few things you want to ask her.
20 If you're going to move on to an entirely new
21 topic --
22 MR. DAN SLOTCHIVER: It's a new topic.
23 THE COURT: Then I suggest -- it's a
24 quarter 'til 5:00 -- that we adjourn for the day
25 and start fresh in the morning.

1 MR. DAN SLOTCHIVER: Thank you, Your
2 Honor. Then in that vein, we will do that.
3 Tomorrow -- you had asked that I
4 identify who we plan to call as witnesses --
5 THE COURT: Yes, yes, sir.
6 MR. DAN SLOTCHIVER: -- on a daily
7 basis. Tomorrow I anticipate attempting to finish
8 with Susan Cohen. I believe that it will take the
9 better part of the day, and when we finish with
10 her testimony, we intend to call Paul Cohen. But
11 when I add Susan Cohen's testimony and I add the
12 cross-examination by the parties, I think it will
13 take the majority of the day, if not the whole
14 day.
15 The only guidance I would ask from
16 you, Your Honor, is that after Paul Cohen, that I
17 would be hard-pressed to believe that we will
18 finish both of them tomorrow. Maybe if we work a
19 little later, we can actually finish them.
20 The next witness I would call would be
21 John Freeman, and the guidance I would ask from
22 the court is I would prefer not to have
23 Mr. Freeman travel to Myrtle Beach tomorrow under
24 the possibility that he'll be called, and I would
25 ask instead that I can allow him or that you would

allow him to come, assuming we've made good progress, to come on Wednesday morning, and if necessary, I'll take him out of order in order to accommodate him and to get him in and out, if that would be agreeable.

THE COURT: So you are requesting that he be allowed to drive down on Wednesday morning, to testify that morning at some point, instead of asking him to be here --

MR. DAN SLOTCHIVER: And I don't -- I mean, I believe it's about a three-hour ride from Columbia.

THE COURT: About two-and-a-half.

MR. DAN SLOTCHIVER: Two-and-a-half. My guess is we'll have plenty of early morning work to do. If we can have him here -- I don't know what the court could agree to. We could have him here at 10:30 or 11:00 o'clock. I just hate to have him come and spend the night unnecessarily and hate to have him come and leave at 5:30 in the morning to be here at 8:00.

THE COURT: And I'm assuming you're going to be speaking with him, or someone?

MR. DAN SLOTCHIVER: I will coordinate with him, yes, absolutely.

THE COURT: Maybe you can ask him if we want to start off with him or start shortly with him on the morning, how early he anticipates being able to get on the road and what time he anticipates being able to get here. I would think by 10:00 o'clock, he could be here.

MR. DAN SLOTCHIVER: Could we agree that I will not need to put him on the stand tomorrow, and between now and tomorrow morning, I will confer with him, and first thing tomorrow morning, I will advise the court as to what we could do with him, and I would imagine that would probably work very well. I just don't want to be in a position where I've got to tell him to be on stand-by to travel here tomorrow when I don't really anticipate that's going to --

THE COURT: I'm fine with that. I would think that we could finish up with Mrs. Cohen, Mr. Cohen tomorrow, there's going to be cross-examination of witnesses, so we would expect him on Wednesday morning, and maybe he can -- if he's on the road by 7:00 o'clock, he should be able to be here by 10:00 o'clock.

MR. DAN SLOTCHIVER: Absolutely.

THE COURT: And then if there's some

things we can do before he gets here, we could certainly do that.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Any objections to that, Mr. Boyd?

MR. BOYD: No objections, Your Honor.

THE COURT: We're going to adjourn for the day. We'll start in the morning at 8:30. If counsel wants to leave whatever in the courtroom, we will make sure that the courtroom is locked within just a few minutes, and it'll be open in the morning probably about 8:15 or so.

MR. DAN SLOTCHIVER: And I'm not sure if Your Honor has cautioned, but I understand the witness cannot speak to counsel or other people about this case until her testimony is done.

THE COURT: Yes. I'm going to instruct the witness you cannot speak with your husband about your testimony or the case, nor your legal counsel or anyone else, all right.

THE WITNESS: Okay. Thank you.

THE COURT: Thank you.

MR. DAVIS: Your Honor, we can still talk with Dr. Cohen, I'm assuming?

THE COURT: Certainly.

Anything else?

All right. We're adjourned.

(The proceedings were adjourned at 4:47 PM.)

1 CERTIFICATE OF REPORTER
2
3 I, Marie H. Bruegger, Registered Professional Reporter, Certified Realtime
4 Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the
5 foregoing transcript is a true, accurate, and complete record.
6
I further certify that I am neither
7 related to nor counsel for any party to the cause pending or interested in the events thereof.
8
Witness my hand, I have hereunto
9 affixed my official seal this 16th day of October, 2013, at Charleston, Charleston County, South
10 Carolina.
11
12
13
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15
16
17
18
19
20
21 Marie H. Bruegger
Registered Professional
22 Reporter, CCR
My commission expires
23 April 18, 2021
24
25

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STATE OF SOUTH CAROLINA
PROBATE COURT
COUNTY OF HORRY
DANIEL B DORN, in his Capacity as the Parent and Natural Guardian of Esti Dorn, Reuvi Dorn, and Yosse Dorn,
Petitioner,
CASE NO. 2008-GC-26-25
vs. CASE NO. 2008-GC-26-50
PAUL S. COHEN and SUSAN COHEN, individually and in their capacity as the Co-Conservators of the person of Abbie Ilene Dorn, a protected person and ward, and in their capacity as Co-Trustees of the Abbie Dorn Special Needs Trust,

Respondents.

VOLUME II

BEFORE: HONORABLE DEIRDRE W. EDMONDS, Judge

DATE: February 26, 2013

TIME: 9:35 AM

LOCATION: Horry County Courthouse
1301 Second Avenue
Conway, SC

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

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15 (INDEX AT REAR OF TRANSCRIPT)
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25

1 THE COURT: We are back on the record
2 this morning in the matter of the Abbie Dorn
3 Special Needs Trust, 2008-GC-26-50, and the matter
4 of Abbie Dorn Conservatorship, 2008-GC-26-25.
5 Mr. Slotchiver?
6 MR. BOYD: Actually, Your Honor,
7 before we --
8 THE COURT: Mr. Boyd?
9 MR. BOYD: Before we get started, I
10 was wondering if I could get, just as a
11 housekeeping item, just a little bit of guidance.
12 I want to clarify, if we can, the court's
13 instructions from yesterday morning.
14 My understanding about the treatment
15 of the witnesses in the case is that
16 Mr. Slotchiver gets to call his witnesses, and
17 everybody will have an opportunity to cross, and
18 then I presume we'll go next, Your Honor. I'll
19 get a chance to call my witnesses.
20 THE COURT: In opposition to his
21 petition and in support of yours.
22 MR. BOYD: Yes. And I'm not -- no
23 second bite at the apple, I understand that, Your
24 Honor, but then I'll get a chance to call all the
25 witnesses, including those that have already

1 testified, as a direct.
2 THE COURT: Any objection to that,
3 Mr. Slotchiver?
4 MR. DAN SLOTCHIVER: Well, I think
5 it's -- first, let's start with the motion they
6 filed.
7 THE COURT: Pardon me?
8 MR. DAN SLOTCHIVER: Let's start with
9 what they filed. They filed a reformation action
10 based on basically the convenience of being able
11 to sign checks without having to get court
12 approval. That's the crux of their case. So if
13 it's limited to that, then we have no objection,
14 but what I don't want to have happen is reengaging
15 each witness over the same issues we've already
16 had testimony over.
17 THE COURT: Which is primarily
18 regarding your petition, I believe.
19 MR. DAN SLOTCHIVER: Which is both my
20 petition and Mr. Kachmarsky's petition, which is
21 coincided with the case. My understanding is you
22 said we're going to hear it all at once, and if an
23 issue develops, you'll consider a motion to
24 bifurcate it, but to re-call -- I understand he
25 can put up his case and put up his defense and he

1 can -- he doesn't have to cross-examine Susan
2 Cohen now, for example. He can wait and call her
3 as a witness, if he wishes to, in this case,
4 but --
5 THE COURT: Which I guess is what
6 you're asking, Mr. Boyd?
7 MR. BOYD: Well, let me clarify, Your
8 Honor. It's not my intent to engage in
9 duplicative testimony. That's not my intent. But
10 what I'd like to do and what I understood the
11 court's instructions yesterday morning would be is
12 I would engage the witness in a typical
13 cross-examination, friendly cross, so to speak,
14 after Mr. Slotchiver has finished with the
15 witness, and then -- but I would like to have the
16 right -- I think my client deserves the right,
17 Your Honor. She's been under examination now for
18 several hours. I'd like to have the opportunity
19 not to duplicate testimony, but to approach the
20 witness as I would have approached her, which is
21 what I understood your instructions to be
22 yesterday morning, to cover any areas that I
23 haven't addressed in responding to
24 Mr. Slotchiver's questions. It's not my intent to
25 duplicate any testimony, Your Honor, but I have

1 things --
2 THE COURT: In support of your
3 petition.
4 MR. BOYD: Yes.
5 THE COURT: Yes, at the same time that
6 you're questioning her in opposition to
7 Mr. Slotchiver's petition. Or are you asking an
8 opportunity to re-call her?
9 MR. BOYD: I'd like the opportunity to
10 re-call her, Your Honor, because she's been on the
11 stand for quite some time. She's been under
12 Mr. Slotchiver's questioning for an extended
13 period of time. I'd like the opportunity to call
14 her. My understanding was the court gave the
15 instruction that we would have the opportunity to
16 re-call witnesses.
17 THE COURT: I think you will have the
18 opportunity, if it becomes necessary, but I
19 thought we were going to try to streamline this a
20 little bit, and during your examination of the
21 witnesses, you would also cover with them any
22 testimony in support of your petition.
23 MR. DAN SLOTCHIVER: That was my
24 understanding.
25 MR. BOYD: That was not my

1 understanding, Your Honor.
2 THE COURT: I would like to go forward
3 in that manner, and if it turns out that there are
4 some problems with that logistically with your
5 client or with the other witnesses, then I'm happy
6 to hear some type of motion to allow you to then
7 re-call her or whatever witnesses there are.
8 MR. BOYD: I understand, Your Honor.
9 I would simply state that my understanding of the
10 court's order Monday morning, yesterday morning,
11 was that the court specifically indicated that we
12 would have an opportunity to re-call the
13 witnesses, even though that they had already been
14 called.
15 And I think the reason that's
16 significant, Your Honor, is if we were the
17 petitioner, and we have our petition that's
18 pending as well, I would present the case slightly
19 differently than I will in response to
20 Mr. Slotchiver's questioning, but I understand the
21 court's ruling. I just --
22 THE COURT: So you want an opportunity
23 to call your witnesses in the order you would like
24 to hear them and elicit whatever testimony --
25 MR. BOYD: My understanding of the

1 court's ruling Monday morning, Your Honor, was
2 that you were going to let Mr. Slotchiver call his
3 witnesses. We'd have cross. I interpreted that
4 to be somewhat limited, that I would be limited to
5 cross, as I would be typically, and I'd get to
6 call my witnesses, Ms. Hedgepath would get to call
7 her witnesses, et cetera, et cetera, and perhaps
8 we work it that way.
9 It's not my intent to duplicate
10 testimony. I'm not intending to ask her the same
11 questions or give her a second bite of the apple.
12 I just prefer -- I think it's -- and I think my
13 client's procedural due process rights should
14 allow the opportunity for her to be cross-examined
15 now on Mr. Slotchiver's examination and then to
16 simply have a --
17 THE COURT: Take a break.
18 MR. BOYD: Take a break, quite
19 frankly.
20 THE COURT: From being on the stand.
21 MR. BOYD: Yes, ma'am, because I would
22 present this case -- obviously, the flow of the
23 testimony, Your Honor, the presentation, every
24 case has a theme, Your Honor, and I'd like the
25 opportunity to bring her back and talk about those

1 areas that I don't need to deal with in response
2 to Mr. Slotchiver's testimony.
3 MR. DAN SLOTCHIVER: And Your Honor,
4 once again, the case they filed is just purely
5 it's simpler to be able to sign the checks without
6 authority, so we're asking you to give us that
7 permission. I fail to see -- this is not a
8 scenario we've got two complicated lawsuits that
9 are different than each other.
10 Our lawsuit is very different than
11 theirs in the sense that we are alleging breaches,
12 and we're alleging failure to act appropriately.
13 Mr. Kachmarsky's similarly -- his counterclaim has
14 propounded similar allegations, but the lawsuit
15 that they're talking about is more as an ease to
16 the court, which is we just want to reform the
17 trust so that we don't have to come to the court
18 every time to get permission. I fail to see how
19 that can't be handled in a cross-examination.
20 Frankly, Your Honor, it appears to me
21 that that argument is one for the court to
22 consider, and primarily, my speculation is the
23 court's going to consider that based on the
24 behavior that's been presented and will be
25 presented to the court, and do you determine

1 they've acted appropriately, and do you determine
2 that it would be a prudent measure to allow them
3 to act without court authority, despite everything
4 that's come up there.
5 They're trying to raise their case to
6 a level that deserves a separate type of
7 litigation with new calling of witnesses. And
8 Mrs. Cohen has been on the stand yesterday, and I
9 anticipate she'll be on the stand for a good part
10 of today, and then she'll be cross-examined, but
11 other than saying why do you want to reform the
12 trust and her saying because it's easier than
13 having to petition to go to court every time to do
14 it, I can't fathom what else their case can really
15 be about.
16 Now, the defense obviously -- or the
17 opposition's going to be that we don't think you
18 should be -- we don't think your past history has
19 indicated that you should be allowed to be given
20 this change in the trust, but they're very
21 different arguments.
22 THE COURT: Mr. Boyd?
23 MR. BOYD: Your Honor, exactly. First
24 of all, Mr. Slotchiver's oversimplifying the case.
25 The case that the Cohens brought was a case to

1 approve -- affirm second payments that had already
2 been made, but also to reform the trust, but
3 again, it's effectively a separate matter.
4 It's the same question that would
5 arise -- and again, I'm basing my impression/my
6 understanding on what I understood the court to
7 rule Monday morning. My understanding was the
8 court specifically said that we'd have the right
9 to re-call witnesses.
10 THE COURT: I did say that.
11 MR. BOYD: And that's -- I think that
12 should -- that was the decision.
13 THE COURT: So you don't want to have
14 to cover in your examination of the witnesses what
15 you would have elicited in your petition?
16 MR. BOYD: It's not my intent to
17 duplicate testimony, Your Honor. I'd just like
18 the opportunity, when Mr. Slotchiver rests, to be
19 able to present my case, including those things
20 from Mrs. Cohen, from Mr. Cohen. I don't know
21 that it will even be necessary, Your Honor. I
22 just want to clarify that that would be an option.
23 THE COURT: I'm going to give him that
24 option, okay, Mr. Slotchiver. I don't want to
25 direct how you try your case and interfere with

1 that. We talked about that briefly this morning
2 when Ms. Moore notified me that she was sick. You
3 didn't want to take Professor Freeman out of
4 order. I don't want to hinder the Cohens' case
5 and how their attorney sees fit to present that.
6 MR. DAN SLOTCHIVER: Your Honor, I've
7 had trials before where the issue became you could
8 cross-examine or you could do direct testimony,
9 but you can't do it both ways. Is that your
10 ruling, that they won't be able to cross-examine
11 the Cohens on these issues and at the same time
12 articulate the same issues in their case?
13 THE COURT: To the extent that
14 Mr. Boyd can question the witnesses while they're
15 on the stand the first time in support of his
16 petition, I'm going to ask him to do that. If he
17 sees the need to call them back to examine them in
18 support of his petition after the entire case has
19 been -- you finish your case, then I'm going to
20 give him the opportunity to do that, as long as he
21 doesn't duplicate the testimony and go into
22 matters that he should have covered under their
23 initial examination.
24 Ms. Hedgepath?
25 MS. HEDGEPATH: For instance, if I

1 question Mrs. Cohen on the stand as
2 Mr. Slotchiver's witness concerning the
3 reasonableness of the amount of fees, if I go into
4 the amount of fees, is that going to preclude me
5 from questioning her about fees, amounts, and so
6 forth incurred when Mr. Boyd calls her?
7 THE COURT: I think that would be
8 something to cover during the initial examination
9 of her. I would not want you to go back into that
10 if Mr. Boyd has to call her back in support of his
11 petition. I think you can then examine her on
12 anything he elicits in a second call of her, but
13 not something that you could have covered the
14 first time.
15 MS. HEDGEPATH: Because I can see
16 Mr. Boyd is asking for affirmation of fees already
17 paid, I believe, and Mr. Slotchiver is alleging
18 that the fees already paid are unreasonable, and I
19 don't want to get caught short on either one of
20 them. So are you saying that that should be
21 covered while Mrs. Cohen is on the stand with
22 Mr. Slotchiver?
23 THE COURT: Yes, ma'am, and that's
24 what I'm telling Mr. Boyd he needs to do. If it
25 turns out that he needs to re-call a witness in

1 support of his petition for something that he
2 didn't cover, that wasn't covered, then you could
3 examine them with regards to that new testimony.
4 It just seems like to me that we
5 should be able to cover most of it. I don't want
6 to hinder you, Mr. Boyd, and your clients in
7 support of their petition, but I would like to get
8 through this testimony and make sure that we get
9 through it in an orderly manner. If you do need
10 to re-call a witness, I'm happy to hear that.
11 MR. BOYD: Understood, Your Honor.
12 Thank you.
13 THE COURT: All right, okay.
14 Mr. Slotchiver?
15 MR. DAN SLOTCHIVER: Thank you, Your
16 Honor. We would re-call or continue the
17 examination of Mrs. Cohen.
18 THE COURT: Mrs. Cohen, if you could
19 take the stand, ma'am. I'm going to ask the court
20 reporter to swear you in again.
21 SUSAN COHEN
22 having first duly affirmed, testified further as
23 follows:
24 MR. DAN SLOTCHIVER: May it please the
25 court?

1 THE COURT: Yes, sir.
2 DIRECT EXAMINATION
3 BY MR. DAN SLOTCHIVER:
4 Q. Mrs. Cohen, we chatted with you for a
5 good amount yesterday afternoon. First, let me
6 confirm, have you spoken with anybody about your
7 testimony since we left court yesterday?
8 A. No, I have not.
9 Q. In making a decision as trustee,
10 whatever the decision would be, paying a bill,
11 hiring a medical expert, whatever it happened to
12 be, did you have a process you would go through?
13 A. For -- do you want me to go through
14 them one at a time?
15 Q. What would your process be in making
16 decisions?
17 A. My process would be, for instance, in
18 hiring somebody, I would put out -- put in ads,
19 and I would interview them, and then I would bring
20 them in for a trial period. Usually, the first
21 week was the initial trial, but they always had 90
22 days, and if they weren't able to learn the job --
23 I mean, obviously, if they weren't able to do it
24 in a week, then I didn't keep them, but if they
25 weren't able to do it in 90 days, then I

1 terminated them.
2 Q. Would you consider costs, for example,
3 in making a decision as to who you were going to
4 hire?
5 A. Yes. But I wanted the best people, so
6 I was willing to pay more for caretakers,
7 et cetera. It needed to be people who were loving
8 and caring.
9 Q. Do you agree with me that as a
10 fiduciary, you have a duty to protect the monies
11 and to be reasonable with the spending of the
12 monies, especially insomuch as they aren't yours?
13 A. I'm aware that they're not mine, yes,
14 but I believe the trust was established for
15 Abbie's benefit, and things need to be in Abbie's
16 best interest.
17 Q. And in hiring people, would cost be a
18 consideration because there was a limited pool of
19 money?
20 A. That was always one of the
21 considerations. Abbie's care, what Abbie wanted,
22 what Abbie needed was always primary.
23 Q. Do you agree with me that it is
24 important to visit and revisit decisions made in
25 order to determine if they continued to be the

1 right decision?
2 A. I believe I've been very, very careful
3 about that. I've examined everything very, very
4 closely. I've spoken numerous times to counsel.
5 I've spoken to many rabbis to make sure I was
6 going the right direction, because I needed
7 confirmation.
8 Q. Mrs. Cohen, I'm just asking would you
9 agree with the statement as a generality that it's
10 important, once you make a decision, not to just
11 live with the decision, but to continue to examine
12 and reexamine that decision?
13 A. That's exactly what I've done, yes.
14 Q. Jeffrey Cohen is your son. Is that
15 correct?
16 A. That's correct, and Abbie's brother.
17 Q. I just want to talk about some people
18 you hired for different things.
19 So you hired Jeffrey Cohen to do some
20 work?
21 A. That's correct.
22 Q. And you have hired Webster Rogers to
23 do some work?
24 A. That's correct.
25 Q. And you employed AccuChex to do some

1 work?
2 A. That's correct.
3 Q. Now, at the time that you hired your
4 son Jeffrey to do work, would you agree with me
5 that he was not a certified accountant or
6 bookkeeper?
7 A. He was not a certified accountant. He
8 was working as a bookkeeper.
9 Q. And would you agree with me that he
10 wasn't even living in South Carolina, but he's
11 living in New York?
12 A. That's correct.
13 Q. Now, when you employed Jeffrey, is it
14 correct that you paid him somewhere in the
15 neighborhood of $36,000 a year?
16 A. At first I paid him -- I always paid
17 him $25 an hour, so when he stopped being hourly,
18 it probably came to approximately that.
19 Q. Your testimony is you always paid
20 Jeffrey $25 an hour?
21 A. Always that was the amount, $25 an
22 hour, or when I needed more help, I discussed it
23 first with Webster Rogers. I asked them what they
24 would charge me for bookkeeping services, and they
25 told me $95 an hour, and I also -- again, I asked

1 Jeffrey if he would move to Myrtle Beach, because
2 I was having a hard time, and so I talked -- and
3 he talked to his rabbi, and we decided he would
4 come once a week.
5 Q. I'm going to ask, Mrs. Cohen, that you
6 stick to -- if you'll answer the questions,
7 because I'm just trying to get the numbers right
8 now.
9 A. I was. What was the question?
10 Q. I said are you testifying that you
11 only paid him $25 an hour when it was an hourly
12 rate?
13 A. Yes.
14 Q. Do you remember him telling you that
15 he didn't want to get paid?
16 A. Initially, that was correct. That
17 was --
18 Q. And if you could just answer the
19 question, please.
20 A. Initially, yes.
21 Q. And do you remember him insisting to
22 you that he doesn't want to get paid, he wants to
23 do it for free?
24 A. In the beginning, that's correct.
25 Q. And would you also agree with me that

1 you wanted to pay him at least $95 an hour?
2 A. That's not correct. That was a --
3 Q. I want to ask you --
4 A. No, no, no. That was a
5 misinterpretation of my testimony.
6 Q. Well, let's talk about your testimony.
7 MR. DAN SLOTCHIVER: Judge, I'd like
8 to show her a copy of her deposition, if I may.
9 I've got the original.
10 THE WITNESS: I've seen it.
11 THE COURT: Any objection?
12 MR. BOYD: No objection, Your Honor.
13 THE COURT: Thank you.
14 THE WITNESS: I have seen it. You
15 don't need to show it to me.
16 BY MR. DAN SLOTCHIVER:
17 Q. I'm going to show you a copy in case
18 you'd like to see the pages.
19 A. You can tell me the pages, but you
20 will see that later on, when I said at least that,
21 I was referring to the $25 an hour. I make that
22 clear later on.
23 MR. DAN SLOTCHIVER: Judge --
24 THE COURT: Ma'am, let him ask the
25 questions, and then you can answer directly his

1 question.
2 THE WITNESS: All right.
3 THE COURT: Thank you.
4 BY MR. DAN SLOTCHIVER:
5 Q. I want to look at several pages and
6 ask you if you agree with what I'm going to read
7 you from those pages. First is Page 50 of the
8 deposition, Lines 2 through 5.
9 I was paying my firm here $95 an hour,
10 so he initially didn't want to take any money. I
11 wanted him to take at least that an hour. I
12 wanted to be able to feel that I could just turn
13 to him.
14 Is that a correct reading of the
15 language here?
16 A. It is a correct reading --
17 Q. Thank you.
18 A. -- but I was referring to the $25 an
19 hour, not to $95.
20 Q. Let's go to Page --
21 A. And if you divide the hours, you'll
22 see it was $25 an hour.
23 Q. Mrs. Cohen, I'm going to just ask if
24 you could restrict your answers to the questions
25 at this time.

1 THE COURT: Please, ma'am. Thank you.
2 THE WITNESS: Okay. I'm sorry.
3 BY MR. DAN SLOTCHIVER:
4 Q. Now, at the time he was hired, would
5 you agree with me that he was in school, and he
6 wasn't working?
7 A. Oh, he was working, but he was also in
8 school. He was working full time at that time
9 with The Ohel as a bookkeeper.
10 Q. And you agree with me that you did
11 state on several times that he wanted to do it for
12 free?
13 A. I said it in the beginning, yes, until
14 I changed the terms.
15 Q. I have received a tremendous amount of
16 discovery from you, and I have submitted a
17 tremendous amount of documents in evidence that we
18 went through yesterday. Can you point to one
19 document, can you identify one document that I
20 submitted into evidence or that I've received in
21 discovery that shows me what Jeffrey Cohen did, as
22 opposed to shows me how much he was paid?
23 And we'll put this sheet on the board
24 that showed how much he was paid. We introduced
25 this earlier as Exhibit No. 88, if you recall, and

1 this shows the years from '08 through '12 and a
2 total payment of $88,917.41. Can you show me one
3 page in the documents we submitted into evidence
4 or that you submitted to us through discovery that
5 shows what he did? If you could just answer yes
6 or no.
7 A. What he did? I know what he did.
8 Q. That wasn't the question, though,
9 ma'am.
10 A. I didn't do it for any of my
11 caretakers or therapists either.
12 Q. Can you -- we've looked at -- in the
13 discovery, we've looked at all the bank
14 statements, and I saw every time there was
15 something in handwriting written in the ledgers, I
16 noticed, and I asked you about it, and you told me
17 all of those were yours.
18 A. Right, but I didn't balance them. I
19 had to send those to Medicaid.
20 Q. So you've got nothing -- you've got no
21 evidence of what -- no -- take it back.
22 You have no evidence that's been
23 submitted to the court or submitted to me through
24 discovery that substantiates anything that Jeffrey
25 Cohen did. Would you agree with that statement?

1 Yes or no.
2 A. No, I wouldn't.
3 Q. You would not?
4 A. I know what he did.
5 Q. But, ma'am, that wasn't the question.
6 The question I'm asking is do you have --
7 A. The things that I was not able to
8 verify, the ledger sheets, I told you I don't know
9 how to read them. I did not balance the
10 checkbooks. I don't know how to do the ledger
11 sheets. Those are things he did.
12 Q. Ma'am --
13 MR. DAN SLOTCHIVER: Your Honor, we've
14 gone beyond the question.
15 THE COURT: Ma'am --
16 THE WITNESS: Well, you asked me about
17 the ledger sheet.
18 THE COURT: Ma'am, let's let him ask a
19 question, let him finish his question, and then if
20 you could just answer his question directly and
21 not go off on your own and explain.
22 THE WITNESS: All right.
23 THE COURT: Thank you.
24 BY MR. DAN SLOTCHIVER:
25 Q. Are you aware of any physical evidence

1 that's been provided to me through discovery or
2 that's been submitted to the court as a document
3 that reflects the work that Jeffrey Cohen did to
4 substantiate payment of this $88,000 number?
5 A. I believe the ledger sheets that you
6 were trying to get me to say I knew about.
7 Q. Ma'am, I believe yesterday you said
8 you weren't familiar with the ledger sheets.
9 A. I wasn't. That's why.
10 Q. And if you're not familiar with the
11 ledger sheets, are you now testifying that you are
12 familiar with them --
13 A. No.
14 Q. -- and they do substantiate --
15 A. I didn't do them.
16 Q. If I could finish the question,
17 please. Are you now testifying that you are
18 familiar with the ledger sheets and --
19 A. No. I don't know anything about them.
20 Q. So the answer to the question that I
21 asked you, then, would be no, that you have no
22 physical evidence to support --
23 A. That's your answer. It's not mine.
24 THE COURT: Could you answer his
25 question, ma'am?

1 BY MR. DAN SLOTCHIVER:
2 Q. What is your answer, then?
3 A. You showed them to me, though. I said
4 I didn't know how to do them, so that was clear
5 substantiation that I don't know how to do them,
6 that he did them. I don't see it any other way.
7 I don't know how to do those.
8 Q. You told me you had never seen those
9 ledger sheets, right?
10 A. I hadn't. I don't know how to do
11 them.
12 Q. Ma'am --
13 A. I don't know how to read them, so I --
14 you showed me those.
15 MR. DAN SLOTCHIVER: Judge --
16 BY MR. DAN SLOTCHIVER:
17 Q. I showed them to you yesterday, and
18 you said you had never seen them before. Do you
19 remember that?
20 A. I had never seen them before.
21 Q. Then how do you know he did them?
22 A. Because you handed them to me. I
23 couldn't have done them. I don't know how to.
24 Q. You don't know who did them, do you?
25 Is that a fair statement?

1 A. I know that he goes on the computer
2 every day.
3 Q. Ma'am, I've --
4 MR. DAN SLOTCHIVER: Judge, we can do
5 this all day long, but I'm trying to move along.
6 She wants to answer what she wants to answer.
7 THE COURT: Your last question I think
8 she was trying to answer, Mr. Slotchiver.
9 BY MR. DAN SLOTCHIVER:
10 Q. If you can answer yes or no. Do you
11 have knowledge as to who created the ledger
12 sheets?
13 A. Well, he had to do the initial --
14 Q. If you can answer yes or no.
15 THE COURT: Ma'am --
16 THE WITNESS: Yes, he would have done
17 the initial work and then --
18 THE COURT: Ma'am, ma'am --
19 THE WITNESS: I'm sorry.
20 THE COURT: Answer his question yes or
21 no.
22 THE WITNESS: Do I have knowledge?
23 BY MR. DAN SLOTCHIVER:
24 Q. Do you have direct knowledge as to who
25 created the ledger sheets?

1 THE COURT: Yes or no.
2 THE WITNESS: Well, yes, I would
3 believe that since I don't know how to do them,
4 and he went on --
5 THE COURT: Ma'am, just --
6 THE WITNESS: How can I --
7 THE COURT: Just yes or no. Do you
8 have knowledge who created the ledger sheets?
9 THE WITNESS: I have an educated
10 guess.
11 THE COURT: Thank you.
12 BY MR. DAN SLOTCHIVER:
13 Q. Are you familiar with the term
14 self-dealing?
15 A. Of course.
16 Q. What is your understanding of the term
17 self-dealing?
18 A. Self-dealing is where you do something
19 for your own benefit.
20 Q. I'm going to read to you a definition
21 of self-dealing in the Black's Law Dictionary and
22 ask if you would also agree with me as to the
23 definition of self-dealing. Self-dealing in
24 Black's Law Dictionary, which is an older edition,
25 because it's my old one, but I'm going to ask you

1 if you would agree with this definition:
2 Self-dealing relates to transactions wherein a
3 trustee, acting for himself and also as trustee, a
4 relation which demands strict fidelity to others,
5 seeks to consummate a deal wherein self-interest
6 is opposed to duty.
7 Does that -- is that consistent with
8 your understanding of self-dealing?
9 A. Yes, it is.
10 Q. Is Jeffrey Cohen still on the payroll
11 today?
12 A. Yes.
13 Q. Mrs. Cohen, looking at the spreadsheet
14 here, it appears to me that from June the 9th of
15 2009 until June the 17th, 2011, your son was paid
16 $1,500 a month, and then from June 17th on, it
17 changed in numbers to altering numbers. Would you
18 agree with that?
19 A. Yes.
20 Q. Was that in part due to my questioning
21 you about his flat-rate payments in your
22 deposition of May 18th, 2011?
23 A. In part.
24 Q. Mrs. Cohen, I'm going to put
25 Exhibit 102 on the screen. And 102 has been

1 introduced into evidence already, and this is a
2 copy of the paperwork, which under 4A -- I don't
3 know if you can see it from there, but do you
4 agree with me the language under 4A is judgment of
5 dissolution is entered?
6 The screen's better now. It might be
7 easier for you to see it from this angle. Is that
8 correct, the language judgment of dissolution is
9 entered?
10 A. That means they were separated, they
11 were not legally married anymore, yes.
12 Q. Now, you're aware of the fact that the
13 trust document and the order of transfer
14 authorized you -- excuse me, the trust document
15 authorized you to pay for legal fees related to
16 the dissolution of marriage?
17 A. It authorized me to pay to completion.
18 Q. Would you show me where it says that?
19 A. I don't have it here.
20 Q. Tell me which document you'd like to
21 see.
22 A. The document that -- that one that I
23 had in my bag.
24 Q. The order of transfer? If you want to
25 step down and get whatever document you want.

1 A. That was the -- I'm sorry. Don't talk
2 when you're off the stand.
3 Q. If you can just tell me what document
4 you're referring to, and I'll pull up the one
5 entered into evidence. What's the caption on the
6 front of that document, ma'am?
7 A. It says: Order of Transfer of
8 Jurisdiction.
9 Q. I show that as Document 87. You're
10 welcome to work off the one that you have in your
11 hand. I would just ask that you would confirm
12 that the one that you have in your hand is the
13 same as the one that I am going to be looking at.
14 A. I told you before I only have it up
15 'til 11.
16 Q. Well, how about let's work off the
17 exhibit so we have no confusion. I'll show you
18 the exhibit.
19 A. This is too small a print for me.
20 Q. Why don't you tell me on yours what
21 page it is that gives you the authority to --
22 A. Right here.
23 Q. If you can read the -- what page and
24 what line?
25 A. What do you mean what line? Do I

1 count down the lines?
2 Q. What page is it on, first?
3 A. You mean on this one?
4 Q. Yes.
5 A. Oh, dear. This is so hard to read.
6 It's this one right here.
7 Q. You're referring to Page 8?
8 A. Yeah, eight on here.
9 Q. And Paragraph 9.
10 A. Do you want me to read it?
11 Q. Well, let's put it on the screen.
12 No. 9, you said, right?
13 A. That's correct.
14 Q. The one that begins with -- I'm
15 looking at the wrong document.
16 A. No, that's not it.
17 Q. This is on the order of transfer of
18 jurisdiction, Page 8.
19 A. Should I read it? That the sums and
20 amounts --
21 Q. If you'll give me one moment. Page 8,
22 please, Paragraph 9. I want to make sure we're
23 looking at the same document. Begins with the
24 words: That the sums?
25 A. That's correct.

1 Q. Let's look at it. So it says: That
2 the sums and amounts referred to hereinabove.
3 Would you agree with me that hereinabove is
4 referring to matters that have already been talked
5 about in this order?
6 A. Yes.
7 Q. And previously paid and disbursed.
8 Would you agree with me that that means funds that
9 have already been paid, previously paid and
10 disbursed?
11 A. I assume that's what it refers to,
12 yes.
13 Q. And those to be paid at the conclusion
14 of these matters?
15 A. That's correct.
16 Q. And the order in front of the court on
17 this date deals with the order of transfer of
18 jurisdiction.
19 A. It also -- we had talked about with
20 the judge at the time, Judge Carter told me that
21 we could deal with the court so this referred to
22 that.
23 MR. DAN SLOTCHIVER: I'm going to
24 object, Your Honor, and ask that it be stricken to
25 any hearsay statement that she asserts that she

1 was given by Judge Carter without any documents to
2 support same.
3 THE WITNESS: But it's right here.
4 THE COURT: Mr. Boyd?
5 MR. BOYD: Your Honor, the document --
6 the document is evidence issued by the court in
7 the hearing, and to the extent that the witness
8 can testify that the judge made a statement
9 reflecting her present state of mind with regard
10 to the document, I think she's got a right to
11 testify.
12 MR. DAN SLOTCHIVER: The problem, Your
13 Honor, is that it would allow a witness to say
14 whatever they wanted to say whenever they wanted
15 to say it. There's no way to validate it.
16 There's no supporting document. There's no
17 supporting transcript.
18 MR. BOYD: Your Honor, she can give
19 her present-sense -- she can give her
20 present-sense impression.
21 MR. DAN SLOTCHIVER: Your Honor, her
22 present-sense impression is not -- does not govern
23 a trust case. She has to have support that she
24 can show. The mere fact that she has a belief,
25 even if she does have that belief, does not excuse

1 her from conduct. She has the right to say -- she
2 has a right to do what's reasonable, and she can't
3 rely on a statement that she can't substantiate
4 that's self-serving to make without any document
5 to support it.
6 She can testify all day long about
7 what the document says, and I'll be happy to chat
8 with her about what it says and what she
9 understood it to be, but as far as giving a
10 statement that exonerates her from any
11 responsibility because the judge told me this
12 would be improper.
13 THE COURT: Mr. Boyd?
14 MR. BOYD: Your Honor, there's no
15 hearing transcript, unfortunately, that's
16 available from that hearing, but she is the party
17 who was there, she is the party who was present at
18 the time, and she can give her present-sense
19 impression of what the court did on that day,
20 according to her recollection.
21 MR. DAN SLOTCHIVER: Her present-sense
22 impression I believe would be irrelevant, and I
23 think, Your Honor, that she can't -- it's no
24 different than an oral contract that has to be
25 consummated in a certain amount of days. You have

1 to have proof of it. She can't -- it would be
2 improper for her proof to be: The judge told me
3 this at a hearing.
4 THE COURT: I'm going to strike that
5 testimony. I don't think it's admissible.
6 MR. BOYD: Thank you.
7 THE COURT: Thank you.
8 BY MR. DAN SLOTCHIVER:
9 Q. Now, other than Paragraph 9, what
10 other document do you have that shows that actions
11 after the dissolution of marriage were
12 appropriate?
13 A. The California document.
14 Q. Could you show me what California
15 document?
16 A. I don't have that one with me. I only
17 have this one with me.
18 Q. If you'll tell me what document it is,
19 I'll be happy to pull it up.
20 A. It's the conservatorship orders where
21 they said that I could do the divorce, that I
22 could handle the divorce to the conclusion.
23 Q. Let's pull that up. I believe it's
24 101. I'm going to show you a copy of Page -- of
25 Exhibit 101 and ask you if this is the document

1 you're referring to?
2 A. I don't think so. It had a lot more
3 writing on this. Wait a minute. This may be it.
4 Petitioner -- although the one I have is much --
5 has a lot more writing on it. Do you want me to
6 read it?
7 Q. Well, if this is not the document,
8 you're welcome to look in your files to get one.
9 If it is --
10 A. I don't have it with me.
11 Q. Why don't you show which paragraph,
12 and we'll put it on the screen also.
13 A. This says: Petitioners hereby amend
14 the petition to --
15 Q. Can I see it?
16 A. That's not it. Wait a minute. Wait.
17 Q. Take your time.
18 A. These two paragraphs.
19 Q. I'm sorry?
20 A. These two paragraphs.
21 Q. Let me see, if I may.
22 A. Petitioner's, this one, A and B.
23 Q. A and B. So we're looking at
24 Exhibit 101, 1A and B, which is on the
25 second-to-the-last page on a petition filed by

1 Louis Michelson.
2 A. Michelson.
3 Q. Michelson. On a petition, okay. Can
4 you tell me what language -- is it A or B?
5 A. Both.
6 Q. Well, let's look at it, then.
7 Petitioner's amend their -- you're relying on a
8 petition for the authority. Is that correct?
9 A. I don't know that this is the right
10 one. I have something with all these written up
11 as orders that -- not the petition, but the
12 orders.
13 Q. Do you have it here with you?
14 A. No. I didn't bring that one. But it
15 gives me the orders, and it says what he asked for
16 in the petition. It said you could employ
17 attorneys and that it could all be paid for by
18 the -- without notice, hearing, blah, blah, blah.
19 Q. Let's look at what you pointed to
20 here. A: Petitioner amends their petition to
21 Checkbox 1D thereof and to request that the court
22 grant them the authority to independently exercise
23 the power under the probate court to employ
24 attorneys to file an action for dissolution of the
25 marriage.

1 We agree with that language, correct?
2 A. Yes.
3 Q. Now, look at the box below that we
4 have on the screen. Judgment of dissolution is
5 granted. Isn't that exactly what you were
6 authorized to do?
7 A. No.
8 Q. To file for -- if I could finish, to
9 file for a dissolution of marriage, and here, if I
10 might finish, the language states the judgment of
11 dissolution is entered.
12 A. No, that's not what I was authorized
13 to do.
14 Q. Can you show me a document that gives
15 you more authority?
16 A. (Demonstrating.)
17 Q. What document is that?
18 A. The same one we talked about.
19 Q. Where does it give you more authority?
20 A. To the conclusion of these matters.
21 And I spoke with Robin Morris. She told me --
22 MR. DAN SLOTCHIVER: I'm going to
23 object, Your Honor. I'm going to object to the
24 statement.
25 BY MR. DAN SLOTCHIVER:

1 Q. To the conclusion of these matters,
2 the reference is made to a dissolution.
3 Mrs. Cohen, isn't it true that --
4 A. No, not in this one.
5 THE COURT: Ma'am --
6 BY MR. DAN SLOTCHIVER:
7 Q. Isn't it true, Mrs. Cohen, that you --
8 that a motion was made and an order was granted in
9 the California divorce action allowing the
10 bifurcation of the case?
11 A. I objected to it.
12 Q. But it was granted?
13 A. It was, but that didn't handle any of
14 the other issues.
15 Q. And isn't it true that when it was
16 bifurcated, it divided the case into two sections:
17 One, dissolution of marriage; two, everything
18 else. Would you agree with that?
19 A. I would not. There was one case
20 number.
21 Q. But the bifurcation divided it, and
22 thereby allowed a dissolution of marriage to be
23 entered September 11th, 2008?
24 A. It's irrelevant. It was one case.
25 Q. You agree with that, the dissolution

1 was entered -- or let me ask: Do you disagree
2 that the dissolution of marriage was entered on
3 September 11th, 2008?
4 A. I don't agree with the date.
5 Q. Well, let's look at the document that
6 we've already entered into evidence that shows
7 judgment of dissolution is entered September 11th,
8 2008. That was entered into evidence without
9 objection.
10 A. Yes, I agree with the date. I'm not
11 fighting you on the date. I'm simply saying that
12 is not a dissolution of a marriage, especially
13 when there are children involved.
14 Q. It just didn't resolve everything
15 else. You wanted it to resolve everything?
16 A. It didn't resolve anything.
17 Q. You wanted the authority to spend the
18 money to do --
19 A. I didn't want it. I was granted it.
20 There's a whole big difference.
21 Q. Can you show me any evidence that you
22 were granted that?
23 A. Yes, right here, and by Robin Morris's
24 interpretation.
25 MR. DAN SLOTCHIVER: I'm going to

1 object to any reference to Robin Morris.
2 BY MR. DAN SLOTCHIVER:
3 Q. So A and B are the -- let's put A and
4 B back up again.
5 A. I didn't say that was a document I
6 have. I have a much more complete document.
7 Q. Well, ma'am, you're testifying today.
8 It's my opportunity to question you and to examine
9 you on your actions and what you did, and this
10 case is about these positions, so unless the court
11 wants us to take a break and have you go home and
12 retrieve the document, I'm going to have an
13 opportunity to ask you today.
14 A. Why can't I ask Bret and Reese for the
15 document?
16 Q. If they -- if you can identify the
17 document you're looking for, then I have no
18 opposition to them handing it to you, but I don't
19 want -- but it's not their job to determine what
20 document it is and to give it to you. So if you
21 know which document you're looking for, please, if
22 you can sit there and you can ask them what
23 document you want, and they can provide it to you.
24 A. Should I walk over there?
25 THE COURT: Can she --

1 MR. DAN SLOTCHIVER: Absolutely, if
2 you want to walk -- I just don't want them to be
3 handing her documents, selecting, if there is one.
4 MR. DAVIS: I mean, I don't want to
5 speak out of terms.
6 MR. DAN SLOTCHIVER: Can we approach
7 the bench, Your Honor, if we're going to have a
8 discussion?
9 THE COURT: Yes.
10 MR. BOYD: Can you pull up 86?
11 (Bench conference was held out of the
12 hearing of the court reporter.)
13 MR. DAN SLOTCHIVER: If you want to
14 show me the document.
15 THE WITNESS: So where should I be?
16 THE COURT: Take the stand.
17 MR. DAN SLOTCHIVER: Are we ready to
18 proceed?
19 THE COURT: Yes, sir.
20 BY MR. DAN SLOTCHIVER:
21 Q. Mrs. Cohen, as a quick step aside, do
22 you agree with me that the litigation involving
23 the dissolution of marriage was concluded by the
24 California court in September of '08?
25 A. No.

1 Q. And that the litigation related to the
2 visitation with the children is ongoing?
3 A. Not just the visitation, everything.
4 Q. Are you aware that an order was
5 entered into by this court on August the 2nd,
6 2011, stating exactly what I read to you, the
7 litigation involving the dissolution of the
8 marriage was included by order of the California
9 court on September 1st, 2008, the litigation
10 related to the visitation with the children is
11 ongoing?
12 A. Am I aware of it?
13 Q. Yes. You just disputed it. I'm
14 asking if you knew that it was ordered by the
15 court.
16 A. What was ordered by the court?
17 Q. That this language was placed in an
18 order by the court, signed by this judge on the
19 bench on August the 2nd, 2011, and filed in the
20 court on August the 2nd, 2011?
21 A. So what are you asking me?
22 Q. You agree that the dissolution was
23 resolved?
24 A. The dissolution?
25 Q. The dissolution.

1 A. That they were no longer married, but
2 the issues weren't resolved.
3 Q. Ma'am, I'm using particular language.
4 The dissolution of the marriage, do you agree with
5 me that it was, in fact, resolved then?
6 A. I don't -- in my opinion, it was not.
7 What was the language?
8 MR. DAN SLOTCHIVER: I think the court
9 can take notice of the language. It's in the
10 court's order.
11 BY MR. DAN SLOTCHIVER:
12 Q. Let me show you this document here.
13 This is another copy -- this is another copy of
14 the same document I provided to you a few moments
15 ago, I believe. Let's see. Where's the one that
16 I gave to you that was marked as an exhibit?
17 A. 101.
18 Q. 101. May I? I want to make sure it's
19 the same document. This is a copy of the same
20 document I provided to you, and this is a copy
21 provided to me by your counsel that may help you
22 in some way, if that assists you with your
23 recollection as to why you believe you have the
24 authority. I don't know if it does or doesn't,
25 but they suggested maybe this language would.

1 A. Pay the attorneys fees thereby
2 incurred.
3 Q. What page are you looking at? Are you
4 looking at Page 2?
5 A. Yes.
6 Q. That says Attachment 23?
7 A. Attachment 3D.
8 Q. Can you tell me what language it is
9 here on this page that gives you the opinion that
10 you had the authority?
11 A. The conservators are granted the
12 independent power under probate code section to
13 employ attorneys to file an action for dissolution
14 of the marriage between the proposed conservatee
15 and her husband, Daniel Bernard Dorn, and to pay
16 the attorneys fees thereby incurred.
17 Q. Mrs. Cohen, once again, we're coming
18 back to the same language, dissolution of
19 marriage, the same language which the court in
20 California ruled on, the same language which the
21 court in South Carolina ruled on.
22 A. Right.
23 Q. Are you telling me now that you're
24 relying on the language allowing the payment of
25 fees for the dissolution of marriage to empower

1 you to spend money for everything else related to
2 the domestic matter?
3 A. I'm relying on this document. This
4 was the initial document. This is the one I'm
5 relying on.
6 Q. Which document are you relying on?
7 I'm going to hand the first one back to your
8 counsel, if you're done with it.
9 A. Order of transfer of jurisdiction.
10 Q. What portion under the order of
11 transfer of jurisdiction are you relying on?
12 A. Exactly on nine, the sums and amounts
13 referred to herein are previously paid and
14 disbursed, those to be paid at the conclusion of
15 these matters. You can't divide a marriage into
16 two.
17 Q. Well, let's put it back on the screen
18 real quick. Paragraph 9, I believe you said?
19 A. Yeah, Paragraph 9, Page 8.
20 Q. This is the one that we've spoken
21 about earlier today?
22 A. That's correct.
23 Q. And this was based on a filing for the
24 order of transfer, and at this point -- are there
25 any other documents that you relied on that gave

1 you the authority to spend upwards of a million
2 dollars in litigation in California?
3 A. This document.
4 Q. Besides this document.
5 A. This document.
6 Q. So based on that document, you felt
7 empowered to spend this million dollars?
8 A. Not just based on this document, on
9 the advice of three attorneys.
10 MR. DAN SLOTCHIVER: I'm going to
11 strike -- I'm going to move to strike that from
12 the record, Your Honor. I don't believe that any
13 advice that she relied on, assuming the advice was
14 given, would be a defense to her actions. She has
15 to -- my understanding of the law is that you
16 cannot insulate yourself by relying on an
17 attorney. It has to be -- at the end, the buck
18 stops there.
19 So the fact that she did or didn't
20 rely on the attorneys would be irrelevant. I'm
21 just trying to understand what she relied on in
22 making her decision, other than things that would
23 not be appropriate to put into evidence. I would
24 ask that that last sentence be stricken.
25 THE COURT: Mr. Boyd?

1 MR. BOYD: Your Honor, there's nothing
2 improper. She answered his question. There's no
3 basis for striking it. He's doesn't like it --
4 THE COURT: I'm going to deny the
5 request.
6 MR. BOYD: -- but that's not a basis
7 to strike it.
8 THE COURT: I'm not going to strike
9 that.
10 MR. BOYD: He asked her did she
11 consult with folks in the process of --
12 MR. DAN SLOTCHIVER: I did not ask if
13 she consulted with anybody.
14 THE COURT: She answered. You asked
15 her what else she relied on. She said the advice
16 of three attorneys. She hasn't said what they
17 said, so I'm going to allow that.
18 MR. DAVIS: Your Honor, I've got
19 something I want to say about that. Can we
20 approach -- I don't want to prejudice the witness
21 at all -- about this document here and the
22 accounts?
23 THE COURT: Yes, sir.
24 (A bench conference occurred out of
25 the hearing of the court reporter.)

1 BY MR. DAN SLOTCHIVER:
2 Q. Mrs. Cohen, do you agree with me that
3 out of the legal fees, that none of the legal fees
4 incurred by Lisa Meyer or the MOLM firm, at least
5 up until the date of your deposition, which was in
6 May of 2011, that none of those fees were related
7 to the issue of visitation?
8 A. None of them?
9 Q. None of them.
10 A. Are you asking me if none of them --
11 Q. I'm asking if you agree with me that
12 no legal bills, no legal fees, no legal expenses
13 incurred -- excuse me. I said it wrong. Glad you
14 corrected me.
15 Would you agree with me that no
16 expenses incurred or legal fees incurred relative
17 to the child support issue --
18 A. Absolutely not.
19 Q. If I could finish. -- were paid to
20 the Meyer firm, at least between the time they
21 were hired and the date of your deposition? Would
22 you agree with that statement?
23 A. No.
24 Q. I'd like to show you your deposition,
25 Page 81, and ask that you would read along with

1 me. Do you still have it? Let me read it to you
2 and see if you agree. Starting with Line 2, two
3 through eight. This is your sworn testimony. You
4 remember giving your deposition, right?
5 A. Yes.
6 Q. We have talked about since Lisa Meyer
7 has been involved, there's been no expenses
8 incurred, legal fees incurred, relative to the
9 child support. It's been relative to visitation.
10 Your response is: Right. Do you --
11 A. Because it keeps getting shoved away.
12 Q. Do you remember stating that at the
13 time of your deposition?
14 A. Yes, I do remember, but I said it
15 keeps getting shoved away. We talked about it
16 consistently. It was the biggest topic.
17 Q. But, ma'am, a moment ago I asked you
18 if you agree with that statement, and you said no.
19 I've asked you to look at the statement that was
20 taken back in '11, and you said right in '11.
21 Does this refresh your recollection as to the fact
22 that no legal fees were paid for child support to
23 the MOLM firm?
24 A. Not directly, but it was always,
25 always the underlying cause. It was -- we talked

about that. I have letters about that. That was the issue that wouldn't go away.

Q. Understanding -- let's go back to those. Understanding that no bills paid to the Meyer firm were related to that issue, and looking at the extraordinary amount of expenses since the Meyer firm became involved, which I believe -- let me get the date.

Looks to me, based on Exhibit 5, that the first billing for legal fees by the Meyer firm was in February of 2010, February 4th of 2010. Would you agree with that, based on the document?

A. What are you asking, just the date?

Q. Yes.

A. That's the date.

Q. Now, understanding that in the year 2010, there were close to $750,000 in medical bills in the year 2011, 121, but then in 2012, 186, is it still your testimony that this was really all about child support?

A. It wasn't all about, but if you'll look right here on 2/7/10, receipts and review of narrative prepared by Susan, Dan's order to show cause, which was about the child support, Susan's response, memo regarding special needs trust,

letters from physician, Dan's declaration, letter from Ron Rosenfeld, court summary, bank account statements, preliminary declaration, draft memo. We were all talking about the child support. I'm not the one that --

Q. These are receipts and reviews of documents that had been created, according to the ledger. Your testimony back in your deposition clearly said that the MOLM firm had nothing to do with it. Is it your testimony now they did, that it had something to do with support?

A. I don't know if the direct billings, but it was always a major issue which was shoved aside, because that's where the court set the agenda.

Q. Do you view major in light of major to you, Susan Cohen, or do you view major in light of expenses associated with it?

A. I could have dropped the case if he had dropped the child support demand, yes.

Q. Actually, you could have dropped the case any time you wanted to.

A. No, I couldn't. That was not the legal advice I was given.

Q. You have taken the position, as I

understand it, that you were empowered to defend. Is that correct?

A. I was empowered to defend, but I wanted to drop it, and I could not. I was advised by three attorneys I could not drop it because of the child support.

Q. Well, I'd be interested to know upon what grounds an attorney could advise you that you don't have the right to drop a case that you were bringing. Would you agree with me that you brought the case for visitation, that was your action?

A. It was --

Q. Dan Dorn didn't --

A. Dan Dorn initially checked off that we could have visitation. He then changed his mind.

Q. Did Dan Dorn --

A. He asked me to bring the case initially.

Q. Did Dan Dorn bring an action in court seeking to give you visitation?

A. No, he did not give any.

Q. So the action --

MR. DAN SLOTCHIVER: If I can finish, Your Honor.

MR. BOYD: Your Honor, I'm not sure who's testifying, whether Mr. Slotchiver's testifying or the witness is testifying, but Mr. Slotchiver should ask questions, and the witness should have an opportunity to answer.

MR. DAN SLOTCHIVER: It would -- it is very --

THE COURT: I understand.

MR. DAN SLOTCHIVER: I'm --

THE COURT: Trying hard. I understand.

Mrs. Cohen, if you will let him ask the question, respond to his question directly.

Mr. Slotchiver, if you will direct your questions to her and not get on a narrative about what happened.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. You remember in your deposition we talked about the fact -- or do you remember in your deposition we talked about the fact that you could have dropped the visitation issue any time you wanted and still defend the support issue?

1 A. I told you that was not my option. I
2 do not set the agenda. I am not a judge.
3 Q. And understanding that since the Meyer
4 firm became involved, the monies that were spent
5 were related to the visitation issue, your
6 position is that you had no right but to continue
7 to fight for visitation and fund the visitation
8 out of Abbie's money, even though it had nothing
9 to do with support?
10 MR. BOYD: Objection.
11 BY MR. DAN SLOTCHIVER:
12 Q. Is that correct?
13 MR. BOYD: Your Honor, counsel's
14 testifying.
15 MR. DAN SLOTCHIVER: I'm asking a
16 question, Your Honor.
17 THE WITNESS: Yes, yes. It was never
18 dropped.
19 THE COURT: Ma'am, ma'am.
20 THE WITNESS: I'm sorry.
21 THE COURT: I'm sorry. If you could,
22 Mr. Slotchiver, if you could ask a little bit
23 shorter questions, maybe break them up so that she
24 could answer them in part. I'm also having a
25 little bit of trouble following those long-winded

1 questions about what you're actually asking.
2 MR. DAN SLOTCHIVER: Fair enough.
3 THE COURT: I don't want to confuse
4 the witness or me.
5 MR. DAN SLOTCHIVER: I don't either.
6 THE COURT: Thank you.
7 BY MR. DAN SLOTCHIVER:
8 Q. Mrs. Cohen, let's start back a little
9 bit.
10 MR. DAN SLOTCHIVER: And if you'll
11 indulge me if I do, because I'm trying to break it
12 back down.
13 THE COURT: Please do so.
14 BY MR. DAN SLOTCHIVER:
15 Q. You agree with me that the visitation
16 issue was not brought by Dan Dorn, correct?
17 A. It was not brought that he wanted us
18 to visit. Is that what you're saying?
19 Q. If you can just answer yes or no.
20 A. Yes.
21 Q. And is it correct that the payment of
22 attorneys related to the visitation action was
23 tendered by you in your capacity as
24 trustee/conservator?
25 A. Did I tender them? Did I pay them?

1 Q. Yes.
2 A. Yes.
3 Q. And that the payment related to the
4 visitation issue had nothing to do with payments
5 related to support?
6 A. It had everything to do with it. He
7 would not drop it. I couldn't change the agenda.
8 Q. Understanding your testimony about the
9 fees paid to the MOLM firm, do you agree with
10 me -- and if you would just give a yes or no --
11 that had you not pursued the visitation issue,
12 that the monies in the trust would be somewhere in
13 the neighborhood of perhaps 900- or $950,000 more
14 than they are now as a result of fees being paid
15 for litigation related to visitation?
16 A. No, I don't agree with you.
17 Q. Well, doing simple math, if we come up
18 with a number of a million dollars -- let's use a
19 million for ease -- and we subtract from it
20 $900,000 related to visitation, would you agree
21 with me that there would be a million dollars
22 left?
23 A. Not if she lost her Medicaid.
24 Q. Or $100,000 left.
25 A. She would have lost her Medicaid if I

1 didn't continue with the lawsuit.
2 Q. If you didn't continue with the
3 lawsuit related to support.
4 A. I could not set the agenda. The judge
5 set the agenda. It was always the judge who set
6 the agenda. I kept saying -- in fact, that's why
7 I got rid of Marina, because when we were dealing
8 with the issue of child support, I said please, I
9 want to get somewhere with this, and she didn't
10 seem to get it. She couldn't seem to get anywhere
11 with it. Obviously, it didn't happen too much
12 elsewhere. I was hoping that another firm would
13 help bring this forward.
14 Q. Can you show me where it is -- can you
15 provide me a copy of a document that you have
16 filed on behalf of the trust seeking to dismiss
17 the visitation issue which the trust brought?
18 A. No. I didn't want to dismiss the
19 action. I simply wanted the other action resolved
20 first.
21 Q. You wanted to keep the visitation
22 action because it was important to you?
23 A. It was important to Abbie. It was not
24 important to me at all. It was important to
25 Abbie. My daughter is conscious. She wants to

1 see her children.
2 Q. Mrs. Cohen, Exhibit 86, Page 3, the
3 last paragraph.
4 THE COURT: What exhibit? I'm sorry.
5 MR. DAN SLOTCHIVER: Exhibit 86.
6 BY MR. DAN SLOTCHIVER:
7 Q. Are you aware that the court in
8 California ruled that Dan additionally argued that
9 this really is a case of disguised grandparent
10 visitation?
11 A. And that was complete nonsense. Yes,
12 I am aware of it. It was complete nonsense.
13 Q. And referencing, if I may finish, that
14 because Susan, which is referring to you, has an
15 ulterior motive in this case to gain visitation
16 for herself and not for Abbie?
17 A. That is not --
18 MR. BOYD: Your Honor, I'm just going
19 to object to the form of the question on this
20 basis. He's represented that the court ruled, but
21 actually, what he's citing is simply a restatement
22 of Dan's argument. It's not a matter of law.
23 First of all, it's a conclusion of law. The
24 witness may or may not have an opinion, but he's
25 citing an argument -- a paragraph in the opinion

1 where they're just citing the arguments of one
2 side.
3 MR. DAN SLOTCHIVER: Your Honor, this
4 is the statement of decision by the court that has
5 been introduced into evidence by the judge. She
6 is a fiduciary in the case. She has -- I'm asking
7 if she is familiar with the conclusions of the
8 court, and then I'm going to ask her a follow-up
9 question to it afterwards.
10 THE COURT: But I think Mr. Boyd is
11 pointing out that the statement in the case is
12 just setting forth what Mr. Dorn was arguing.
13 MR. DAN SLOTCHIVER: Actually, it's
14 not.
15 THE COURT: Okay. I'll let you point
16 that out.
17 BY MR. DAN SLOTCHIVER:
18 Q. On the third sentence, it states: Dan
19 has a point. Susan has clearly and repeatedly
20 articulated her desire to have visitation with
21 Esti, Reuvi and Yosse, and she has, in fact,
22 appeared uninvited at Dan's home and temple to see
23 the children. By her demeanor and actions, Susan
24 demonstrates a degree of preoccupation with
25 achieving visitation with the children regardless

1 of Dan's preferences. Susan has shown that she
2 does not consider any objection that Dan may have
3 to this concept as being valid.
4 You've seen this language?
5 A. Yes.
6 Q. I take it you disagree with it?
7 A. Yes.
8 Q. You did not appeal the order. Is that
9 correct?
10 A. You are suing me for spending the
11 money, and now you're saying I should have
12 appealed it. That's ridiculous. I'm sorry, but
13 that's -- you're not being sensible.
14 Q. Do you agree on Page 8, the last
15 paragraph at the very bottom --
16 A. I can't see it, but if you want to
17 read it to me.
18 Q. -- with the court's opinion that Abbie
19 is, in fact, comatose?
20 A. Absolutely not.
21 Q. But you do agree that is the court's
22 opinion?
23 A. It's the court's opinion.
24 Q. Based on argument provided to the
25 court from counsel hired by both sides, and after

1 review of all the evidence, the court came up with
2 that conclusion.
3 A. Courts have come up, unfortunately,
4 with very detrimental decisions at many times in
5 the past.
6 MR. DAN SLOTCHIVER: I'm going to move
7 on to another topic, Your Honor.
8 THE COURT: Thank you.
9 BY MR. DAN SLOTCHIVER:
10 Q. As trustee, you made a decision to
11 bring an action to reform the trust in South
12 Carolina. Do you agree with that?
13 A. I wanted to have the documents the
14 same.
15 Q. And would you agree with me that the
16 reason for bringing the reformation action is
17 because you wanted to be empowered to do something
18 that you don't know if you had the power to do?
19 A. I absolutely know I had the power to
20 do it. I wanted the documents to read the same.
21 Q. Let me show you a copy of Exhibit 2.
22 This is a copy of an exhibit in evidence, a letter
23 from your lawyer, Bret Davis, where he states
24 under Paragraph 2: The parents of Abbie have
25 asked me to petition the Horry County Probate

1 Court for an order which specifically allows them
2 to use funds from the special needs trust to pay
3 the attorneys fees in California and South
4 Carolina who are defending the trust.
5 You agree with that reading, correct?
6 A. I agree you can read, yes, but it's
7 not what I asked.
8 Q. So you believe that your counsel
9 misquoted you to the court?
10 A. I think that he may have understood it
11 in a different manner. What I said I wanted was
12 the three documents to agree. That was my
13 understanding, that there was just some language
14 that the family counsel had that it now uses all
15 the time. He wanted to make it exactly as the
16 family counsel said.
17 Q. What three documents are you referring
18 to that you wanted to agree?
19 A. This document in California that said
20 we could use the money and the one that I didn't
21 understand.
22 Q. Well, you said that -- I'm sorry.
23 Let's go through them one at a time so I make sure
24 I understand which ones you're talking about.
25 A. This one.

1 Q. The document you're referring to now
2 is?
3 A. The order of transfer of jurisdiction.
4 Q. Order of transfer of jurisdiction,
5 which we spoke about that had language in it
6 relevant to quote-unquote dissolution of marriage.
7 That's No. 1.
8 A. But it says to conclusion of these
9 matters, of these matters, conclusion of these
10 matters.
11 Q. Mrs. Cohen, do you understand that the
12 matters before the court that were filed at that
13 time were matters dealing particularly with
14 transferring jurisdiction to South Carolina?
15 A. It was talking about dissolution and
16 ending all the matters in the marriage. In the
17 marriage is what Paragraph 9 refers to.
18 Q. And I think we've gone through that
19 before over and over. Unless you have other
20 language to support it, let's move on to
21 the next --
22 A. I have reliance of counsel.
23 Q. What other documents that you wanted
24 to make consistent? That was one. You said there
25 were three you wanted to -- you wanted to have

1 consistency between them. What was the other two
2 documents?
3 A. The third one was I don't know which
4 one, the one -- one of the ones you had pulled
5 out. I don't know.
6 Q. I'm sorry?
7 A. All I know is that this one clearly
8 gave me authority. Robin Morris said that
9 marriage is --
10 MR. DAN SLOTCHIVER: I'm going to
11 object to --
12 THE COURT: Thank you.
13 BY MR. DAN SLOTCHIVER:
14 Q. What was the second document?
15 A. I believe it may have been the
16 California document, but I'm not sure.
17 Q. Which California document?
18 A. I don't -- not that one, but the one I
19 have at home, but at any rate, this was the one
20 that I was primarily relying on.
21 Q. And the third document?
22 A. And Bret told me that --
23 MR. DAN SLOTCHIVER: I'm going to
24 object to --
25 BY MR. DAN SLOTCHIVER:

1 Q. If you want to talk about counsel, we
2 can do it, but you open the door.
3 A. I'm sorry. Okay. No, I don't. I
4 don't know.
5 Q. Third document?
6 A. California, this one, and I don't know
7 what the third document was.
8 Q. What did you believe the inconsistency
9 to be?
10 A. I don't know. The language didn't say
11 exactly the same thing.
12 Q. Did you ever -- based on this e-mail,
13 it says that this issue is starting to come up in
14 California litigation. When it references this
15 issue, is it -- would it be fair to say the issue
16 they're talking about is the expenditure of trust
17 money to fund the visitation case?
18 A. The issue. Yes. Vicki was giving
19 me --
20 Q. I'm just asking for a yes or no,
21 please, at this point.
22 A. Yes.
23 Q. And this is in 2010, when the Meyer
24 firm was involved?
25 A. Yes.

1 Q. And this was in 2010, when the issues
2 that were being litigated, based on your testimony
3 earlier and based on your deposition testimony,
4 were the issues of visitation?
5 A. And ending the child support demand.
6 Q. Well, I believe that you testified
7 earlier, ma'am, that child support was not being
8 handled at that point --
9 A. It was always there. It would not
10 end.
11 Q. -- because Vicki kept pushing it away
12 was your words.
13 A. And she also wouldn't sign a letter.
14 Q. So the issue in front of the court at
15 that time in California was a visitation issue?
16 A. That's what the judge put there.
17 Q. So this came up in California about
18 the fact that you were spending money, so
19 therefore -- from the trust to pursue the action
20 of visitation, and based on that, you sought out
21 counsel in South Carolina?
22 A. I had already had counsel. He was the
23 transfer.
24 Q. Counsel here says he's intending to
25 file a dec action to the court. Do you know why

1 that never happened?
2 A. I don't know what a dec action is.
3 Q. It's a -- I will represent to you a
4 declaratory action is one which you say I'm asking
5 the court to tell me what the law is, basically.
6 Do you agree with me, Mrs. Cohen, that
7 had you sought permission from the court to spend
8 the money in the California litigation for
9 whatever the litigation was for, that all of this,
10 all of the litigation, all of the expenses, all of
11 the appointed people, all of the lawyers,
12 everybody here would not be here for this trial
13 because the judge would have ruled yes or no, and
14 you would have had all the support you needed?
15 A. I had the authority from this
16 document. That was my 100-percent understanding.
17 This was only brought because --
18 Q. And the document you're referring
19 to -- once again, the document you're referring to
20 is the -- you're referring to the order of
21 transfer of jurisdiction?
22 A. Absolutely, and what Judge Carter told
23 me.
24 MR. DAN SLOTCHIVER: I'm going to
25 object to that, Your Honor.

1 THE COURT: I'll strike that.
2 MR. DAN SLOTCHIVER: Can we take a
3 short recess?
4 THE COURT: We may. Five minutes?
5 Ten? Five?
6 MR. DAN SLOTCHIVER: Either one.
7 MR. BOYD: Actually, I need to make a
8 phone call, Your Honor. If I could have --
9 THE COURT: Let's take ten minutes,
10 then.
11 MR. DAN SLOTCHIVER: Thank you, Judge.
12 THE COURT: Thank you.
13 Instruct the witness not to speak with
14 counsel about her testimony.
15 THE WITNESS: Okay. Thank you.
16 THE COURT: Thank you.
17 (A brief recess transpired from
18 11:15AM to 11:20 AM.)
19 THE COURT: We're back on the record
20 in the Dorn matter.
21 Mr. Slotchiver?
22 MR. DAN SLOTCHIVER: Thank you, Your
23 Honor.
24 THE COURT: Thank you.
25 BY MR. DAN SLOTCHIVER:

1 Q. Mrs. Cohen, do you agree that you were
2 the original person -- you and your husband were,
3 from the inception, listed as the trustees and the
4 conservators for your daughter?
5 A. From the original? You mean from
6 California?
7 Q. You were never replaced, you were the
8 original people?
9 A. Yes.
10 Q. And you had ample opportunity, I take
11 it, to read the trust document?
12 A. Yes.
13 Q. Did you read the trust document?
14 A. Yes.
15 Q. Did you have any questions about the
16 trust document --
17 A. Yes.
18 Q. -- at the time that you were appointed
19 as trustee?
20 A. Yes.
21 Q. I want to direct your attention to the
22 trust document, which is Exhibit 1, and Page 10 --
23 or Paragraph 10, excuse me.
24 A. I can't see it if you're going to ask
25 me to read it.

1 Q. Let's look at the last sentence of it,
2 if we can blow that up.
3 Mrs. Cohen, what does the word shall
4 mean? Would you agree that it means must, it's a
5 compulsory word?
6 A. I guess it could be.
7 Q. Would you agree with me the word shall
8 is a compulsory word, it means equivalent to must?
9 A. It's somewhat equivalent. It's not
10 exactly equivalent.
11 Q. Did you rely on this paragraph of the
12 trust as part of your opinion that you had the
13 right to hire and pay attorneys related to the
14 visitation issue?
15 A. You asked me if I had questions. It
16 was a question.
17 Q. Well, at the time the trust was
18 created, I take it that the visitation issue had
19 not yet been pursued?
20 A. It would have had nothing to do with
21 visitation.
22 Q. And my question to you is: With
23 reference to the visitation issue, did you rely on
24 this trust language?
25 A. I had -- I spoke with counsel, and

1 I --
2 Q. Ma'am, not what you spoke to counsel
3 about -- and I'm sorry to interrupt you -- I want
4 to know did you rely on this language in your
5 opinion that you had the ability and the authority
6 to pay attorneys?
7 A. I did not rely on that language, no.
8 I had already asked about it.
9 Q. So this language was not part of your
10 decision-making power?
11 A. No.
12 Q. Fair enough. And let's look at 12.
13 12 says: The trustee may employ attorneys,
14 accountants, and financial advisers and
15 consultants at the expense of the trust to
16 represent the beneficiary in connection with any
17 and all matters involving or in any way related to
18 beneficiary or any property in which he has an
19 interest or responsibility. Any and all legal,
20 equitable, judicial, or administrative hearings,
21 actions, suits, proceedings, attachments, or
22 distresses involving beneficiary in any way,
23 including, but not limited to, claims by
24 beneficiary arising out of property damage or
25 personal injury.

1 I take it this section was used to
2 allow you to assist in the litigation over the
3 injuries sustained by Abbie?
4 A. To assist?
5 Q. Well, to have authority over it. This
6 empowered you to hire lawyers --
7 A. Over the litigation.
8 Q. -- over the PI case, the injury case?
9 A. No. I didn't hire the lawyers in the
10 PI case.
11 Q. It says here at the bottom: The
12 compensation of trustee's attorneys-at-law shall
13 be subject to prior approval of a court of
14 competent jurisdiction.
15 Did you rely on this paragraph?
16 A. For what, the PI, the personal injury?
17 Q. Did you -- let me clarify, please.
18 Did you rely on this paragraph in making your
19 determination that you had the authority to spend
20 money from the trust related to the visitation
21 action?
22 A. No. I didn't rely on that paragraph.
23 Q. Let me show you -- I'm trying to make
24 sure I understand all the bases that you had, so
25 since you don't remember the other two, I'm just

1 going to go a little bit through the process of
2 elimination, but let me show you under the
3 complaint -- under the complaint that you filed,
4 you attached a copy of the letters of
5 conservatorship.
6 Under 101, the letters of -- under the
7 appointment, the order appointing the probate
8 conservator, Attachment 23, the second paragraph:
9 The conservators are granted the independent power
10 under Probate Code Section 2591(q) to employ
11 attorneys to file an action for dissolution of the
12 marriage between the proposed conservatee and her
13 husband and to pay the attorneys fees thereby
14 incurred.
15 Do you rely on this as empowering you
16 to spend the money?
17 A. What document is that?
18 Q. I'm sorry?
19 A. What document is that?
20 Q. This is under the conservatorship
21 papers, Document 101.
22 A. This was the beginning, and then this
23 was the confirmation.
24 Q. So did you, in fact, rely on this
25 language?

1 A. On that language? It was a
2 consideration, but I would not have relied on
3 anything without this and without attorneys'
4 opinion.
5 MR. DAN SLOTCHIVER: Well, I'm going
6 to ask to strike with regard to the attorneys'
7 opinions.
8 MR. BOYD: Objection, Your Honor. I'm
9 not sure, again, what the basis is for striking
10 the answer. The witness answered the question.
11 He may not like the answer, but there's nothing,
12 from an evidentiary perspective, that's
13 objectionable about it.
14 MR. DAN SLOTCHIVER: Is it my
15 understanding, then, that Mr. Boyd would allow me
16 to depose and open --- and that he's opening the
17 door for all attorneys to be subject to the court
18 for cross-examination?
19 THE COURT: Mr. Boyd?
20 MR. BOYD: Your Honor, we've been down
21 this path before. She's testifying the same way
22 she testified in her deposition.
23 MR. DAN SLOTCHIVER: I agree. The
24 difference is that it's not an appropriate
25 response for consideration by the court. I

1 understand that she may have testified the same
2 before. As you know, we have very liberal rules
3 on depositions about what we can object to.
4 THE COURT: Might I say this: I don't
5 know if this will have any impact or not. I
6 missed what she said. I did not -- I was making a
7 note. I did not hear the last part of her
8 statement.
9 MR. DAN SLOTCHIVER: She referenced
10 advice of attorneys.
11 THE COURT: Could you read her
12 statement, please?
13 (The Court Reporter read the answer
14 commencing on Page 352, Line 24.)
15 THE COURT: I'm going to allow that.
16 BY MR. DAN SLOTCHIVER:
17 Q. So these are the two documents you
18 relied on, the order of transfer of jurisdiction
19 and the conservatorship papers. Is that correct?
20 A. This was the primary document.
21 Q. The order of transfer, okay.
22 Did you consider the expense that --
23 or strike that.
24 Was part of your motivation in filing
25 the reformation action to eliminate the expense of

1 having to get court approval and thereby having a
2 wait period and monies involved with lawyers, and
3 you wanted to avoid that by getting the court to
4 say you don't have to do it, you can sign it on
5 your own?
6 MR. BOYD: Objection, Your Honor.
7 That's not a question; it's a story. I'm not even
8 sure what he's asking.
9 THE WITNESS: I don't know what --
10 THE COURT: Excuse me, ma'am.
11 MR. BOYD: Could you restate the
12 question?
13 THE COURT: If you could shorten that
14 a little bit.
15 MR. DAN SLOTCHIVER: I'd be happy to.
16 BY MR. DAN SLOTCHIVER:
17 Q. Do you agree that it would be prudent
18 for you, as a trustee, to seek court approval
19 before payment of fees?
20 A. I got court approval.
21 Q. Did you review the pleadings filed
22 with the court in South Carolina in the
23 reformation action before they were filed?
24 A. Before they were filed?
25 Q. Yes.

1 A. Oh, you mean when it was -- when I had
2 it, so it would have been filed already, right?
3 Q. You, as trustee, employed lawyers to
4 file a reformation action, correct?
5 A. Right.
6 Q. Did you review those pleadings before
7 the reformation action was filed?
8 A. I don't remember.
9 Q. Do you believe that it would be
10 prudent for you to review pleadings filed on
11 behalf of the trustee before they were filed?
12 A. Yes, and I probably did, but you're
13 asking me for a yes or no. I don't remember.
14 Q. Do you remember reference being made
15 in those pleadings to the fact that it is prudent
16 for this court to affirm the payment of such fees
17 and to approve the payment of future fees?
18 A. That sounds right.
19 Q. So you would agree that it would be
20 prudent for the court to approve fees?
21 A. They did.
22 Q. I have a little bit of a disconnect.
23 I'm trying to understand if you had full approval,
24 why are you filing a petition with the court
25 stating it is prudent for this court to affirm the

1 payment of fees and to approve the payment of
2 future fees?
3 A. Just for the documents to be in line.
4 I already had approval.
5 Q. You made an allegation in the petition
6 you filed, Paragraph 10 of the reformation action,
7 that states: The petitioners were previously
8 granted authority to employ attorneys on behalf of
9 the protected person for matters related to the
10 divorce action and to pay for such services from
11 the trust.
12 Do you remember making that
13 allegation?
14 A. Read it again.
15 Q. Paragraph 10.
16 A. Paragraph 10?
17 Q. Do you remember this allegation?
18 A. I don't particularly remember it, but
19 obviously, it seems to be accurate.
20 Q. Is the basis for this allegation --
21 THE COURT: Mr. Slotchiver?
22 MR. DAN SLOTCHIVER: Yes, ma'am.
23 THE COURT: Is that the petition?
24 MR. DAN SLOTCHIVER: It's the petition
25 filed by -- on behalf of Mrs. Cohen for their --

1 when they summonsed for relief. The day after we
2 filed our petition, they filed theirs the next day
3 for the reformation action.
4 THE COURT: This has been amended,
5 so --
6 MR. BOYD: What exhibit number are you
7 asking her to read in, for clarification?
8 MR. DAN SLOTCHIVER: It's not an
9 exhibit. If it is, I can find it. I don't
10 believe I put this into evidence.
11 MR. BOYD: That's what I was --
12 THE COURT: Because I have the amended
13 petition.
14 MR. BOYD: If you're going to ask her
15 to refer to a document, it should probably be
16 admitted into evidence, Your Honor.
17 THE COURT: The amended? I would
18 think so.
19 MR. BOYD: Because what she was
20 reading was not matching my electronic copy, but
21 now I understand.
22 MR. DAN SLOTCHIVER: It's not the
23 amended copy, Your Honor. This is --
24 MR. BOYD: If you're going to ask her
25 to refer to it, Your Honor, it should be in the

1 record.
2 MR. DAN SLOTCHIVER: This is a --
3 THE COURT: The initial petition.
4 MR. DAN SLOTCHIVER: That she filed as
5 the trustee.
6 THE COURT: Okay. Would you like to
7 admit that into evidence? Mr. Boyd is requesting
8 that you submit that if you're going to ask her to
9 refer to it and respond to questions regarding it.
10 MR. DAN SLOTCHIVER: I'm happy to put
11 it in evidence.
12 THE COURT: I think it might be
13 appropriate. If that's somebody's copy, we can
14 certainly make a copy.
15 MR. DAN SLOTCHIVER: It is.
16 THE COURT: What number?
17 THE REPORTER: 106.
18 (PLF. EXH. 106, Summons for Relief,
19 was marked for identification.)
20 THE COURT: Any objection, Mr. Boyd?
21 MR. BOYD: No objection, Your Honor.
22 THE COURT: We'll just try to make a
23 copy.
24 MR. DAN SLOTCHIVER: Thank you.
25 THE COURT: 106 without objection.

1 (PLF. EXH. 106 was admitted into
2 evidence.)
3 THE COURT: And that's the initial
4 petition?
5 MR. DAN SLOTCHIVER: Yes.
6 THE COURT: Thank you.
7 BY MR. DAN SLOTCHIVER:
8 Q. Is there language that you have
9 available to you through the pleadings and the
10 documents introduced into evidence and the
11 discovery that supports your position that the
12 court previously granted authority to employ
13 attorneys on behalf of the protected person for
14 matters related to the divorce action and to pay
15 for such services as distinguished from matters
16 related to the dissolution, which is what I saw in
17 all the documents we've seen?
18 A. No. It's this -- right here.
19 Q. So you're relying on the same language
20 that refers to dissolution that's --
21 A. No, it's not referring -- it says to
22 conclusion of all these matters.
23 Q. Under that understanding, do you
24 believe that anything that you would do related in
25 any way whatsoever to the domestic matter filed in

1 California was authorized?
2 A. Yes.
3 Q. And that any amount of money that you
4 would spend would be authorized?
5 A. Yes.
6 Q. And reasonable?
7 A. How does one determine reasonable? I
8 don't know.
9 Q. Well, let's talk about authorized
10 first. So you were at liberty, in your opinion,
11 to do whatever you wanted to, you were authorized
12 to do whatever you wanted to, related to the
13 domestic action. That's your opinion?
14 A. It wasn't my opinion; it was counsel's
15 opinion.
16 Q. You stated that you don't know what
17 reasonable is. Is that correct?
18 A. It's relative. If I spend the same
19 amount that he did, because he had a very
20 aggressive attorney, then it's what needed to be
21 done for Abbie's benefit.
22 Q. Would you agree with me, Mrs. Cohen,
23 that whatever money Dan Dorn spent was in his
24 individual capacity, not as a trustee? Would you
25 agree with that? Yes or no, please.

1 A. Most of the money was from his
2 parents, so no, I wouldn't agree with it.
3 Q. Was he involved in the matter as a
4 trustee?
5 A. No.
6 Q. Was he spending trust money?
7 A. No.
8 Q. Were you spending trust money?
9 A. Yes.
10 Q. Do you understand that there is a
11 distinction?
12 A. Yes.
13 Q. What amount of money would have been
14 too much?
15 A. I have no answer to that. I have no
16 idea.
17 Q. If it, for the same action, cost
18 $2 million, and there was $2 million available,
19 would you have spent it?
20 A. I can't answer that. I have no idea.
21 Q. Do you understand the costs that have
22 been incurred as a result of the filing of the
23 reformation action?
24 A. That's your fault, not mine.
25 MR. DAN SLOTCHIVER: Judge, if she

1 could be asked to answer the question.
2 THE WITNESS: Well, whose fault is it?
3 THE COURT: If you could repeat the
4 question. I think he asked you whether you knew
5 how much money had been spent on the reformation
6 action.
7 MR. DAN SLOTCHIVER: Or the costs that
8 had been incurred as a result of the filing of the
9 reformation action.
10 THE COURT: Thank you.
11 THE WITNESS: Yes.
12 BY MR. DAN SLOTCHIVER:
13 Q. How much?
14 A. Well, Dan testified having spent 150,
15 and I spent about a hundred, but that's out of our
16 funds, not from the trust.
17 Q. So at some point you started to pay
18 the money out of your own funds instead of from
19 the trust?
20 A. It was for -- you're the one who made
21 that point, that you were suing us individually.
22 Q. So I made the point at the taking of
23 your deposition in May of 2011, and do you recall
24 at that point advising me that the trust was
25 paying for all of the legal fees incurred related

1 to the South Carolina action? Do you remember
2 telling me that?
3 A. I did. If I paid any, I paid them all
4 back.
5 Q. And do you remember us discussing the
6 fact that you, as an individual, were also named
7 as a party in this action?
8 A. Yes. We paid all the money back.
9 Q. So my understanding, then, is that
10 your testimony is after the deposition and after
11 we've addressed these points with you, then you
12 paid the money back?
13 A. I don't know what date it was. It may
14 have been before that. You would have to check
15 the records. I don't know what date.
16 Q. Do you remember the admonition made to
17 you by Judge Edmonds at the TRO hearing?
18 A. Yes.
19 Q. But between that point and the time of
20 the deposition, you incurred -- you continued to
21 allow the trust to pay the expenses?
22 A. Yes. I was trying to close things up.
23 Q. And it wasn't until after the
24 deposition took place that you decided to
25 reimburse the trust from your personal funds?

1 A. No. It may have been -- it was
2 probably before that. I don't have the date.
3 Q. Well, I believe you testified a moment
4 ago that it was the deposition that brought it to
5 your attention.
6 A. No, I didn't. I said that, and we can
7 read back my words.
8 Q. Well, I tell you what we could do.
9 Why don't we do this instead. If you look at
10 Page 30 of your deposition, Line 18, and under
11 Line 18 through 25, would you agree with me that
12 you and your husband have contributed nothing to
13 the defense of this action from your own --
14 A. I didn't say that. I just said we did
15 pay for the trust to be set up.
16 Q. Well, let's read -- I'm going to read
17 it and ask if you agree with what I read.
18 A. I said I don't know.
19 Q. Well, I'm going to read from the
20 language on Line 18, and you can follow along, and
21 I'm going to ask if you agree that this is what
22 the language says.
23 Would you agree with me that you and
24 your husband have contributed nothing to the
25 defense of this action from your own personal

1 accounts? And your response is: But we did pay
2 for the trust to be set up.
3 A. Right.
4 Q. So does this refresh your recollection
5 as to the fact --
6 A. But if you will look at --
7 THE COURT: Ma'am --
8 BY MR. DAN SLOTCHIVER:
9 Q. If I can finish, please. Does this
10 refresh your recollection that up until the time
11 that I raised this point to you at the deposition,
12 that all of the defenses for you and Dr. Cohen in
13 your individual capacity related to this action
14 were paid for by the trust?
15 A. As I quote on the next page, I don't
16 know. I don't know. I guess I don't know. I'm
17 sorry. I'm not trying to be so dense. I just
18 don't quite understand what you're getting at.
19 I'm sorry. I'm not trying to give you a hard
20 time. I didn't know.
21 Q. Were you present at your husband's
22 deposition?
23 A. I think so.
24 Q. Do you remember him likewise
25 testifying to the fact that the fees were paid

1 from the trust?
2 A. I don't remember that, no. But he
3 wouldn't have paid any of the fees.
4 Q. Are you aware that as a result of the
5 filing of the reformation action that this court
6 took it upon it as its responsibility to appoint
7 counsel and guardians to serve in the capacity not
8 only in the case that we had filed, but also in
9 the case that you had filed, with the exception of
10 John Kachmarsky?
11 A. What do you mean with the exception?
12 Q. Well, he was solely because of his
13 capacity as guardian and attorney for the kids in
14 your action. Any expenses incurred and fees
15 incurred by him would be solely attributable to
16 the reformation action, correct?
17 A. I don't know. I guess.
18 Q. And the fees incurred by Lynette
19 Hedgepath and Lee Moore would, in some way or
20 another, have to be divided between the two
21 actions because they'd been appointed on both
22 cases. Would you agree with that?
23 A. So why does Abbie have to pay all the
24 fees?
25 Q. Well, that was the next question I was

1 going to ask you. Did you consider the expenses
2 that you would be incurring when you made the
3 decision to have the reformation action filed?
4 A. I didn't know about any expenses other
5 than a court filing fee.
6 Q. Once the action was filed and Judge
7 Edmonds appointed counsel to serve in these
8 multiple roles, did you revisit the issue to
9 consider the expenses involved?
10 A. Yes. What options did I have? Can I
11 take them away and say I don't want those people
12 appointed?
13 Q. Did you consider dismissing the action
14 for reformation?
15 A. Yes.
16 Q. You did?
17 A. Yes.
18 Q. Did you make a determination to
19 dismiss it? Obviously not, correct?
20 A. I spoke with counsel about it. They
21 decided not to.
22 MR. BOYD: Your Honor, can we ask the
23 witness not to get into matters of attorney-client
24 privilege?
25 THE WITNESS: I'm sorry, I'm sorry,

1 I'm sorry.
2 THE COURT: Ma'am, I recommend that
3 you not breach the issue of your counsel's advice
4 to you.
5 THE WITNESS: Okay. I'm sorry.
6 THE COURT: So as to not open that
7 issue up for cross-examination.
8 THE WITNESS: Okay.
9 BY MR. DAN SLOTCHIVER:
10 Q. Let me show you first -- well, let me
11 ask you first, Mrs. Cohen, are you familiar that
12 there -- I think we talked earlier about John
13 Kachmarsky and the fact that he had submitted a
14 fee petition. We talked about it in connection
15 with your counsel's argument about the
16 reasonableness of paying for research, talked
17 about that yesterday, I believe. Do you remember
18 that?
19 A. Yes.
20 Q. So you are familiar that fee petitions
21 have been filed with this court?
22 A. Yes.
23 Q. Let's look at some of the expense --
24 and you understand -- strike that.
25 You understand that throughout this

1 proceeding yesterday, today, tomorrow, the next
2 day, and next week, until we finish it, that the
3 lawyers who have been appointed by the court will
4 be submitting fees for their time?
5 A. Yes.
6 Q. Let's look at the fees submitted
7 initially. Or let's look at the fee orders
8 showing what's been ordered by the court. The
9 first order -- let's go down to the numbers that
10 are down at the bottom. Go to the next page.
11 Next page, please. Keep going. Keep going.
12 Let's go to the last page, I think.
13 You understand right here that the
14 court, with reference to Mr. Kachmarsky, has
15 ordered, and I believe you have tendered payment,
16 if I'm correct. Is that right?
17 A. Yes.
18 Q. Payment in the amount of just under
19 $36,000?
20 A. Yes.
21 Q. And that was an interim payment
22 granted for the bills submitted up to that time?
23 A. Yes.
24 Q. And if we look at Lee Moore, Ms. Moore
25 submitted an affidavit requesting payment for

1 guardian fees in the amount of $12,495, plus
2 costs, for a total of $12,600, in addition to
3 court monies previously authorized for over
4 $6,000, so we're looking at about $19,000 related
5 to her, correct?
6 A. Yes.
7 Q. So from the 35, call it 20, we're at
8 about 55, and then we got Lynette Hedgepath, and
9 if we look at hers -- and you paid those, correct,
10 out of the trust?
11 A. Yes.
12 Q. Ms. Hedgepath referenced $16,569.50?
13 A. Yes.
14 Q. And you understand, Mrs. Cohen, or
15 would you agree with me that you know that on
16 Monday of next week, we're situated, before we
17 begin -- before we recommence the trial of this
18 case, to entertain motions by all counsel --
19 Ms. Hedgepath, Ms. Moore, Mr. Kachmarsky -- as to
20 additional fees based on time incurred in this
21 case?
22 A. What do you -- what are you asking me?
23 What do you want me to do?
24 Q. Well, are you familiar with that?
25 A. I didn't know it was Monday.

1 Q. And you're familiar with the fact that
2 they're still sitting here today billing, and
3 would you agree with me that the cost to the trust
4 becomes quite extraordinary?
5 A. Yes, I would.
6 Q. And is it still your opinion that
7 despite that, you would not be willing or have not
8 been willing --
9 MR. DAN SLOTCHIVER: Strike that, Your
10 Honor.
11 BY MR. DAN SLOTCHIVER:
12 Q. Do you agree with me that despite all
13 of that, you have not withdrawn your petition for
14 the reformation?
15 A. That wouldn't have caused you to drop
16 this nonsensical suit. I don't know why you're
17 asking me that.
18 Q. Let's move on. Mrs. Cohen, you were
19 appointed -- do you understand that you were
20 appointed as a co-trustee?
21 A. Yes.
22 Q. And do you understand that as a
23 co-trustee, you have duties that you share with
24 your co-trustee?
25 A. I, in fact, do it all, or pretty much.

1 Q. Well, and that was what I was going to
2 ask you. Would you agree with me that the reality
3 is Dr. Cohen does very little with reference to
4 the trust, and you pretty much handle all of it?
5 A. Yes.
6 Q. And that he, as a general rule,
7 acquiesces to your decision-making and agrees with
8 whatever you decide is best to be done?
9 A. I don't know if he acquiesces. He
10 works incredibly long hours, so I handle it.
11 Q. Do you run all decisions that you make
12 by him, or do you generally just make them on your
13 own?
14 A. I may suggest it to him. I'm not
15 always sure if he's listening, but that's one of
16 the reasons I needed Yaakov, because I didn't
17 understand a lot of things.
18 Q. Do you understand that your duty as a
19 co-trustee is to work in concert with your
20 co-trustee, not to make unilateral decisions?
21 A. No, I don't understand that co means
22 one person or the other. That's what it was
23 explained to me, that one person could make the
24 decision, and the other could take over if needed.
25 MR. DAN SLOTCHIVER: Perhaps it's a

1 good time to take a break. I don't know what time
2 you want to take lunch, Your Honor, but we've got
3 a few issues to go over that are going to take --
4 we're moving forward. However you want to go.
5 THE COURT: It's 12:00 now. How much
6 longer do you think it will take to go over
7 those -- for you to finish with this witness?
8 MR. DAN SLOTCHIVER: We are not
9 finished with this witness, we've got some
10 clarifications, but we are winding it up, and I
11 think it might move quicker if we take a break at
12 this point, if that would be okay.
13 THE COURT: Would you like to break
14 for lunch?
15 MR. DAN SLOTCHIVER: I would.
16 THE COURT: Is that fine with
17 everybody else?
18 MR. BOYD: No objection, Your Honor.
19 THE COURT: So it's 12:00. We'll
20 start back at 1:15. Is an hour and 15 minutes
21 enough for everybody, so we can try to move this
22 thing forward? Yes?
23 MR. DAN SLOTCHIVER: Yes.
24 MR. BOYD: Yes.
25 THE COURT: We'll be back at 1:15.

1 Thank you.
2 THE WITNESS: Should I leave
3 everything here?
4 THE COURT: Ma'am, are those exhibits?
5 THE WITNESS: What is?
6 THE COURT: I'm sorry. What were you
7 asking, ma'am?
8 THE WITNESS: Should I leave
9 everything here?
10 THE COURT: If they're exhibits, if
11 you could give those to the court reporter.
12 Thank you. We're adjourned.
13 (A luncheon recess transpired from
14 11:58 AM to 1:23 PM.)
15 THE COURT: We're back on the record
16 of the matter regarding Abbie Dorn.
17 Mr. Slotchiver?
18 MR. DAN SLOTCHIVER: Thank you, Your
19 Honor. Almost done.
20 THE COURT: Thank you.
21 BY MR. DAN SLOTCHIVER:
22 Q. Mrs. Cohen, do you believe that Abbie,
23 by taking care of your daughter in the manner that
24 you have taken care of her as a guardian, that she
25 may, in fact, live for a significant amount of

1 time, perhaps even decades?
2 A. God willing. I have no idea. I'm not
3 God.
4 Q. You agree that you and your husband
5 have provided her care partially assisted by the
6 fact that he is a physician and has access to
7 things that an ordinary person might not be able
8 to have access to?
9 A. Well, he is a physician. I don't know
10 if I can make that assessment, but --
11 Q. Do you agree with me that preservation
12 of the trust for Abbie is an important
13 responsibility for you as a fiduciary?
14 A. It's secondary to getting Abbie the
15 very best care and getting her desires and needs
16 met.
17 Q. Do you agree with me that it would be
18 improper to exhaust the funds of the trust?
19 A. I don't believe the funds would be
20 exhausted. She gets an amount every month.
21 Q. Were they exhausted -- well, let's
22 talk about that. As I understand it, there's a
23 monthly annuity which I believe you testified to
24 earlier, perhaps in the deposition, about the fact
25 that you generally exhausted that on a monthly

1 basis and had to dip a little bit into the
2 reserves?
3 A. No longer.
4 Q. That was your testimony back then,
5 correct?
6 A. That's correct, but her condition has
7 improved, thank God.
8 Q. And that it would be unreasonable and
9 inappropriate, would you agree with that
10 statement, to exhaust the excess funds, meaning
11 not the annuity and not -- but the entire corpus
12 of the monies set aside in the original -- I
13 believe it was a deposit of about $960,000. Would
14 you agree that that would be unreasonable?
15 A. Not if it's in Abbie's best interest.
16 Q. Do you agree with the fact that you
17 did, in fact, exhaust those funds by having more
18 debt or having as much debt owed as there were
19 assets?
20 A. No. I never exhausted the funds.
21 Q. I'm going to ask you, please, to turn
22 to Page 33 of your deposition, and if we could
23 look at Lines 3 through 12.
24 A. 33?
25 Q. Yes.

1 A. What do you want me to say?
2 Q. Well, I'm going to read and see if you
3 agree with the statement that you made in your
4 deposition: So when the legal fees -- the
5 question asked by me was: So when the legal fees
6 are paid that are outstanding, the account will
7 virtually be gone, assuming it was all paid in a
8 lump sum? Your response: All paid in a lump sum?
9 My question: In other words, the debts are equal
10 to the assets. And your response is: That's
11 correct.
12 A. To -- if I had paid it all in a lump
13 sum, but I did not. I saved the money and never
14 depleted the trust.
15 Q. Understanding that you didn't pay it
16 all in a lump sum, would you still agree with me
17 that you had exhausted it based on the debts being
18 equal to the assets?
19 A. No, I wouldn't. I negotiated the
20 settlement with Lisa, and I did not exhaust it.
21 Q. So what you told me on this date you
22 would disagree with?
23 A. You were asking me a theoretical
24 question, if I paid it all in a lump sum. I
25 didn't. It was just like if you asked me if I

1 bought a house for cash.
2 Q. If you bought a house worth $100,000,
3 and you had a $100,000 debt on that house, what
4 net do you have? What net monies do you have?
5 A. If you're paying $1,200 a month,
6 you're not going to have any debt. You're just
7 going to have the payments a month. You still are
8 not going to be broke.
9 Q. Do you agree with me that --
10 A. What line? I'm sorry.
11 Q. -- the fees charged to the trust --
12 A. What line?
13 Q. Not a line. Would you agree with me
14 that the fees charged to the trust for the hourly
15 rate of the MOLM firm were outrageous?
16 A. They were in line with Dan Dorn's
17 fees.
18 Q. I would ask that you be instructed --
19 A. In context.
20 MR. DAN SLOTCHIVER: Judge, I would
21 ask that she be instructed to answer the question.
22 THE COURT: Ma'am --
23 THE WITNESS: No.
24 BY MR. DAN SLOTCHIVER:
25 Q. You would not agree they were

1 outrageous?
2 A. Not for Beverly Hills.
3 Q. Would you please turn to Page 44 of
4 your deposition, Lines 21 through 23?
5 A. Yes.
6 Q. Question: What's the hourly rate for
7 Lisa Meyer? Answer: Lisa Meyer, I believe, is
8 $700, which, of course, is outrageous.
9 Do you agree that was the statement?
10 A. Outrageous for Myrtle Beach.
11 Q. Do you agree that you made the
12 statement at your deposition?
13 A. I made the statement, but it was in
14 relation to Myrtle Beach, not Beverly Hills.
15 Q. It doesn't state that in the
16 statement, does it?
17 A. That's what I meant.
18 Q. And would you agree that the fees you
19 were paying for other counsel in California before
20 you replaced them with the MOLM firm ranged
21 between $395 and $450 an hour, several hundred
22 dollars less than these fees?
23 A. They were less expensive, but I was
24 getting nowhere.
25 Q. I'm asking do you agree there are

1 lawyers who would take a mere $395 to $450 an hour
2 in California to represent you in this case?
3 A. Yes, and if Dan Dorn hadn't filed --
4 THE COURT: Ma'am --
5 THE WITNESS: -- I wouldn't have done
6 that.
7 THE COURT: Ma'am, please don't go off
8 like that, okay. Just answer the questions.
9 THE WITNESS: Okay. I'm sorry.
10 THE COURT: Thank you.
11 BY MR. DAN SLOTCHIVER:
12 Q. Earlier today in your deposition
13 (sic), you referenced that you had relied upon the
14 order from California and the transfer
15 paperwork --
16 A. This.
17 Q. -- and advice from counsel as to your
18 basis for believing you had the authority to pay
19 fees. In the thousands of documents that have
20 been provided to us and the probably thousands of
21 documents in front of the court as exhibits, can
22 you show me one place where there is a letter or a
23 memo or a note from a lawyer giving you the
24 authority to spend the money?
25 A. Well, Robin and I talked, and there's

1 a letter -- yes, there is a letter.
2 MR. DAN SLOTCHIVER: Your Honor, I've
3 asked a very direct question.
4 THE WITNESS: Yes. There is a letter
5 from Robin.
6 BY MR. DAN SLOTCHIVER:
7 Q. That letter, if there -- is that
8 letter --
9 A. No, it's not in your --
10 Q. Can you show me in the exhibits
11 that we've been given or the discovery we've been
12 provided --
13 A. Why would you show a letter? Your
14 exhibits. Didn't you ask me your exhibits?
15 Q. I'm asking you to show it to me. I'll
16 give you every exhibit and all the time you want
17 to look at it.
18 A. Not in your exhibits, but I have a
19 letter.
20 MR. DAN SLOTCHIVER: Your Honor, I
21 don't want to argue with the witness.
22 THE COURT: Ma'am --
23 THE WITNESS: But what's the question?
24 Is there a letter?
25 THE COURT: Ma'am, if you could stop

1 talking for a moment.
2 THE WITNESS: Okay. I'm sorry.
3 THE COURT: Thank you.
4 BY MR. DAN SLOTCHIVER:
5 Q. Can you show me one document signed by
6 counsel, your counsel, that gives you that
7 authority? We're talking about over a million
8 dollars. I'm asking -- it's a lot of money.
9 A. Yes, it is.
10 Q. It's over $1.1 million in fees. I'm
11 asking you if you can show me one document that
12 gives you that authority, one document that's been
13 submitted into evidence or provided to us through
14 our discovery requests, and if you can state yes
15 or no, and the next question I'll ask is which one
16 is it.
17 A. No, not that you submitted.
18 Q. That you or your counsel have
19 submitted to us or that we have introduced into
20 evidence.
21 A. I don't know what they submitted to
22 you.
23 Q. In your capacity as a trustee and
24 conservator who brought an action and were named
25 in an action and also, I guess, in your capacity

1 as an individual, did you cooperate with providing
2 counsel requested discovery documents?
3 A. Yes.
4 Q. Are you aware that a gigantic portion
5 of this case that we've been talking about since
6 yesterday that's been filed for two-and-a-half
7 years --
8 A. Yes.
9 Q. If I can finish. -- that you've been
10 deposed on, that experts have been hired on, is
11 devoted to the issue of did you have authority,
12 and was it reasonable? Are you aware of that?
13 A. Yes.
14 Q. And is it my understanding that you
15 are not able to provide any document provided by a
16 counsel to you, a memorandum, or a letter or
17 something of the sort confirming that you have
18 that authority?
19 A. There's a letter from Robin Morris.
20 Q. Are you aware that Robin Morris
21 advised the court in an earlier hearing -- we've
22 got the transcript -- that she provided her entire
23 file, her entire file, to Bret Davis and did not
24 maintain it?
25 A. Yes, I know that.

1 Q. And are you aware of the fact that
2 we --
3 MR. DAN SLOTCHIVER: Judge, I'd like
4 to go off the record and take this up with the
5 court. I'm very concerned about this information.
6 THE COURT: All right. Let's go off
7 the record.
8 (Off-the-record conference.)
9 THE COURT: We're back on the record
10 in the Dorn matter.
11 Mr. Slotchiver?
12 MR. DAN SLOTCHIVER: Thank you, Your
13 Honor. Before we proceed, can we put on the
14 record the discussion that we had off the record?
15 THE COURT: Yes, we may. Would you
16 like to start?
17 MR. DAN SLOTCHIVER: Absolutely. Your
18 Honor, a few moments ago, we stepped outside
19 because there was testimony from Mrs. --
20 And I'm going to state what I believe
21 we discussed. If anybody disagrees, obviously,
22 I'm sure they'll stand up.
23 But there was testimony from
24 Mrs. Cohen that she had relied on a letter. I
25 asked her what letter. She said it was a letter

1 from Robin Morris. We stepped outside and
2 discussed the fact that that letter had not been
3 provided to us in discovery.
4 Conversation ensued that there was, in
5 fact, a letter delivered to us on Friday in
6 discovery which copied -- which was a Robin Morris
7 letter. Frankly, I had not read it, because as
8 stated to the court yesterday, I advised the court
9 that we anticipate some objections to some
10 evidence coming in because of what I characterize
11 as a document dump on Friday.
12 The court asked when the document
13 became available, when they learned about the
14 document. Mr. Boyd stated that in a conversation
15 he had had with Ms. Morris, she had advised that
16 she may have the document on a computer, but the
17 computer was old, and she hadn't found it, and
18 subsequently, she sent this document over.
19 We then objected. I objected based on
20 the fact that the document had not been previously
21 submitted to us, based on the fact that there were
22 discovery requests outstanding, that we had come
23 to the court on several occasions seeking to
24 receive supplemental discovery, and that we
25 believed we should have received that.

1 The conversation then went into the
2 issue that we had a hearing, wherein Robin Morris
3 was present, dealing with that file and wherein
4 the testimony was that her entire file had been
5 delivered to Bret, she did not maintain her file,
6 and that it had been commingled.
7 And then Bret Davis -- Reese Boyd
8 testified or argued that I had the right to take
9 her deposition. My assertion, in turn, was that I
10 opted not to because they had not provided --
11 because they were asserting an attorney-client
12 privilege. I don't -- I decided not to pursue it
13 because they weren't seeking to introduce
14 something because they can't have it both ways.
15 You can't assert an attorney-client privilege on
16 the one hand and then introduce the document on
17 the other.
18 Based on this, the court reviewed the
19 e-mail exchange, not the document itself, but the
20 e-mail exchange from Robin Morris to Reese Boyd,
21 which, in turn, was sent to us, and noted on it
22 that the letter that Robin Morris wrote, which is
23 the one that's being referred to, was actually a
24 letter to Mrs. Cohen's original counsel in
25 California, Ms. Korol, I believe, with a carbon

1 copy to Mrs. Cohen, for which we asserted that if
2 it was a letter written to her counsel or a letter
3 written to Mrs. Cohen, they had a duty to provide
4 it.
5 The court asked if counsel for the
6 Cohens had taken the position that the California
7 litigation, the California legal files, were
8 protected by the privilege, and this has been a
9 very lengthy trial, the whole process of
10 two-and-a-half years, but we reminded the court
11 that we had actually argued that, and they opposed
12 us getting the files from California based on
13 privilege, and Your Honor ruled that Mrs. Cohen's
14 counsel was correct, and you ruled against us, and
15 that we were not provided that.
16 Based on this, we have asked that this
17 letter be stricken because it wasn't provided to
18 us either in a timely manner or at all, that had
19 we known that there was a potential letter in the
20 computer, that we could have easily utilized John
21 Akerman, in the back of the courtroom, to do a
22 forensic look at that computer utilizing certain
23 search words that would have come up with that
24 document, and had we done it, we could have seen
25 it and had an opportunity, if we wished to, to

1 take the deposition of Ms. Morris regarding that,
2 but we did not.
3 So my understanding is that the
4 court's ruling based on this general situation is
5 that at this point, the court is not going to
6 allow the introduction of that letter, it's going
7 to strike the testimony with regard to the fact
8 that there was a letter to rely on, and that the
9 court will entertain the -- will entertain
10 questioning pertaining to that letter in the
11 future. It wasn't clear to me if it's on
12 cross-examination or in the case to be brought by
13 the Cohens. I'm assuming in the case to be
14 brought by the Cohens. Is that correct?
15 THE COURT: When they seek to
16 introduce it, when they seek to introduce it.
17 MR. DAN SLOTCHIVER: When they seek to
18 introduce it, and at that time, the court has
19 advised that we -- that our right to object is
20 still reserved.
21 THE COURT: Yes.
22 MR. DAN SLOTCHIVER: And we can bring
23 up the objection at that time, and the court will
24 make a ruling, but at this juncture during the
25 examination, it is not allowed.

1 THE COURT: Yes, sir.
2 Mr. Boyd?
3 MR. BOYD: Your Honor, I would just
4 briefly -- again, the matter that is in
5 discussion, the letter in question, the Cohens
6 initially learned, I learned, that Ms. Morris had
7 been served a subpoena in this matter for the
8 entirety of her file. We sought to work with
9 Mr. Slotchiver and Mr. Dorn's counsel.
10 As I stated in our conference, and as
11 the court is well aware, we had a hearing on the
12 matter, and the court ruled that the entirety of
13 the file, for various reasons, the fact that the
14 file had been merged into another attorney's file,
15 that Ms. Morris had retired, that there were
16 likely materials in there that were
17 attorney-client privileged, that it was not
18 subject to wholesale disclosure.
19 THE COURT: And I do recall Ms. Morris
20 at that hearing said: I don't have anything. I
21 have -- the subpoena was for her file, and she
22 said: I don't have anything. And that was one of
23 the reasons that I did not require her to -- she
24 did respond, I understand, to the subpoena by
25 saying: My answer is I have nothing.

1 MR. BOYD: And I believe, yes, Your
2 Honor, that's correct. And I just want to clarify
3 that the letter that I mentioned in our
4 off-the-record communication, I mentioned that I
5 did follow up with counsel. On August 8, 2011, I
6 wrote Mr. Slotchiver a letter addressing various
7 discovery issues, Your Honor, designation of
8 expert witnesses, et cetera.
9 The letter includes a paragraph, which
10 I'll just, if I may -- I stated to Mr. Slotchiver:
11 With respect to the deposition of Robin Morris, I
12 would again suggest that you provide me with a
13 list of questions for submission to Ms. Morris as
14 written interrogatories. That way we could
15 evaluate each question as to attorney-client
16 privilege and advise you to submit the questions
17 to Ms. Morris, as the privilege is waived with
18 respect to the question, or alternatively, assert
19 a privilege accordingly.
20 Even if you are not inclined to depose
21 Ms. Morris by written interrogatory, the written
22 questions could be the basis for potentially
23 agreeing on a document to limit the scope of
24 deposition, consistent with the Cohens'
25 attorney-client privilege.

1 So, Your Honor, I was doing my best to
2 cooperate with the discovery of information that
3 Robin Morris might have in her file, and at that
4 time, Your Honor, I knew the same thing that
5 everyone else knew, which is what Robin Morris had
6 represented in court, and I produced the letter
7 within 48 hours. I think it was -- it came in one
8 day, I produced it the next day. She had told me
9 she had nothing, and then later she said: I found
10 something, and she e-mailed it to me, and I
11 immediately, relatively speaking in today's world,
12 in the throes of trying to get ready for trial,
13 Your Honor, we produced it as quickly as possible.
14 MR. DAN SLOTCHIVER: And I take
15 exception to the comment, Your Honor, that she
16 said she had nothing. According to Mr. Boyd in
17 chambers, she told him she thought she had
18 something, it was in a computer, the computer was
19 old, she hadn't found it.
20 Secondly, Your Honor, with reference
21 to the comment about he tried to work with me. I
22 appreciate counsel advising me the limitations on
23 which I'm allowed to practice, but under the
24 limitations he provided, that I would submit
25 written questions, and he'll consider those and

1 make a decision, I opted to let him follow the
2 standard rules of discovery, let him provide
3 documents that he claimed was not privileged, and
4 other than that, I opted, based on the fact there
5 were none, not to take the deposition.
6 MR. BOYD: Your Honor, I was simply
7 trying to meet our obligations under the rules
8 consistent with the court's order on the
9 attorney-client privilege. And yes, Ms. Morris
10 did tell me, in fact, that she could not find
11 anything.
12 THE COURT: Anyone else?
13 MR. KACHMARSKY: Judge, I would like
14 to at least have an opportunity to look at the
15 letter before you finalize your ruling on it, I
16 mean, because I don't even know what it says.
17 THE COURT: All right.
18 MR. KACHMARSKY: It'll take a few
19 minutes.
20 THE COURT: We'll take just a couple
21 minutes. We'll go off the record. Y'all want to
22 take a minute and let me know when you're ready?
23 MR. DAN SLOTCHIVER: Thank you, Your
24 Honor.
25 THE COURT: I'll step back in when

1 you're ready.
2 (A recess transpired from 2:13 PM to
3 2:25 PM.)
4 THE COURT: We're back on the record
5 in the Dorn matter.
6 Mr. Kachmarsky asked for an
7 opportunity to review the documents, the e-mail
8 letter from Ms. Morris.
9 MR. KACHMARSKY: I have, Your Honor,
10 and I will withdraw my request for you to withhold
11 your ruling at this point.
12 MR. DAN SLOTCHIVER: If I may, Your
13 Honor, I had an opportunity, and I wanted to put
14 it on the record, to pull a part of the
15 transcript.
16 THE COURT: From the hearing?
17 MR. DAN SLOTCHIVER: From the hearing.
18 I can't put it on the screen, but I'll read it
19 slowly, if I may, and it's pretty brief.
20 THE COURT: And this was the
21 hearing --
22 MR. DAN SLOTCHIVER: This was --
23 actually, I've got the original transcript, if
24 you'd like, Your Honor. I'd be happy to give it
25 to you.

1 THE COURT: No. Unless Mr. Boyd has
2 an objection, I'm happy to just let you read.
3 MR. BOYD: I'll listen, Your Honor.
4 Can you remind me the date of the
5 hearing?
6 MR. DAN SLOTCHIVER: Yes. The hearing
7 was July 25th, 2011, a year-and-a-half ago.
8 THE WITNESS: I'm sorry. Are you
9 talking to me or --
10 MR. DAN SLOTCHIVER: No.
11 THE COURT: No, ma'am. Thank you.
12 MR. DAN SLOTCHIVER: In the hearing --
13 and I'll read to you part of the responsive
14 testimony, because I think it makes sense. In the
15 argument made by Reese Boyd on Page 21: Your
16 Honor, Ms. Morris then responded to the subpoena
17 on June the 6th. Dear Dan, the documents you're
18 requesting, no mention of a subpoena -- excuse me,
19 no mention of a deposition, by then a subpoena or
20 in response. Dear Dan, documents you are
21 requesting via subpoena dated May 23rd are
22 privileged pursuant to the attorney-client
23 privilege. Further, I have no documents
24 responsive to this request.
25 So she did raise the issue of

1 attorney-client privilege, but however, without
2 waiving the privilege, she responded affirmatively
3 to the subpoena: I have nothing responsive in my
4 possession.
5 Two short other excerpts. Then
6 there's, on Page 25, direct testimony from
7 Ms. Morris, Line 24: Your Honor, I would just
8 simply like to reiterate that under the rules
9 of -- Page 26 -- ethics, my understanding is after
10 having reviewed them, both during my retirement
11 and after my retirement and subject to the
12 subpoena, that I have no obligation to keep copies
13 of records or to retrieve copies of records, plus,
14 my representation has ceased, and the client
15 requested that I turn over the file to subsequent
16 counsel.
17 Mr. Slotchiver apparently wants me to
18 go rifle through another lawyer's -- another
19 attorney's file in the midst of litigation in
20 order for me to find something that he took from
21 my office. Your Honor, I think that that, in and
22 of itself, would be some breach of
23 confidentiality.
24 I have no authority to go into Bret's
25 office and go through his file looking for pieces

1 of paper. I have not had my hands on this file
2 for three days short of two years. I have no idea
3 where it is, what's happened to it, what condition
4 it might be, and I think it would put me -- excuse
5 me. And I think it would put an undue burden on
6 me and certainly, I think, create a fairly
7 substantial privilege issue for me to be ordered
8 to go into an attorney's file in the midst of
9 litigation.
10 And this file was transferred to him
11 so -- well, before any of this litigation was
12 initiated, so there is no issue here as to whether
13 it was done for some improper purpose, which is
14 the inference that I have been receiving from
15 Mr. Slotchiver when he first contacted me.
16 So I wanted to point out to the court
17 that it's not just argument of counsel that's
18 addressed the fact that there was no document and
19 asserted the privilege, meaning counsel for the
20 Cohens in today's case, but it's also argument
21 from the lawyer who purportedly wrote this letter
22 that we're talking about, who herself made the
23 same assertions, and I wanted to have clarity for
24 the record on that.
25 I'm happy to submit a copy of the

1 transcript to the court for its review. I don't
2 believe the court had one, so I'd like to put it
3 into evidence if I may. It's still a sealed copy.
4 Fair enough?
5 THE COURT: Any objection?
6 MR. BOYD: No objection.
7 THE COURT: No objection. Court will
8 admit that.
9 MR. DAN SLOTCHIVER: You can mark this
10 as our next exhibit.
11 (PLF. EXH. 107, 7/25/11 Hearing
12 Transcript, was marked for identification and
13 admitted into evidence.)
14 MR. DAN SLOTCHIVER: And it's still a
15 sealed copy, Your Honor.
16 THE COURT: Yes, sir.
17 MR. DAN SLOTCHIVER: And Your Honor,
18 why don't we go ahead, while we're here, and admit
19 the original transcript also. I can put it in a
20 file or mark it as an exhibit. We've referenced
21 it.
22 THE COURT: Whose deposition?
23 MR. DAN SLOTCHIVER: The transcript of
24 Susan Cohen.
25 THE COURT: Her deposition?

1 MR. DAN SLOTCHIVER: Yes, from
2 May 18th of '11.
3 THE COURT: So that would be 108?
4 MR. DAN SLOTCHIVER: Yes.
5 (PLF. EXH. 108, Deposition of Susan
6 Cohen, was marked for identification and admitted
7 into evidence.)
8 MS. HEDGEPATH: Excuse me, Your Honor.
9 What was 107?
10 THE COURT: 107 was the transcript of
11 the hearing held on 7/25/11 with respect to
12 Ms. Morris.
13 MR. DAN SLOTCHIVER: I believe, Your
14 Honor, I have nothing further.
15 THE COURT: And let me just go back
16 and -- just give me one second.
17 Got it. So at this time the court is
18 going to strike the testimony of the witness with
19 respect to a letter from counsel that she
20 referenced in her testimony.
21 MR. DAN SLOTCHIVER: Your Honor, as
22 the striking, would the record then reflect that
23 there are no documents responsive to the question?
24 THE COURT: At this point, there are
25 no documents responsive to the question.

1 MR. DAN SLOTCHIVER: Thank you, Judge.
2 THE COURT: I have indicated to
3 counsel that at whatever time that Mr. Boyd may
4 seek to introduce that letter from Ms. Morris,
5 that I'm happy to allow him to try to do that and
6 hear any objection at that time as to why it
7 should not be allowed at that time.
8 MR. DAN SLOTCHIVER: Thank you, Judge.
9 MR. BOYD: Thank you, Your Honor. And
10 Your Honor, just for the record, I don't -- I
11 listened to the transcript reading. I don't think
12 there's anything that was said in that transcript
13 that's inconsistent with anything that we
14 represented, so I appreciate the court's ruling.
15 THE COURT: Thank you.
16 I'm sorry, Mr. Slotchiver. Did you
17 say you were finished with the witness?
18 MR. DAN SLOTCHIVER: I am.
19 THE COURT: Thank you.
20 THE WITNESS: Should I leave?
21 THE COURT: No, ma'am. I'm sorry.
22 We're going to give the other attorneys an
23 opportunity to now question you.
24 Mr. Boyd?
25 MR. BOYD: Your Honor, can we take

1 about a five-minute break. I apologize. I'm a
2 little out of sorts here at the moment.
3 THE COURT: Yes. And let me ask you,
4 I'm not sure if -- I'm assuming Mr. Kachmarsky
5 would go after Mr. Boyd, but if --
6 MR. DAN SLOTCHIVER: The order we had
7 done yesterday was from here to Lynette to John.
8 THE COURT: Okay. I'm happy to go
9 with that order.
10 So we'll take about five minutes.
11 MR. BOYD: Thank you, Your Honor.
12 THE COURT: We're going to go off the
13 record.
14 (A recess transpired from 2:32 PM to
15 2:44 PM.)
16 THE COURT: We're back on the record
17 in the Abbie Dorn matter.
18 Mr. Slotchiver?
19 MR. DAN SLOTCHIVER: One brief matter
20 before we start. At the very beginning of the
21 trial yesterday, I advised the court that we had
22 some issues that may need to be brought up, and
23 I'd rather bring it up now than later, and the
24 particular issue deals with the -- we've talked
25 about the letter that we were delivered on Friday,

1 but in addition to that letter, there were other
2 documents provided to us on Friday, and we
3 would -- before we start -- what I don't want to
4 do is open the door and start the testimony of
5 Mrs. Cohen, whereas, she's asked about these
6 documents, and they come in without first having
7 an opportunity to object to any documents
8 delivered to us on Friday coming into evidence.
9 They seem to primarily be by way of
10 communications between counsel of the two parties,
11 but I believe it would be improper to bring those
12 documents in now, in light of the fact they were
13 only delivered to us on Friday, and we don't have
14 to rehash that we've talked about the discovery
15 process and what we've gone through in this case.
16 THE COURT: Mr. Boyd?
17 MR. BOYD: Your Honor, this case is
18 not a simple case, Your Honor. There are so many,
19 literally thousands, of documents involved in this
20 case, Your Honor, that it is really difficult to
21 get your arms around the documentation. We've
22 stated it in court many times. We have literally
23 produced thousands of pages of documentation at
24 the request of Mr. Dorn and his counsel.
25 The settlement -- the

1 correspondence -- and I would ask the court to
2 consider, Your Honor, that the purpose of the
3 discovery rules generally are to avoid surprise,
4 ambush, et cetera, unfair advantage. My original
5 impression of many of the documents that were
6 produced on Friday was based on my assessment that
7 they related to settlement discussions and
8 Mrs. Cohen's efforts to settle the case, and
9 therefore, they probably were not something that
10 would be admissible.
11 But unfortunately, Your Honor, what
12 this case has become over time, if the court will
13 really think about it in these terms, is
14 effectively a relitigation of the merits of the
15 California proceeding in the South Carolina
16 probate action, because effectively, what's on
17 trial here today, Your Honor, is the
18 reasonableness of the trustees' actions.
19 And in fact, there were documents that
20 were in the file, some of them came to me over
21 time. I questioned whether they were admissible.
22 They were settlement oriented. But in fact, Your
23 Honor, what has become a central question of this
24 case is the efforts of the trustee to settle the
25 California litigation on reasonable terms, in

1 effect, to stop the bleeding.
2 And so the question really came to the
3 floor when Dan Dorn made some statements regarding
4 settlement in his deposition, which was just
5 earlier this month, Your Honor, and that
6 discussion related to the possible settlement of
7 the California action is what brought those
8 documents back to the fore, Your Honor.
9 There was no intent to surprise
10 anybody. I really took a different view of those
11 documents. I mean, quite frankly, Your Honor, I
12 think the documents are relevant, and they're
13 relevant to the reasonableness of the trustees'
14 actions.
15 THE COURT: Are they documents that
16 you're going to be seeking to introduce today? Do
17 you anticipate that? It is 3:00. I'm prepared to
18 go a little while. Or are they documents that
19 you're going to be seeking to introduce through
20 your client today?
21 MR. BOYD: Your Honor, if we get that
22 far.
23 THE COURT: Or will they -- this is
24 what I would propose, okay. As everybody knows,
25 Ms. Moore is not here, and in going forward today,

1 I told her, based on my conversation with you,
2 Mr. Slotchiver, this morning, that she would have
3 an opportunity to review the transcript of today's
4 hearing this evening, in the morning, a rough
5 draft, something of that, maybe a recording of it,
6 and I don't want to make a ruling.
7 Now, I've made a ruling as to the
8 admissibility or the statements that Mrs. Cohen
9 made with respect to reliance upon counsel's
10 advice during her examination by Mr. Slotchiver.
11 MR. DAN SLOTCHIVER: Yes.
12 THE COURT: I would rather not go
13 forward, talk about documents that may or may not
14 get introduced today, without Ms. Moore having an
15 opportunity to be here. I don't want there to be
16 anything that's going -- she represents Abbie Dorn
17 as the guardian ad litem. I'd prefer,
18 Mr. Slotchiver, let's wait and see how far
19 Mr. Boyd gets with his examination or whether we
20 get to the point of him wanting to admit some of
21 these documents.
22 MR. DAN SLOTCHIVER: And I'm happy to
23 respond at that time, as long as he doesn't go
24 into it today. He's made some arguments that I'm
25 happy to address with the court. We have vast

1 differences of opinion.
2 THE COURT: I understand.
3 MR. DAN SLOTCHIVER: But I can wait,
4 if that's the court's desire.
5 THE COURT: I would rather do that, I
6 mean, just listening to his argument,
7 understanding you want to respond to it. I don't
8 want to hinder Ms. Moore in any way in making a
9 ruling that she might want to take a position on,
10 and I think she's entitled to be heard on it. I
11 think this is certainly an important issue that I
12 would rather try to wait, if we can, until
13 possibly tomorrow.
14 MR. BOYD: I don't have a problem with
15 that, Your Honor.
16 MR. DAN SLOTCHIVER: Can Mrs. Cohen be
17 advised not to reference these documents in her
18 testimony?
19 THE COURT: Yes, ma'am. And I will
20 ask Mr. -- instruct Mr. Boyd not to ask her about
21 any of the documents that --
22 And these are documents that you just
23 received last week. Is that correct?
24 MR. DAN SLOTCHIVER: Friday, yes.
25 THE COURT: Okay. So Mrs. Cohen, if

1 you will not make reference to any documents that
2 you're aware that your attorney just received
3 through discovery last week or received last week.
4 MR. BOYD: I will not ask her about
5 those documents, Your Honor.
6 THE COURT: Thank you.
7 THE WITNESS: You're talking about all
8 those settlement documents?
9 THE COURT: Yes, ma'am.
10 THE WITNESS: Okay. Thank you for
11 clarifying.
12 THE COURT: Thank you.
13 MR. DAN SLOTCHIVER: Thank you, Judge.
14 THE COURT: Thank you.
15 And then at whatever time,
16 Mr. Slotchiver, I need to hear from you, I'm happy
17 to do that. Thank you.
18 MR. BOYD: Thank you, Your Honor.
19 THE COURT: Mr. Boyd?
20 THE WITNESS: And also you meant the
21 thing we just talked about?
22 THE COURT: Ma'am?
23 THE WITNESS: You also meant what we
24 just talked about?
25 THE COURT: Yes, ma'am.

1 THE WITNESS: Okay. Thank you. I
2 just wanted to be sure.
3 THE COURT: Certainly.
4 THE WITNESS: Thank you.
5 CROSS-EXAMINATION
6 BY MR. BOYD:
7 Q. Good afternoon, Mrs. Cohen.
8 A. Good afternoon.
9 Q. I'm going to call you Susan, if that's
10 okay.
11 A. That's fine.
12 Q. Susan, you've been asked to look at a
13 great many documents over the last couple of days.
14 Let me start by asking you to take a look for a
15 moment at what was previously marked. I'm just
16 going to try to take the exhibits that you've been
17 asked to look at. This is Exhibit 4, what's been
18 previously marked as Exhibit 4. Take a look at
19 that.
20 MR. BOYD: Your Honor, may it please
21 the court, I'm going to ask for the admission of
22 certain documents that have previously been
23 produced with --
24 MR. DAN SLOTCHIVER: Are we --
25 THE COURT: Mr. Slotchiver, you look

1 puzzled.
2 BY MR. BOYD:
3 Q. Take a look at that document.
4 Mrs. Cohen, I'd like --
5 MR. DAN SLOTCHIVER: I'm just a little
6 puzzled. I see the Bates numbers on these
7 documents are not the same Bates numbers as the
8 ones that we were provided in discovery.
9 MR. BOYD: You were provided with both
10 these documents. There's a distinction between
11 the two.
12 BY MR. BOYD:
13 Q. Mrs. Cohen, do you notice the document
14 that I've just handed you --
15 MR. BOYD: Your Honor --
16 BY MR. BOYD:
17 Q. Do you notice these documents, these
18 documents that you previously provided in this
19 case?
20 A. Yes.
21 MR. BOYD: Your Honor, without
22 objection, I'd ask that this be marked as
23 Exhibit 1 for the --
24 THE COURT: For identification
25 purposes?

1 MR. BOYD: Yes, ma'am.
2 THE COURT: Or introduction?
3 MR. BOYD: Introduction, please.
4 THE COURT: Any objection?
5 MR. DAN SLOTCHIVER: No objection.
6 THE COURT: No objection. Thank you.
7 MR. BOYD: Thank you, Your Honor.
8 THE COURT: So we will refer to this
9 as?
10 MR. BOYD: Respondent's No. 1, Your
11 Honor.
12 THE COURT: Respondent's No. 1.
13 (RES. EXH. 1, Checks and Deposits to
14 Abbie Dorn Special Needs Trust, Bates No. 4091
15 through 4093, was marked for identification and
16 admitted into evidence.)
17 BY MR. BOYD:
18 Q. Mrs. Cohen, in comparing what was
19 previously marked as Petitioner's Exhibit No. 4
20 and what has now been marked as Respondent's
21 Exhibit No. 1, do you notice a difference? They
22 appear to be largely similar, but do you notice a
23 difference in those two documents?
24 A. Well, yes. I don't know where the
25 numbers are. Is this -- are you talking to the

1 0491 on the bottom?
2 Q. There's some additional -- there's
3 some additional -- you had referenced $150,000,
4 Mrs. Cohen.
5 A. That's correct.
6 Q. There's some additional wording at the
7 bottom of the first page.
8 A. This? Okay. This one? I'm sorry.
9 Reese, are you talking about this document?
10 Q. Yes, what's been labeled Bates
11 No. Cohen 4093.
12 A. Oh, that's a Bates number, okay. I'm
13 sorry. Okay.
14 Q. And I believe you had earlier
15 testified, Mrs. Cohen, that you thought there was
16 perhaps some double accounting?
17 A. Yes.
18 Q. Double counting in the accountings?
19 A. I believe so.
20 Q. Are those numbers in any way related?
21 A. Yes. They're the same numbers that
22 had already been counted in.
23 Q. And the reference to $150,000 at the
24 bottom of that page, what does that -- what does
25 that -- do you recall what that's a reference to?

1 A. Yes. I settled with Lisa and Felicia
2 at the MOLM firm.
3 THE COURT: Ma'am, could you speak
4 into the microphone?
5 THE WITNESS: I'm sorry. I settled
6 with the MOLM firm, so it was paying off the bill
7 in its entirety.
8 BY MR. BOYD:
9 Q. And was that a settlement offer on the
10 bill that the MOLM -- and I'm just going to call
11 it the Meyer Olson firm, Mrs. Cohen, if I may.
12 Was that a settlement offer that the Meyer Olson
13 firm extended to you?
14 A. Yes.
15 Q. And did you use your personal funds to
16 pay the amount they requested?
17 A. I paid the initial check from Abbie's,
18 the $50,000, and then I used our personal funds, a
19 Visa and American Express, until there were
20 sufficient funds to keep the -- yes.
21 Q. And did the Meyer Olson firm give you
22 a timeline for taking advantage of that
23 settlement?
24 A. Yes.
25 Q. Do you recall what that time limit

1 was?
2 A. It was --
3 Q. You don't have to give me the exact
4 dates, just generally speaking.
5 A. I don't recall exactly, but it was in
6 a short period, you know, in that March 2012
7 period.
8 Q. And by taking advantage of that offer
9 of reduced bill, did you reduce the ultimate bills
10 paid by the trust as a result?
11 A. Yes, I did.
12 Q. I'm sorry. Was there something about
13 the next page that you wanted to --
14 A. No. You asked me if it was reduced.
15 Is that what you mean?
16 Q. Yes.
17 A. Yes.
18 Q. Thank you. Mrs. Cohen, next I want to
19 turn your attention to Mr. Slotchiver's review
20 with you of Plaintiff's Exhibits 5 through 36. I
21 won't, obviously, ask you to look at all of those
22 at this moment, but those were a series of legal
23 bills, Mrs. Cohen, from the Meyer Olson firm and
24 also from Honey Amado, Honey Kessler Amado.
25 And let me just ask you, Mrs. Cohen,

1 do you consider yourself -- do you consider
2 yourself to be a legal expert?
3 A. No, not at all.
4 Q. Mr. Slotchiver asked you many
5 questions. You reviewed those bills in detail
6 with him. He asked you many questions about the
7 subject of research by attorneys, how much is
8 appropriate. Let me ask you this: Do you know
9 exactly how long it should take an attorney to
10 research any particular question of law?
11 A. I have no idea. No, I wouldn't know.
12 Q. Have you ever had any experience or
13 legal training working in a law office that would
14 give you any idea how to evaluate the question of
15 what amount of research would be appropriate on a
16 bill?
17 A. I've never had any experience.
18 Q. Earlier in this case, did you ask me
19 to file a petition opposing a fee petition
20 presented in this matter by John Kachmarsky?
21 A. Yes.
22 MR. BOYD: Your Honor, may I approach?
23 THE COURT: Yes, sir.
24 BY MR. BOYD:
25 Q. Mrs. Cohen, I'm going to hand you what

1 is a document filed in the record in this matter,
2 which I just previously referred to.
3 MR. DAN SLOTCHIVER: What number are
4 you looking at?
5 MR. BOYD: This has not been entered.
6 We can enter it into evidence. It's the document
7 captioned Memorandum in Opposition to Motion for
8 Attorney's Fees and Guardian Ad Litem Fees of John
9 Kachmarsky, Esquire.
10 (RES. EXH. 2, Memorandum in Opposition
11 to Motion for Attorney's Fees and Guardian Ad
12 Litem Fees of John Kachmarsky, was marked for
13 identification.)
14 BY MR. BOYD:
15 Q. Have you had a moment to review that,
16 Mrs. Cohen?
17 A. Yes. You just want me to review
18 Page 2?
19 Q. Yes. My question to you, Mrs. Cohen,
20 is: You indicated just now that you asked that we
21 file that petition opposing the fee petition of
22 Mr. Kachmarsky. Can you tell me why you did that?
23 A. Well, his fees, in comparison to
24 everybody else's fees, struck me as absolutely
25 outrageous, and it seemed to me that many of the

1 things that he did could have been done by -- I
2 don't know what you call them -- a secretary or a
3 legal secretary or something like that.
4 Q. Did your opposition, Mrs. Cohen, to
5 the Kachmarsky fee petition, did your opposition
6 to the fee petition have anything to do with the
7 subject of legal research directly or
8 indirectly --
9 A. No.
10 Q. -- and how much time Mr. Kachmarsky
11 spent on legal research?
12 A. Not at all.
13 Q. Would you have any knowledge with
14 which to evaluate that question?
15 A. None whatsoever.
16 Q. Thank you, Mrs. Cohen.
17 Let me ask you further, Mrs. Cohen,
18 about the series of legal bills from California
19 that we produced that have been labeled Exhibits 5
20 through 36 for the petitioner in this matter. You
21 reviewed those bills with Mr. Slotchiver, and let
22 me ask you this: Whether the number was $950,000
23 or $1 million or whatever, there was a significant
24 amount of money that was spent in California on
25 the divorce proceeding. Would you agree?

1 A. Yes.
2 Q. Did you ever anticipate, would you
3 ever have anticipated, that you would have become
4 involved in a divorce proceeding in California
5 that would have been that expensive?
6 A. Never.
7 Q. Can you tell the court how the divorce
8 proceeding began?
9 A. Well, what happened, as Dan stated in
10 his deposition, that he came to us one year after
11 Abbie had had her unfortunate event and said that
12 he wanted to move on, and I said that was --
13 Can you hear me?
14 Q. Yes.
15 A. I said that was fine, I said that was
16 fine with him, and he said thank you for being so
17 understanding, and then he proceeded to tell me --
18 I said let's just do this simply. Let's divide
19 all the assets, and I will sign it right away,
20 whatever needs to be done, so we can just move on.
21 Q. Do you recall any references to
22 LegalZoom?
23 A. No, not then. That wasn't that day.
24 Should I move forward?
25 Q. Well, let me ask you this: Do you

1 know why Dan asked you -- well, let me back up.
2 Were you generally receptive to the idea of filing
3 for divorce?
4 A. I was aware, since the first month in
5 the hospital, that Dan was going to move on.
6 Q. Did you think it was in Abbie's best
7 interest to cooperate with Dan in the filing of
8 the divorce petition?
9 A. Absolutely.
10 Q. Why did you think that, Mrs. Cohen?
11 A. From the first month, even though he
12 still loved Abbie, he started making references to
13 the fact that he was young and wanted to have fun
14 and talking about his sexual needs that weren't
15 being met, and he was drinking very heavily,
16 always had a flask in his pocket.
17 THE COURT: I'm sorry, ma'am. I need
18 you to speak up.
19 THE WITNESS: I'm sorry. Where didn't
20 you hear me, from where?
21 BY MR. BOYD:
22 Q. Just repeat the last sentence or two.
23 A. Okay. As I said, he -- should I go
24 back to the sexual needs and the -- what he said
25 to me repeatedly, from the first month, he said:

1 I'm young, and I want to have fun. He also
2 started talking to me about his sexual needs that
3 weren't being met.
4 Q. Mrs. Cohen, do you need to take a
5 break?
6 A. No. It's just painful. It's painful.
7 And by the time Abbie was in Oxnard,
8 my husband and I had both moved out there. My
9 husband had gotten a medical license. Can you
10 hear me? My husband had gotten a medical license
11 to practice in California. It was our intention
12 to stay out there, so Abbie could be near her
13 children, with us taking care of her. I'm sorry.
14 Anyway, he -- I asked him -- they were
15 talking about discharging her from the facility in
16 Oxnard, and there was a house in his neighborhood,
17 and it was expensive, much more expensive. We
18 have a house for 6,000 square feet, and this was a
19 little tiny 1,200-square-foot house for a million
20 dollars. Ours was 750. And we just wanted Abbie
21 to be near her children.
22 So Dan is a real estate agent and
23 broker. I asked him to look into that house and
24 look into the neighborhood for us to take Abbie
25 home and take care of her right there. I'm sorry.

1 And he said that he wanted us to move to Orange
2 County, which is over an hour away. He knows I
3 can't drive on highways. And he testified to this
4 in court that that's what he said, and it is what
5 he said.
6 Shall I move forward?
7 Q. Well, let me ask you this: Was there
8 any reason that you thought it might be in Abbie's
9 interest to participate or to cooperate with Dan
10 in getting a divorce?
11 A. I also was afraid at that point if he
12 had the decision-making, he would let her die. In
13 the beginning, all the rabbis were there, and he
14 knew the rabbinical law. After that, I don't
15 think he cared. I called his rab, and his rab
16 told me: I can't help you.
17 I'm sorry a rab, should I explain?
18 MR. DAN SLOTCHIVER: Your Honor, I
19 object to any hearsay testimony.
20 THE WITNESS: Okay. I'm sorry.
21 THE COURT: Yes, ma'am. Thank you.
22 BY MR. BOYD:
23 Q. Mrs. Cohen, just try to tell me what
24 you have knowledge of, independent knowledge of.
25 A. I was just afraid that he would let

1 her die, and I desperately wanted to not let him
2 be able to do that. He clearly had lost interest
3 totally, and once we moved -- once we moved to the
4 Centre for Neuro Skills --
5 MR. DAN SLOTCHIVER: Your Honor, I
6 would object to her opinion as to what Dan Dorn
7 did or did not want to do in his own head. What
8 he told her is different, what he said to her is
9 different, but her opinion that he lost interest
10 and her opinion that he wanted her to die, there's
11 no foundation for that, and I would ask that be
12 stricken.
13 THE COURT: Mr. Boyd?
14 MR. BOYD: Your Honor, she's
15 giving a -- she's basing her answer on his present
16 state of mind at the time and a genuine concern
17 that she had for the safety and well-being of her
18 charge.
19 THE COURT: I think she can say what
20 he may have told her, but I don't think she can
21 then jump to the conclusion of what she thought
22 based on what he said, so I'm going to strike that
23 testimony.
24 MR. BOYD: I understand, Your Honor.
25 I understand. Thank you.

1 BY MR. BOYD:
2 Q. Let me ask you this question,
3 Mrs. Cohen: Did Dan ever say anything that caused
4 you to have concerns about him being involved in
5 her medical decision-making?
6 A. Did he say anything? Not at that
7 time, but when he started calling the Centre for
8 Neuro Skills, I was concerned.
9 Q. Why were you concerned, Mrs. Cohen?
10 A. Because he never asked how she was.
11 All he talked about was the fact he called her --
12 oh, I can't hearsay. You can't talk about that,
13 right?
14 Q. If he made a statement that gave you
15 cause for concern.
16 A. Okay. Her case reviewer contacted me
17 and said that --
18 MR. DAN SLOTCHIVER: Your Honor,
19 objection to hearsay.
20 THE COURT: Yes, ma'am. You can't say
21 what someone told you. You cannot state what
22 someone may have told you, ma'am. They're not
23 here to testify or be cross-examined. That would
24 be hearsay.
25 BY MR. BOYD:

1 Q. Let me leave it to you this way,
2 Mrs. Cohen: You felt like -- did you feel like it
3 was in Abbie's interest to cooperate in the
4 divorce?
5 A. Very much so.
6 Q. Fair enough. Let's leave it at that.
7 So you decided to cooperate with the
8 divorce, and did you think it was going to be a
9 simple matter?
10 A. Yes. I thought it was going to be a
11 very simple matter, that we could just sign a few
12 papers, and it would be over.
13 Q. What happened, Mrs. Cohen, to turn the
14 divorce proceeding into something very unexpected?
15 A. Well, when I went to the house after I
16 had spoken with Dan, the only thing I wanted was
17 for Abbie to see the children, and I asked if he
18 would bring the children up, after he told me he
19 wanted to move on with his life, and he said: No.
20 I'm too busy.
21 So I said to him: All right. Then
22 Paul and I will drive the two-and-a-half hours,
23 we'll pick up the kids, and we will bring them to
24 Bakersfield, and we will return them home. He
25 said: No. I won't permit you to do that. So I

1 said to him: Well, then we'll get an ambulance,
2 and we'll bring Abbie to Los Angeles, and he told
3 me he wouldn't let her in the house.
4 Q. And let's try to address -- because
5 the issue, Mrs. Cohen, one thing that I'd like to
6 understand, when did you begin to realize that the
7 divorce proceeding was not going to be what you
8 had anticipated?
9 MR. DAN SLOTCHIVER: Your Honor, if I
10 may?
11 THE COURT: Yes, sir.
12 MR. DAN SLOTCHIVER: I want to grant a
13 certain amount of latitude, but my concern is that
14 this case is not about when she knew the divorce
15 was going to be complicated or the fact that the
16 divorce was, in fact, complicated, assuming we get
17 there. The allegations in this case are breach of
18 fiduciary duty, unreasonable activity, and
19 unauthorized activity.
20 So now we're focusing on the divorce,
21 and I don't believe that it's -- we're not at that
22 place right now, and I would ask that this conduct
23 that we're talking about now, it would be
24 irrelevant at this particular juncture. I'm not
25 really sure that we're in an area right now that

1 we're testifying that relates to the case.
2 MR. BOYD: Your Honor, the entirety of
3 the case, in one sense, comes down to the
4 reasonableness of the trustees' actions.
5 MR. DAN SLOTCHIVER: While we would
6 agree with that wholeheartedly, the conduct taken
7 by Dan Dorn in his individual capacity we believe
8 has no reflection whatsoever on the conduct of the
9 trustee. Dan Dorn, as discussed in testimony, is
10 an individual. He has the right to do what he
11 sees right to do because he's spending his funds.
12 He's not subject to the fiduciary responsibility
13 of spending someone else's money.
14 As Mrs. Cohen testified to in her
15 examination, she understands that she's a
16 fiduciary. She understood there's a distinction
17 between her right to spend Abbie's money and her
18 right to spend her own money.
19 There's been an attempt throughout the
20 proceedings, since the very beginning, to try to
21 correlate the legal fees incurred in California
22 and to relate those actions to one another. The
23 case is not about whether an hour was spent for an
24 hour of billing. It's not about the amount of
25 fees that was generated and paid for versus the

1 services provided. The case is about whether or
2 not it was authorized to spend that money and
3 whether or not spending that money was reasonable
4 in light of the condition of Abbie and in light of
5 the benefit that she would get, if any, which I
6 would argue to the court that it's res judicata.
7 The court in California, in this
8 issues with this particular plaintiff asserting
9 visitation, has already ruled that there was none,
10 clearly has stated in the order there's no benefit
11 at all to Abbie Dorn to see the children, she
12 doesn't know they're there, she cannot understand
13 it, and she can't comprehend it, that that part of
14 her doesn't work.
15 So I think that we're going way off
16 track if we're going to argue now about divorce
17 proceedings and not limit it to the issue at hand,
18 which is whether or not she was reasonable or
19 authorized to make the expenditures related to it.
20 MR. BOYD: Your Honor, the entirety
21 of -- well, not the entirety. A substantial,
22 significant majority of Mr. Slotchiver's testimony
23 on questioning of my client was a review of the
24 billings in the divorce proceeding in an attempt
25 to attribute the billings and the fees that were

1 incurred to one type of service or another with
2 many, many questions related, how could you
3 possibly have spent this much money on a divorce
4 proceeding in California. And Your Honor,
5 Mrs. Cohen is entitled to answer that. She's
6 entitled to explain the historical context in
7 which the divorce proceeding arose, how it
8 evolved, if it establishes that her actions as a
9 trustee were reasonable.
10 THE COURT: I'm going to allow some of
11 it, Mr. Slotchiver.
12 MR. DAN SLOTCHIVER: If I may be heard
13 one more moment, Your Honor.
14 THE COURT: All right.
15 MR. DAN SLOTCHIVER: The case that we
16 presented was to distinguish the bill -- was first
17 to understand the magnitude of damages, the
18 magnitude of money spent on attorneys fees, number
19 one, secondly, to figure out at what point that
20 money was related to visitation, as opposed to
21 protecting from spouse, from the spousal action,
22 and also to understand at what point it was that
23 the money was -- what point did we have money that
24 was authorized to be paid, under our review of the
25 documents, versus the other part. It had nothing

1 to do with the divorce action.
2 We have never asserted, nor are we
3 asserting, a claim that the Meyer firm did not
4 appropriately -- we've never argued that their
5 bills were incorrect with reference to the time
6 they've stated. We have raised the issue as to
7 how much the bills were, we've raised the issue as
8 to understand the magnitude of the damages, but as
9 discussed with this court on several occasions
10 since this trial began, in order to understand the
11 threshold, the threshold question is had she gone
12 to the court for permission, we wouldn't be here
13 today. So from the point that she did not have
14 permission under our theory, under the way we see
15 the documents, what are the damages.
16 That being said, I understand your
17 order, and if it stays, I would just like to have
18 my objection noted for the record.
19 THE COURT: So noted. Thank you.
20 MR. BOYD: Thank you, Your Honor.
21 BY MR. BOYD:
22 Q. So Mrs. Cohen, we were talking about
23 the divorce proceeding, and you agreed, at Dan
24 Dorn's request, to cooperate with the filing of
25 the divorce proceeding in California, correct?

1 A. That's correct.
2 Q. Did you know how to use LegalZoom?
3 A. No. Hadn't even heard of it.
4 Q. Did you contact an attorney in
5 California to assist you?
6 A. Not until after we went to Dan's
7 house. That was after he said that Abbie could
8 not -- he wouldn't admit Abbie to the house. We
9 went to his house, and he told me at that point --
10 I said that I wasn't comfortable with him just
11 getting a Jewish divorce, which is what he said he
12 wanted, that he needed -- that I wanted a civil
13 divorce, and he told me that I should file it
14 because he would be embarrassed.
15 Q. And Mrs. Cohen, you did, in fact, on
16 Abbie's behalf, file a divorce proceeding in
17 California, correct?
18 A. Yes.
19 Q. How did Dan Dorn respond to that
20 divorce proceeding?
21 A. Dan Dorn checked that Abbie could have
22 visitation. His attorney sent a letter saying we
23 would have a settlement proposal in one week.
24 Never happened. The next thing I knew, we're
25 being served with --

1 Should I stop?
2 THE COURT: No, ma'am. Go ahead.
3 THE WITNESS: The next thing I knew,
4 we were being served with an order for child
5 support. At that point, my husband was getting
6 ready to go out to visit. He spoke with Dan,
7 explained --
8 Oh, I'm not supposed to say what he
9 said, right?
10 THE COURT: Well, he's a party to the
11 action.
12 THE WITNESS: Oh, okay.
13 He spoke with Dan and explained that
14 Abbie would lose her Medicaid, and he had -- he
15 put me on the phone, and Dan spoke to me. Well,
16 he listened, and I spoke, and I explained to him:
17 We'll give you more money. What the attorneys --
18 Marina Korol had told me was the formula would
19 relate to approximately $1,000 a month, because it
20 was based on -- what she was asking for was based
21 on Abbie's earnings from the age the children were
22 five to 18, which would have been approximately
23 $48,000 a year, so under the formula that she
24 was -- the children together were entitled to
25 about a thousand dollars a month.

1 At that point I said to Dan: Dan, we
2 will give you more than that. We will pay for the
3 childrens' summer camp. We will pay one-third of
4 the tuition, which is $15,000 a year. We will buy
5 all their clothes. So when they come -- because
6 at that point he hadn't gotten into all this about
7 visitation yet and at that point refused, but we
8 will pay for you to come out, and an escort, we
9 will pay all your fees so that you can bring
10 somebody with you, and there won't be any
11 expenses, and we will pay for everything.
12 He told me that unless he got
13 everything he wanted, which was money from us, and
14 child support in addition, there was no
15 discussion. He left me with no place to go.
16 At that point I called Robin Morris,
17 and I also called -- oh, I'm sorry. Stop.
18 BY MR. BOYD:
19 Q. Let me stop you, Mrs. Cohen. You were
20 asked earlier today by Mr. Slotchiver about your
21 choice of the Meyer Olson firm.
22 A. That's correct.
23 Q. What was the reasoning? What caused
24 you to transition the case to the Meyer Olson
25 firm?

1 A. After Dan switched from his original
2 attorney, whose name I don't remember, he got
3 Vicki Greene. At that time I was still talking to
4 Mr. Michelson because we still had some, what
5 would you call it, some legal -- some things we
6 had to talk about, and he told me at that time --
7 MR. DAN SLOTCHIVER: Your Honor, I
8 object to anything that's hearsay.
9 THE WITNESS: Okay.
10 BY MR. BOYD:
11 Q. Mrs. Cohen, please just answer the
12 questions by telling me about what you know to be
13 the case.
14 A. Okay. I'm sorry. Where --
15 THE COURT: You can't state what that
16 attorney told you or anyone else told you unless
17 they're a party to this action, ma'am.
18 THE WITNESS: Oh, okay, all right.
19 So I had reason to be concerned,
20 especially when the letter had stated very clearly
21 we were going to have a settlement within one
22 week, and then the next thing we know, we're being
23 demanded child support.
24 And I know that Dan and I had talked
25 during the malpractice settlement, and he knew the

1 one thing I cared more about than anything was
2 Abbie be covered for health insurance. I had -- I
3 had talked to Russ Kussman a number of times
4 about --
5 BY MR. BOYD:
6 Q. Mrs. Cohen, who is Russ Kussman?
7 A. Russ Kussman was the malpractice
8 attorney, and Dan had filed the lawsuit.
9 Q. And continue, Mrs. Cohen. You were
10 explaining the reasoning for the transition to the
11 Meyer Olson firm.
12 A. Okay. My biggest concern was about
13 the health insurance, and so I called Robin
14 Morris --
15 THE WITNESS: Can I mention the
16 letter? No?
17 THE COURT: No, ma'am.
18 THE WITNESS: Okay. I thought you
19 said I could.
20 BY MR. BOYD:
21 Q. Please don't make references to any --
22 A. I'm sorry. I'm getting confused.
23 Q. -- letter, Mrs. Cohen.
24 A. Okay. Well, how do I put this? So
25 based on legal advice --

1 THE COURT: No, ma'am.
2 THE WITNESS: No, okay. Okay. I was
3 concerned. That's okay?
4 BY MR. BOYD:
5 Q. Yes.
6 A. Okay. Since my biggest concern was
7 Abbie's health insurance, and I was concerned that
8 Abbie would lose her Medicaid and that we would
9 have to pay everything back to Medicaid, and she'd
10 already been in the hospital at that point for
11 pneumonia, so certainly, there was a risk of her
12 being hospitalized again, and considering what
13 we'd just been through and the current bills at
14 that time, I was concerned that not only would all
15 the trusts be enough, but it would go way beyond
16 that if we, in fact, lost Medicaid.
17 Q. Did you ever, Mrs. Cohen, make any
18 progress toward resolving the demand for child
19 support prior to moving the case to the MOLM firm?
20 A. I made no progress. That was one of
21 my concerns, and I made no progress on it at all.
22 It was an intractable issue.
23 Q. Was it your desire to become involved
24 in a protracted divorce proceeding in California?
25 A. Absolutely not. I just want to take

1 care of my daughter and be left alone.
2 Q. Did you ever attempt to settle the
3 California proceedings, Mrs. Cohen?
4 A. Many, many, many times.
5 Q. Once you got her --
6 MR. DAN SLOTCHIVER: Your Honor, I
7 would place an objection on the record.
8 THE COURT: Yes, sir.
9 MR. DAN SLOTCHIVER: Beyond the fact
10 that settlement negotiations generally aren't
11 permissible in court, we get to a second tier in
12 this particular case, which is that I don't want
13 to open the door to talk about settlement
14 negotiations. Mrs. Cohen was a fiduciary. She
15 was -- whether they tried to settle or not, I
16 guess it goes into the question of what did they
17 discuss and was it reasonable, and I don't believe
18 it's appropriate to go into settlement
19 negotiations between the parties.
20 She brought it, and she ended up
21 litigating it and never withdrew it. I think
22 those are factors that are before the court
23 properly. If we go into settlement negotiations,
24 we're going to talk about all types of issues and
25 conversations and this and maybe that, and we're

1 getting into a whole different field that I don't
2 believe is appropriate in this particular action.
3 THE COURT: Mr. Boyd?
4 MR. BOYD: Your Honor, I'm not
5 offering discussions of settlement. Again, this
6 case has become, in effect, a trial over the
7 reasonableness of the trustees' actions. I'm not
8 offering and don't intend to offer any settlement
9 discussion for the purpose of -- for instance, if
10 there was an offer, hypothetically, to pay an
11 opposing party $10, I'm not offering any
12 settlement discussion for the purpose of showing
13 that the $10 was justified or is somehow a
14 reasonable amount or that the party is liable.
15 Your Honor, the multiple attempts by
16 the trustee to settle the case go to the
17 reasonableness of the conduct. This is a case
18 where Mr. Dorn has testified, Mrs. Cohen has now
19 testified, that Mr. Dorn approached Mrs. Cohen,
20 said: Mrs. Cohen, I would like a divorce. I'd
21 like to move on.
22 MR. DAN SLOTCHIVER: Your Honor,
23 Mr. Dorn has not testified in this case yet.
24 THE COURT: No, he's not.
25 MR. BOYD: I'm sorry, Your Honor. In

1 his deposition, he testified. And in effect,
2 through his actions, put the trustee in a box that
3 she could not get out of, Your Honor, and that
4 goes to the reasonableness of her conduct.
5 And I just look at Rule 408, Your
6 Honor, at the last sentence. It says: This
7 rule -- which is compromise and offers to
8 compromise South Carolina Rules of Evidence 408.
9 This rule does not require exclusion when the
10 evidence is offered for another purpose, such as
11 proving bias, prejudice of a witness, negating a
12 contention of undue delay, proving an effort to
13 obstruct a criminal investigation.
14 So I'm not offering any settlement
15 offer specifically for the purpose of showing that
16 the offer was indication of any amount that was
17 reasonable for one party to pay another. I'm
18 offering it as evidence of the fact that the
19 trustee was trying to behave reasonably. The
20 whole crux of petitioner's case is that the
21 trustee is a fiduciary, she has certain
22 obligations, and she behaved unreasonably.
23 MR. DAN SLOTCHIVER: Your Honor, I
24 believe this court can take judicial notice that
25 any party to any action has the right to withdraw

1 that action, and as such, it's not a question of
2 did she get enough to be willing to settle it.
3 The question is was she authorized and was it
4 reasonable to pursue this litigation on behalf --
5 in her capacity as a trustee. Now, none of the
6 exceptions he referenced apply to this situation
7 right here.
8 Secondly, if I may just put it on the
9 record, the issue is when we start talking about
10 negotiations, if we do it, we're going to open the
11 door wide open to talk about any negotiation, what
12 was a good negotiation and what wasn't, when this
13 case is about was there authority and was it
14 reasonable to pursue it. Regardless, even there
15 was authority, was it reasonable to pursue it and
16 at what cost.
17 I don't believe that a factor is could
18 it have settled, because before you get there,
19 you've got to decide -- I would argue that you
20 would -- I would suggest you would have to decide
21 did she have the authority, was it reasonable, and
22 could she, at any time she wanted to, have walked
23 away, walked away if not from the support action,
24 walked away from the visitation action.
25 And once we get into settlement, the

1 next thing I anticipate is letters coming in about
2 settlement, and then the court's going to have to
3 review letters about settlement discussions back
4 and forth between the parties, and the problem
5 with that, Your Honor, is that then we're going to
6 go back into the same issue that I raised at the
7 beginning before testimony about a document dump
8 that took place on Friday afternoon. And for the
9 record, I wasn't even at the office on Friday. So
10 I think we're walking into the same position that
11 we talked about earlier.
12 MR. BOYD: Your Honor, the issue has
13 been raised repeatedly today that Mrs. Cohen at
14 any time could have dropped the action and walked
15 away. In fact, she'll testify that that's not the
16 case. In fact, it's been made in reference to
17 both this proceeding and the proceeding in
18 California, when, in fact, with respect to the
19 petition that the Cohens originally filed,
20 Mr. Kachmarsky filed a counterclaim. Well, once
21 that counterclaim was filed, it, in fact, was not
22 the province of the Cohens simply to drop their
23 petition and go away. That's a matter of record.
24 It's clear. And the evidence in the case is, will
25 show, that the trustee was concerned that by

1 agreeing to simply dismiss the divorce
2 proceeding --
3 MR. DAN SLOTCHIVER: Well, now he's
4 testifying for his witness as to what her concerns
5 were. I'd object to that also, Your Honor.
6 MR. BOYD: Your Honor, I'm simply
7 responding to counsel's arguments, because I do
8 think the whole issue here is was the trustee
9 acting reasonably in furtherance of what she
10 believed to be in the best interest of the ward.
11 And she's just testified just moments ago -- I'm
12 not testifying for her; I'm reiterating what she
13 just said. She just indicated that her primary
14 concern was preserving the insurance that Abbie
15 was entitled to, and if she had concerns about the
16 fact that if there was an award for child support
17 out of the trust, and she did not want any
18 insurance or Medicaid eligibility to be
19 compromised by that, Your Honor, it was entirely
20 reasonable for her not to go along with just
21 walking away when a claim for child support was
22 outstanding.
23 THE COURT: I think this
24 is admissible.
25 MR. DAN SLOTCHIVER: Your Honor, she

1 certainly could have walked away from the issue of
2 visitation, which necessitated $900,000 of
3 expenses, and she could have still stayed in there
4 and argued it's reasonable to continue the
5 support, keeping in mind that she's testified
6 earlier today that when the Meyer firm became
7 involved, there was no action whatsoever,
8 repeatedly, no action whatsoever on the support
9 case. Everything was related to the visitation
10 case. So they're trying to combine them all
11 together. The reality is they're two separate
12 issues.
13 I believe the court can take notice
14 she could have walked away from the visitation
15 case. She could have stopped pursuing it, stopped
16 pushing it. She could have still defended the
17 visitation case. And if she had continued to --
18 or excuse me, the support case. And if she had
19 continued to visit the support case, there would
20 certainly be a question about the authority, but
21 at the same time, there would be a whole different
22 position about the reasonableness of defending
23 against a support case, and that's -- what they're
24 trying to do now is to bring in the visitation
25 case, and in light of the testimony that shows

1 that as soon as Meyer got involved, it stopped,
2 and in light of the graphs that we've submitted to
3 the court showing out of $1.1 million, $900 or so
4 thousand dollars was related solely to the
5 visitation, I don't believe it's proper to allow
6 them to talk about settlement negotiations with
7 reference to visitation, because it's improper.
8 It's not before the court in that regard.
9 MR. BOYD: Your Honor, she's also
10 testified repeatedly this morning that she could
11 not set the agenda, the court had set the agenda,
12 and that there were reasons fully beyond her
13 control as a trustee that she could not control,
14 that she could not bring the child support issue
15 to the fore.
16 THE COURT: I'm going to allow the
17 testimony.
18 MR. DAN SLOTCHIVER: Yes, Your Honor.
19 But if I could point out, John Kachmarsky's
20 counterclaim made reference -- that was in April
21 of 2011. By that point, most of the money had
22 already been spent. So are we going to allow the
23 testimony about settlement negotiations from the
24 beginning until the end, or can we limit it to
25 anything that took place after April of 2011?

1 MR. BOYD: Your Honor, I don't have
2 the transcript yet, but I was simply noting that
3 today there has been discussion of this action in
4 South Carolina, that the Cohens simply could have
5 walked away from it, and that has not been the
6 case since Mr. Kachmarsky filed his counterclaim.
7 MR. DAN SLOTCHIVER: I would take
8 exception. They could have walked away from the
9 case that they filed, and they could have still
10 defended the case that Mr. Kachmarsky brought.
11 And frankly, it's very similar to the same case
12 that I brought, so the fees would not have been
13 much more substantial, but we would have avoided
14 all fees related to the reformation case.
15 And I've been involved in many cases,
16 Your Honor, I'm sure you've seen many where there
17 are substantial causes of action listed.
18 Sometimes the court will, on its own, or sometimes
19 the parties will, on its own, dismiss one, two,
20 three, some of the causes of action. It doesn't
21 mean that the case -- that you can't walk away
22 from causes of action.
23 I've had courts say to me: You have
24 five causes of action. Why don't we get rid of
25 two and keep the other three. I've had lawyers on

1 the other side say: I'll dismiss these parts of
2 it. That happens all the time. And to argue to
3 the court that you can't do it, it might be a
4 belief that Mrs. Cohen had, but it's not an
5 accurate statement.
6 THE COURT: And I think you can argue
7 that, Mr. Slotchiver, at the appropriate time in
8 your closing arguing law to the court.
9 MR. DAN SLOTCHIVER: Thank you, Judge.
10 THE COURT: She certainly got into
11 this testimony this morning. I'm going to give
12 him an opportunity to explore that.
13 MR. BOYD: Thank you, Your Honor.
14 THE COURT: Thank you.
15 BY MR. BOYD:
16 Q. Mrs. Cohen, let me just switch gears
17 to something that may be a little easier to
18 address. I want to ask you to take a look -- I
19 want to go back to the issue of expenses. I'm
20 going to ask you to take a look, Mrs. Cohen, at
21 what's previously been marked and admitted into
22 evidence as Exhibits 94, 95, 96, 97, 98, and 99.
23 MS. HEDGEPATH: I'm sorry, Mr. Boyd.
24 My back was to you. Do you mind repeating those
25 numbers?

1 MR. BOYD: These are the annual
2 accountings that were previously filed.
3 MS. HEDGEPATH: And the exhibit
4 numbers, Your Honor?
5 MR. BOYD: Just a second. Those are
6 Exhibit Nos. 94 through 99.
7 MS. HEDGEPATH: Thank you.
8 BY MR. BOYD:
9 Q. Mrs. Cohen, I'm also going to hand you
10 a document which is a summary of the accountings
11 which we previously produced electronically in
12 this matter, and these are the portions of the
13 electronic accounting records related to legal
14 fees, legal fees and professional fees.
15 MR. BOYD: And Your Honor, I would
16 stipulate Your Honor will recall that these are
17 the legal fees as set forth in the electronic
18 versions of the trust accountings that we filed,
19 and I would, if there's no objection, move to
20 admit this document.
21 THE COURT: Mr. Slotchiver, any
22 objection?
23 MR. DAN SLOTCHIVER: We're just
24 looking at the numbers very quickly, Your Honor.
25 THE COURT: Sure.

1 MS. HEDGEPATH: Are these the same
2 that are attached to the accountings that was
3 entered yesterday?
4 MR. BOYD: Those are --
5 MR. DAN SLOTCHIVER: Your Honor, these
6 numbers are a little different than the ones that
7 we had talked about earlier with the witness, not
8 much, but a little different. I'm not sure where
9 they're substantiated from.
10 THE COURT: Mr. Boyd, would you like
11 to lay a foundation for that?
12 MR. BOYD: Your Honor, if Your Honor
13 will recall, there was a pretrial teleconference,
14 status conference, in this matter in which
15 petitioner's counsel requested that the annual
16 accountings be provided to them in electronic
17 format. I don't know if Your Honor recalls that
18 discussion. I can give you the date of it. I
19 believe it was in December, Your Honor.
20 What these documents are, and I can
21 produce the -- we can show the electronic -- be
22 glad to submit electronic copies of the actual
23 files that were transmitted into evidence. If
24 Your Honor would like to have those, we'd be glad
25 to do that. So what these documents are are

1 printouts of the annual accountings that we
2 provided in electronic format.
3 MR. DAVIS: These have already been --
4 MR. DAN SLOTCHIVER: Your Honor, these
5 are a little different than what he sent us on the
6 accounting in December.
7 THE COURT: They're a little different
8 than what, Mr. Slotchiver?
9 MR. DAN SLOTCHIVER: Than what we were
10 sent on the accountings.
11 THE COURT: The electronic documents
12 he sent?
13 MR. DAN SLOTCHIVER: Yes. There are
14 certain things I do in this case and certain
15 things my co-counsel does, if it's okay for him to
16 address the court.
17 THE COURT: Yes.
18 MR. STEVE SLOTCHIVER: Your Honor, I'm
19 looking at the annual accounting --
20 conservatorship annual accounting that was filed
21 on December 31st of last year with your court,
22 Your Honor, which covered the period from
23 January 1st, 2012, through November 30th, 2012,
24 and I'm looking specifically at Schedule 2.21
25 attached to that, and it is Bates stamped

1 No. 4432, which deals with legal fees, and I'm
2 comparing that to Schedule 2.21, same schedule
3 number, on the attachment or on the submission
4 that Mr. Boyd just presented, and the numbers are
5 different. The total legal fees on the one that
6 he submitted is $155,000, the one that he
7 submitted just now. The total legal fees on the
8 one that he submitted on December 31st, marked as
9 the conservatorship annual accounting, is
10 $186,485, I believe, Your Honor. The copy is not
11 the clearest, but basically, it's about a $30,000
12 difference.
13 THE COURT: Mr. Boyd, do you have an
14 explanation so we can understand what you have?
15 MR. BOYD: Your Honor, these are the
16 electronic copies that Webster Rogers provided to
17 us.
18 MR. DAVIS: These just don't include
19 the Hedgepath and Lee Moore.
20 MR. STEVE SLOTCHIVER: Your Honor,
21 there was an earlier accounting that they filed
22 maybe a month earlier than that that covered the
23 first four months of the year, and let me just
24 take a quick look at that and see if that's what
25 he's referring to. He may be referring to an

1 older schedule.
2 MR. DAVIS: Steve, all the ones we
3 sent for 2012 were the same, right, we sent in
4 2012?
5 MR. STEVE SLOTCHIVER: Give me just a
6 moment.
7 It does appear, Your Honor, that he's
8 working off of Bates No. 4392, which was on the
9 accounting that only covered from January 2012
10 'til April 30th of 2012, rather than the
11 accounting that covered from January 1st, 2012,
12 through November 30th, 2012.
13 THE COURT: So is he referring to the
14 one that was sent by electronic transmission to
15 you?
16 MR. STEVE SLOTCHIVER: Your Honor,
17 he's referring to an old schedule that covered
18 four months of the year, rather than 11.
19 MR. DAVIS: And Steve, you're saying
20 just that one year. All the other ones are fine?
21 THE COURT: Based on that
22 clarification, is there an objection?
23 MR. DAN SLOTCHIVER: No, no objection
24 based on that clarification, that it's limited to
25 that shorter period.

1 THE COURT: Okay. Thank you.
2 So Mr. Boyd, did you submit that?
3 MR. BOYD: Yes, Your Honor.
4 THE COURT: Does the court reporter
5 have it?
6 (RES. EXH. 3, Detail of Legal and
7 Professional Fees, was marked for identification.)
8 BY MR. BOYD:
9 Q. Mrs. Cohen, let me ask you a few
10 questions about the document that we just marked.
11 A. I'm sorry. I gave it back to you.
12 THE COURT: And that was a schedule.
13 Is that correct?
14 MR. BOYD: Yes, Your Honor. These are
15 schedules from the annual accountings.
16 BY MR. BOYD:
17 Q. Mrs. Cohen, can you tell me -- let's
18 look at the schedule for 2008. Robin Morris is
19 the first attorney listed on that schedule?
20 A. Yes.
21 Q. Why was Robin Morris retained?
22 A. Robin Morris was retained to make sure
23 that everything was in compliance. She was trying
24 to help Louis Michelson so that we could transfer
25 the conservatorship from California to South

1 Carolina, because we had to obtain conservatorship
2 to remove Abbie from California.
3 THE COURT: Could you lift that
4 microphone up a little bit?
5 THE WITNESS: I'm sorry. Should I say
6 that again?
7 THE COURT: No. I heard you, but it
8 was faint.
9 THE WITNESS: I can't seem to get it
10 to stay. Does this work better where it is right
11 now?
12 THE COURT: Yes, ma'am.
13 THE WITNESS: Let me move closer.
14 THE COURT: Thank you.
15 BY MR. BOYD:
16 Q. And Mrs. Cohen, explain for the court,
17 if you would, who was Louis Michelson?
18 A. Louis Michelson was the attorney who
19 did the conservatorship in California. He's a tax
20 attorney.
21 Q. And obviously, the reference to
22 Webster Rogers, was that legal fees?
23 A. No.
24 Q. The reference in the following line,
25 Mrs. Cohen, to Moore Law Firm, can you tell me who

1 that was?
2 A. That's who Judge Carter appointed as
3 the guardian ad litem.
4 Q. And who was that specifically?
5 A. It was Lee Moore.
6 Q. And I think you've identified Marina
7 Korol. Who was Marina Korol, Mrs. Cohen?
8 A. She was the first attorney.
9 Q. First attorney retained for what
10 purpose?
11 A. To handle the divorce.
12 Q. The divorce proceeding in California?
13 A. Yes.
14 Q. Take a look at the next page,
15 Mrs. Cohen, if you would. Gary Zimmerman is
16 listed on the second page, which is the annual
17 report for 2009. Who was Gary Zimmerman,
18 Mrs. Cohen?
19 A. Gary Zimmerman was the person I was
20 advised I needed to retain to defend the trust.
21 MR. DAN SLOTCHIVER: Your Honor, I
22 would object to any hearsay statement. I don't
23 know who advised her, what was advised, but I
24 think the statement itself should be stricken.
25 THE COURT: I'll strike that.

1 MR. DAN SLOTCHIVER: Thank you, Your
2 Honor.
3 THE WITNESS: So what should I say,
4 who is he?
5 BY MR. BOYD:
6 Q. Just identify who he is.
7 A. He is an attorney who specializes in,
8 I guess, keeping people from breaking trusts. I
9 guess that's the best way to describe it.
10 Q. And where is he located, Mrs. Cohen?
11 A. He is also in California, I believe in
12 Beverly Hills.
13 Q. And why was it -- why did you believe
14 that you had the need to retain Mr. Zimmerman?
15 A. Am I allowed to say advice of counsel?
16 No, okay. Because I was -- again, I was very
17 afraid that Abbie was going to lose her Medicaid.
18 Q. And these concerns that you had about
19 the loss of Medicaid, Mrs. Cohen, they stem from
20 what, based upon --
21 A. I'm not allowed to say counsel. Based
22 upon --
23 Q. Was it related to the demand for child
24 support?
25 A. Oh, yes. It was related to the demand

1 for child support totally.
2 Q. And was that related to the fact that
3 Abbie's assets were in the special needs trust?
4 A. Yes.
5 Q. Let's look at the trust document,
6 Mrs. Cohen.
7 MR. DAN SLOTCHIVER: Your Honor, how
8 late do we plan to go today? I'll go as late as
9 you can, but I'm just curious.
10 THE COURT: I'm not sure. I'd like
11 to -- I don't know.
12 MR. DAN SLOTCHIVER: I'd love to
13 finish the exam, I understand, but how late are
14 you willing to go at the latest?
15 THE COURT: That's hard to say. 6:00,
16 maybe, 6:30, if we need to. I'd certainly like to
17 finish with this witness, if possible, and if we
18 have time to move on -- I think Mr. Cohen you were
19 going to call next?
20 MR. DAN SLOTCHIVER: Yes.
21 THE COURT: I know you wanted to be
22 able to plan tomorrow and Professor Freeman, so
23 we'll see how we go.
24 MS. HEDGEPATH: Judge, I do have a
25 sitter at home with my husband that I need to make

1 arrangements to get someone else to come in at
2 6:00 if we're going much further.
3 THE COURT: All right. If you remind
4 me of that. We'll just kind of see how we go,
5 okay.
6 BY MR. BOYD:
7 Q. So Mrs. Cohen, you just testified that
8 you found it necessary to retain these advisers to
9 assist you?
10 A. Yes.
11 Q. Can you explain to the court -- I'm
12 going to show you -- can you explain to the court
13 your -- I'm going to show you what has already
14 been marked as the Dorn trust, the Abbie Dorn
15 Special Needs Trust.
16 A. Yes.
17 Q. Were you concerned about the demand
18 for child support and the Medicaid eligibility of
19 the trust?
20 MR. DAN SLOTCHIVER: This has been
21 asked and answered repeatedly and discussed
22 repeatedly, Your Honor.
23 THE COURT: Mr. Boyd, if you could
24 move on a little bit.
25 MR. BOYD: I will, Your Honor.

1 BY MR. BOYD:
2 Q. Let me ask you this, Mrs. Cohen: Did
3 you retain an attorney in South Carolina to assist
4 you with the transfer of the trust from California
5 to South Carolina?
6 A. Yes.
7 Q. And who was that?
8 A. Robin Morris.
9 Q. Let's take a look at what has been
10 offered into evidence as Plaintiff's Exhibit
11 No. 87, Mrs. Cohen.
12 A. This is this?
13 Q. Yes. You've got that?
14 A. Yes.
15 Q. Mrs. Cohen, you were asked about this
16 document earlier.
17 A. Yes.
18 Q. Was this order issued as a result of
19 your transferring the jurisdiction -- excuse me,
20 your transferring the trust to South Carolina?
21 A. Yes.
22 Q. Mrs. Cohen, let me ask you to turn to
23 Page 3 of this document, if you would, and let's
24 look at Paragraph 7 of this document.
25 A. Yes.

1 MR. BOYD: Your Honor, can I take a
2 brief recess?
3 THE COURT: I'll be happy to. Five
4 minutes, maybe, ten at the most, just very
5 quickly.
6 (A recess transpired from 4:00 PM to
7 4:44 PM.)
8 THE COURT: So at this point we will
9 adjourn. We will meet back in the morning at
10 9:00 o'clock.
11 (The proceedings were adjourned at
12 4:45 PM.)
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1 CERTIFICATE OF REPORTER
2
3 I, Marie H. Bruegger, Registered Professional Reporter, Certified Realtime
4 Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the
5 foregoing transcript is a true, accurate, and complete record.
6
7 I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.
8
9 Witness my hand, I have hereunto affixed my official seal this 16th day of October, 2013, at Charleston, Charleston County, South
10 Carolina.
11
12
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17
18
19
20
21 Marie H. Bruegger
Registered Professional
22 Reporter, CCR
My commission expires
23 April 18, 2021
24
25

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STATE OF SOUTH CAROLINA
PROBATE COURT
COUNTY OF HORRY
DANIEL B. DORN, in his Capacity as
the Parent and Natural Guardian of
Esti Dorn, Reuvi Dorn, and Yosse Dorn,
Petitioner,
CASE NO. 2008-GC-26-25
vs. CASE NO. 2008-GC-26-50
PAUL S. COHEN and SUSAN COHEN,
individually and in their capacity as the
Co-Conservators of the person of Abbie
Ilene Dorn, a protected person and ward,
and in their capacity as Co-Trustees of
the Abbie Dorn Special Needs Trust,

Respondents.

VOLUME III

BEFORE: HONORABLE DEIRDRE W. EDMONDS,
Judge

DATE: March 4, 2013

TIME: 8:30 AM

LOCATION: Horry County Courthouse
1301 Second Avenue
Conway, SC

REPORTED BY: MARIE H. BRUEGGER, Registered
Professional Reporter, CRR

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21 (INDEX AT REAR OF TRANSCRIPT)
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24
25

1 THE COURT: We are back on the record
2 today, March 4th, 2013, in the matter of the Abbie
3 Dorn Special Needs Trust, 2008-GC-26-50, also in
4 the matter of Abbie Dorn Conservatorship,
5 2008-GC-26-25. I believe we are ready to resume
6 the trial.
7 Mr. Boyd, are you feeling better?
8 MR. BOYD: Yes, Your Honor, and I just
9 appreciate the court's patient and support, but
10 yes. Thank you.
11 THE COURT: I'm glad you're back with
12 us. Thank you.
13 And I believe we were going to start
14 back with you, Mr. Boyd.
15 MR. BOYD: Yes.
16 Your Honor, we're actually missing
17 Mr. Davis. Let me, if I may, just real briefly,
18 ascertain his whereabouts.
19 THE COURT: Sure. All right.
20 MR. DAVIS: Good morning, Judge.
21 THE COURT: Good morning, Mr. Davis.
22 How are you?
23 MR. DAVIS: Good.
24 THE COURT: Mrs. Cohen is going to
25 take the stand.

1 SUSAN COHEN
2 having first duly affirmed, testified as follows:
3 THE COURT: And Mr. Boyd, I know that
4 you began your examination of Mrs. Cohen last
5 Tuesday afternoon.
6 MR. BOYD: Yes, ma'am.
7 THE COURT: I know you were not
8 feeling well, and I apologize, I didn't recognize
9 that you were having any difficulties, but to the
10 extent that you need to go back over any of that,
11 then you're certainly free to do that this
12 morning.
13 MR. BOYD: Thank you, Judge. Yes,
14 Your Honor. I've never experienced anything quite
15 like that, Your Honor, and I hope to not have to
16 put you through that again at any point in the
17 future. It was certainly not my intention, but I
18 appreciate the court's patience, and I'll try to
19 move right along.
20 THE COURT: All right. Thank you. We
21 are hopeful that we might can finish this by
22 Thursday. We had talked -- I know you weren't
23 here on Wednesday. Mr. Davis was here. We talked
24 off the record Wednesday morning about how we were
25 going to go forward this week. And

1 Mr. Slotchiver's going to try to finish up his
2 case as quickly as possible. I know he has a
3 couple more witnesses, and if we can finish by
4 Thursday, that's what we hope to do. If we can't,
5 then we just can't. I plan on going a little bit
6 long today and also tomorrow so that we might can
7 get to the point that we might could finish on
8 Thursday.
9 MR. BOYD: Okay, Your Honor.
10 THE COURT: But if you start having
11 any difficulties, please let me know, Mr. Boyd.
12 MR. BOYD: I certainly will, Your
13 Honor. Thank you.
14 THE COURT: Thank you.
15 CROSS-EXAMINATION
16 BY MR. BOYD:
17 Q. Good morning, Mrs. Cohen.
18 A. Good morning.
19 Q. How are you this morning?
20 A. I'm doing well. Thank you.
21 Q. Good. Mrs. Cohen, just for the
22 record, before we get started, have you and I
23 discussed your testimony since we were last here
24 on Tuesday?
25 A. No, no, we have not.

1 Q. Thank you. Let's go back to talk a
2 little bit about your background, Mrs. Cohen.
3 Where are you from?
4 A. I was born in Kingston, New York, and
5 I grew up in Harrisburg, Pennsylvania, and I went
6 to college in Philadelphia at Temple University.
7 And we moved to Ohio, after we lived in California
8 for a while, and I went to graduate school when I
9 was pregnant with my third child.
10 Q. And I assume when you say we, you're
11 referring to you and your husband?
12 A. Yes, that's correct.
13 Q. Is your husband with us here today?
14 A. Yes. He's right here.
15 Q. Mr. Cohen, okay, Dr. Paul Cohen.
16 Let's talk for a moment about the
17 individual that this case is really about,
18 Mrs. Cohen, Abbie. Tell me about Abbie.
19 A. Well, Abbie is my middle child. She
20 has always been a wonderful person. She was
21 always the peacemaker in the family. When there
22 was a child at school that nobody liked, that
23 nobody would sit with at lunch, Abbie always made
24 the definite decision to go and sit with that
25 child and to make sure that that child had

1 somebody that was her friend and tried to include
2 that child.
3 In high school, Abbie was the child
4 that everyone came to with her problems. She
5 would sit on her bed with her dog, and we never
6 had to worry about boys or anyone being in her
7 room, because that dog guarded her, and they would
8 talk to Abbie about their problems, and she was
9 the one who would be the one to help them find a
10 way, a solution in life.
11 And she's always been a hard worker.
12 She worked very hard through college. She was
13 premed, she wanted to be a surgeon, but she talked
14 to us about it, and her biggest goal in life was
15 to be a mom. That's what she wanted more than
16 anything else was to marry and have children. And
17 we told her a surgeon was a tough life for a mom,
18 and we suggested that she might look at some
19 alternative careers, and she looked at dentistry
20 and chiropractic and decided to become a
21 chiropractor, and that was a path to follow.
22 She and Dan married in 2002, and right
23 from the beginning, they wanted children. That
24 was the most important thing to them. And they
25 had gone to a number of rabbis/religious leaders

1 to ask for blessing, because it didn't seem to be
2 happening. And they finally did in vitro, and 48
3 hours later, she found that she was pregnant with
4 triplets, and she was very, very, very happy and
5 very excited.
6 And it was a hard pregnancy. She was
7 praying all the time that she wouldn't lose her
8 babies. That was her biggest fear. She just was
9 very, very afraid that something would be wrong,
10 and she just prayed constantly and read psalms, as
11 I do, and she did everything the doctors told her.
12 She had a high-risk specialist. She
13 had -- of course, the head of the obstetrical
14 department was her doctor. She was put on bedrest
15 after four-and-a-half months after a scare where
16 she almost lost the babies, and they asked her to
17 gain a great deal of weight. She was a tiny
18 little thing, and she only weighed about 109,
19 110 pounds, and she was five-five.
20 She was told that she needed to gain
21 weight, so she woke up every morning at 4:30 in
22 the morning so she could start to eat, because
23 they felt that if she gained enough weight, she
24 would be able to hold her babies to term, so
25 that's what she did. She got up every morning at

1 4:30. She'd start eating. She did everything
2 that was recommended to her. She followed every
3 order.
4 And it was hard because she told me
5 when she would go out to the obstetrician, she
6 would just look around, and it was so wonderful
7 just to be outside. It was such a blessing to see
8 the world again, instead of being in her bed.
9 But she did a lot of research. She
10 propped up her computer. She did a lot of
11 research during that time on the best way to care
12 for triplets and also, if, God forbid, everything
13 wasn't right, where she could get the most help
14 for her children, and she contacted the triplet
15 groups, and she was just very, very active.
16 She was also asked by his parents --
17 tell me when I'm -- when it's hearsay, because I'm
18 always confused.
19 Q. Just answer to the extent you know,
20 and if there's a problem, we'll let you know.
21 A. They had asked her to computerize
22 their business, which she did, so she did that. I
23 know that she was a little upset with some things
24 at that time because I think she learned some
25 things that upset her, but she wouldn't tell me

1 what it was. But she concentrated on trying to be
2 positive, that was her goal, and praying to God,
3 HaShem, that everything would go well.
4 And she called when she was on the way
5 to the hospital. She was in labor. She was very
6 excited. It was -- it was early, it was
7 33-and-a-half weeks, so we knew they were going to
8 be pretty premature. I had been planning to come
9 out five days later, and obviously, at that stage
10 when she was in labor, she -- I was not able to
11 come out, to get there in time.
12 Q. Before you get into that, let me ask
13 you a question. Is it fair to say, based on your
14 experience, that having children and children
15 generally were very important to Abbie?
16 A. That was the most important thing.
17 When her sister was a baby, Abbie was only three
18 years old, and I was not even allowed to diaper
19 her. She would take her, and she would diaper
20 her. In fact, Abbie had started diapering herself
21 when she was two, because I was not perfect
22 enough. She would smooth out her diaper and get
23 it absolutely perfect, and then she would pull it
24 up and fasten it.
25 And when she had a little birthday

1 party to go to when she was three years old, she
2 would take the present out of my hands, because
3 that was before bags. She would take the present
4 out of my hands, because she did it perfectly.
5 She would fold the little sides down of the paper
6 and put the ribbon on perfectly.
7 She was just so very meticulous and
8 very into maternal. Her sister was just -- she
9 was so mothering. She was always -- she would
10 change her when she wasn't even wet. That was --
11 she was so fond of doing things for her. And she
12 was always -- when there was a baby in the family,
13 Abbie was always right there.
14 And she was there for her two nephews
15 when they were born. She helped take care of the
16 second one. My daughter had problems. She was a
17 placenta -- the baby was placenta previa, and he
18 was also a preemie. And she wrapped the baby up
19 all the time before she presented him for her
20 sister, because his little head was perfect, but
21 his body was really skinny and kind of
22 scary-looking, kind of looked like ET, like a
23 little alien, so she didn't want her sister to see
24 the baby like that, that much like that, so she
25 would make sure he was all wrapped and present him

1 all like a little perfect little package.
2 And she talked about her nephews all
3 the time. They were -- as someone said, they were
4 like movie stars in Hollywood. Everybody in
5 Beverly Hills/Hollywood area knew about those
6 babies because that's what she was talking about
7 all the time. She just absolutely adored them.
8 So this was the most important thing
9 in her life, to have children.
10 Q. Thank you. And, of course, as we all
11 know, there was an unfortunate accident during the
12 delivery of Abbie's triplets which resulted in a
13 series of unfortunate events.
14 Let me ask you a question, Mrs. Cohen.
15 I'm going to show you an exhibit -- or document
16 that you produced to us, Mrs. Cohen. It's a
17 declaration that you prepared. As a result of the
18 accident that we've discussed, and we discussed
19 this some on Tuesday, I believe, there was a med
20 mal suit as a result of the accident that happened
21 at Cedars-Sinai. Is that correct?
22 A. That's correct.
23 Q. And is this a declaration that you
24 prepared in connection with that litigation?
25 A. In connection with --

1 Q. Is this a declaration that you
2 prepared in connection --
3 A. Yes, it is.
4 Q. And you've provided that to us
5 previously, and you recognize the document?
6 A. Yes.
7 MR. BOYD: If there's no objection,
8 I'd move that we enter this into evidence, Your
9 Honor. I believe it'll be Respondent's 4.
10 THE COURT: Any objection?
11 MR. DAN SLOTCHIVER: No objection.
12 THE COURT: No objection?
13 MR. BOYD: Thank you, Your Honor.
14 THE COURT: I'm sorry. Ms. Hedgepath
15 needs to see it, I believe.
16 Mr. Boyd, I'm sorry. This one that
17 the witness has, has that been --
18 MR. BOYD: I have marked this one,
19 Your Honor. I was going to give this one to the
20 court reporter. We may be short a copy.
21 THE COURT: And I'm sorry. What
22 number is that?
23 MR. BOYD: This will be R-4, Your
24 Honor.
25 THE COURT: Thank you. Admitted

1 without objection.
2 MR. BOYD: Thank you, Your Honor.
3 (RES. EXH. 4, Declaration of Susan
4 Cohen, Bates No. 0030 through 0034, was marked for
5 identification and admitted into evidence.)
6 BY MR. BOYD:
7 Q. Mrs. Cohen, if you could look at the
8 last paragraph on the first page. You stated
9 petitioner's gross settlement of award was
10 $6,730,000, of which $1,264,000 constituted
11 settlement of petitioner's loss of future
12 earnings?
13 MR. DAN SLOTCHIVER: I'm sorry, Your
14 Honor, I apologize. We're admitting this as to
15 the fact that this was a document created by Susan
16 Cohen, but I want to make sure that we're not
17 admitting it as to the truth of all matters set
18 forth in the document.
19 THE COURT: Thank you.
20 MR. BOYD: I just offered it as a
21 declaration that she previously prepared, Your
22 Honor. It's like any other testimony that she
23 might have prepared.
24 MR. DAN SLOTCHIVER: We have no
25 opposition to it being introduced for that

1 purpose.
2 THE COURT: Thank you.
3 BY MR. BOYD:
4 Q. Is that a fair -- does that assist you
5 in recalling the results of the medical
6 malpractice claim?
7 A. Yes, yes.
8 Q. And Mrs. Cohen, if you could, turn to
9 Page 2, the first paragraph. What was your
10 statement with respect to the attorneys fees paid
11 from the med mal claim and the resulting sum --
12 the bulk of the med mal claim went to purchase an
13 annuity, correct?
14 A. That's correct, yes.
15 Q. Can you -- just for the record, what
16 does your declaration say with respect to the
17 purchase of the annuity? I think there's a
18 sentence that begins: The lion's share.
19 A. The lion's share of this award in the
20 sum of $4,333,105 was used to purchase an annuity
21 for petitioner from AIG Life Insurance Company
22 that at that time pays $131,000 per month for
23 petitioner's lifetime, increasing at 3.5 percent.
24 In or about January of 2009, the annuity payments
25 increase to $32,085. The balance of the award in

1 the sum of $910,275.20 constitutes settlement of
2 petitioner's loss of future earnings claim.
3 Should I go on?
4 Q. Yes. I think that's good. Thank you.
5 MR. KACHMARSKY: Mr. Boyd, can I ask
6 you if you've got another copy of that?
7 MR. BOYD: I'm sorry, John, if you can
8 bear with me. I thought I had more copies of each
9 of these. Apparently, we only have two.
10 Actually, I'll share with the witness and let
11 Mr. Kachmarsky have your copy, if you don't mind.
12 Your Honor, I'm going to approach. My
13 apologies.
14 THE COURT: Yes, sir.
15 BY MR. BOYD:
16 Q. Mrs. Cohen, on Page 3 of your
17 aforementioned declaration, there's a statement
18 with regard to eligibility. You have, I think,
19 previously on Tuesday advised that one of your
20 concerns -- primary concerns from the beginning
21 throughout this process has been Abbie's insurance
22 eligibility?
23 A. Absolutely. From the time that the
24 malpractice was first brought up, that's the one
25 thing I cared the most about, that she would have

1 health insurance.
2 Q. Can you explain? Can you give the
3 court a little bit of background on that subject?
4 A. Well, as you know, I did work -- I
5 think I mentioned briefly that I worked briefly as
6 a medical social worker in neurosurgery even
7 before this happened, and one of the most dramatic
8 cases I had was two physicians who were totally
9 bankrupt by their insurance bills, and it's not an
10 uncommon thing. I'm sure the court and everyone
11 in the room has been aware of things like that.
12 And considering the incredible cost of Abbie's
13 hospitalization, I was afraid that that would
14 be -- that could easily eat up any award that she
15 had if she did not have health insurance, so that
16 was always my number-one concern is that she have
17 health insurance.
18 And I had talked extensively to Russ
19 Kussman about trying to make that a priority, but
20 even Lloyds of London, who was the insurer for the
21 hospital, said they would not, under any
22 circumstances, consider giving her health
23 insurance, which to this day still amazes me that
24 when it's supposed to make things frank, if that's
25 ever possible, that that's the one thing they

1 would not consider.
2 And that was the biggest fear, and Dan
3 Dorn knew that. He knew that my biggest fear --
4 MR. DAN SLOTCHIVER: Your Honor, I
5 object to any statement from her as to what Dan
6 Dorn knew without laying a foundation as to what
7 he did know.
8 THE COURT: Thank you. Sustained.
9 THE WITNESS: I'm sorry.
10 BY MR. BOYD:
11 Q. Abbie's insurance eligibility, if
12 insurance could be obtained, or her Medicaid
13 eligibility, those were important to you?
14 A. Extremely important to me, very high
15 priority.
16 Q. And I think as we discussed on
17 Tuesday, Mrs. Cohen, Medicaid eligibility would
18 become an issue when Mr. Dorn filed for child
19 support from the trust. Is that correct?
20 A. Absolutely. It was a very, very
21 important issue.
22 Q. So you understood that that was a
23 potential likely problem with respect to Medicaid
24 eligibility?
25 A. Absolutely. It was the one thing that

1 caused me the most psychological distress and
2 fear.
3 Q. Is it your understanding that any
4 benefit for a third party paid from the Abbie Dorn
5 Special Needs Trust, and by third party we mean
6 anybody other than Abbie, that that can disqualify
7 the Medicaid eligibility of the trust?
8 MR. DAN SLOTCHIVER: Your Honor, I
9 object. I don't believe that there's a proper
10 foundation for her to give an opinion as to what
11 would or would not disqualify Medicaid.
12 MR. BOYD: Your Honor, I'm just asking
13 the witness to rely upon her experience, having
14 been through this as the trustee, having consulted
15 with numerous experts. She has testified that
16 that was a significant issue that she sought
17 counsel. I'm asking her -- I believe she already
18 testified to this on Tuesday, but I'm simply
19 asking for her opinion as to whether or not -- and
20 it's addressed in her affidavit, Your Honor. I
21 think the subject speaks for itself.
22 MR. DAN SLOTCHIVER: And Your Honor, I
23 don't know who she spoke to in order to form the
24 opinion. He referenced that he's asking her based
25 on her opinion having been formed talking to the

1 experts. That would be hearsay. And this
2 opinion, this declaration she's given, has been
3 entered only for the purpose of it's a document
4 that she signed.
5 But the only thing I'm objecting to is
6 her giving a medical opinion as to this matter.
7 If she wants to give her personal opinion that
8 this is what she believes, I'm not opposed to
9 that, but I certainly want to make sure there's a
10 foundation that it's not based on anything other
11 than her own personal belief.
12 MR. BOYD: She's not giving a medical
13 opinion, Your Honor. She's explaining to the
14 court what her mindset was, her present sense,
15 what her concerns were as a trustee when she was
16 working her way through these issues.
17 MR. DAN SLOTCHIVER: As long as we
18 limit it to her mindset and not her mindset based
19 upon who she talked to or based on different
20 doctors and so forth. That would be hearsay. I
21 don't object to her mindset as long as she doesn't
22 inappropriately reference conversations that we
23 don't know about, that we had no opportunity to
24 judge or look at or get into to see if they did
25 occur or didn't occur or if it was perceived by

1 her in the same manner that they might have meant
2 it to be perceived.
3 And that's the problem with the
4 testifying about knowledge she obtained from
5 professionals without us having an opportunity to
6 question those professionals. But as far as her
7 opinion, if it's just blanket, I was concerned
8 about Medicare, then we have no objection to that.
9 THE COURT: Mr. Boyd?
10 MR. BOYD: Well, Your Honor, she's not
11 referenced any specific conversation that she had
12 with an attorney, an adviser, an accountant, so I
13 don't think there's any issue of hearsay. Again,
14 she's just giving her opinion that was formed at
15 the time as a result of being the trustee working
16 through these issues.
17 MR. DAN SLOTCHIVER: And actually,
18 Mr. Boyd referenced her opinions formed based on
19 conversations she's had with different
20 professionals, so while she didn't do it, the
21 question that led to it certainly gave her the
22 opportunity to respond to it in that manner. And
23 in order to have a clean record, I want to make
24 sure that she can only respond to it from a
25 personal opinion without speaking to where she

1 formed that opinion, because I think that would be
2 improper.
3 THE COURT: Mr. Boyd, I think I have
4 to sustain his objection and instruct the witness
5 to only rely on what she knows, unless you can lay
6 a foundation, unless you're going to have the
7 professionals who advised her.
8 MR. BOYD: Your Honor, under
9 questioning, there was a significant amount of
10 questioning that Mr. Slotchiver gave the witness
11 as to is it not prudent for a trustee to seek the
12 advice of outside advisers, and I think it would
13 be impractical for the court to expect the witness
14 to be able to attribute every single thing that
15 she's learned through this process to any one
16 particular conversation.
17 In previous testimony, when I had
18 Mrs. Cohen on the stand Tuesday, we did discuss
19 the attorneys that she retained initially. We
20 identified those attorneys. We can go back and
21 look at the exhibit. But I don't think she said
22 anything that would be directly attributable to a
23 specific conversation such that the hearsay rule
24 is implicated. And to the extent that it deals
25 with a medical condition or Abbie's medical

1 condition, there's an exception to the hearsay
2 rule anyway for medical-related diagnoses and
3 prognoses.
4 So again, I'm not sure that -- I'm not
5 sure she's really saying anything that's hearsay.
6 She's talking about her general knowledge that
7 she's acquired over this process.
8 THE COURT: To the extent that she
9 talks about her general knowledge that you've
10 stated that she's acquired, without relying on
11 what other physicians may have told her, I will
12 allow that testimony.
13 MR. BOYD: Thank you, Your Honor.
14 THE COURT: Thank you.
15 BY MR. BOYD:
16 Q. Mrs. Cohen, let me just ask, if you
17 would, then -- I'm going to just give you the
18 exhibit. Turn to Page 3. Would you just take a
19 look at the next-to-the-last paragraph? And as a
20 matter of fact, just for the record, Mrs. Cohen,
21 if you wouldn't mind, just read that paragraph, if
22 you would.
23 A. Petitioner's continued Medicaid
24 eligibility depends on how resources that were
25 available to her are used during her lifetime.

1 Medicaid rules dictate that if any portion of the
2 trust is distributed for any reason other than the
3 special needs of the petitioner, petitioner would
4 be disqualified from receiving Medicaid benefits.
5 Thus, if a California court issues an
6 order stating that the special needs trust is
7 accessible for additional child support for the
8 minor children, the distribution of monies from
9 the special needs trust for child support would
10 illustrate to Medicaid that the trust is being
11 utilized for reasons other than the special needs
12 of the petitioner. This type of distribution
13 would necessarily result in a penalty of
14 disqualifying petitioner from such benefits.
15 And that is my opinion.
16 Q. Is that still your opinion today?
17 A. And it is still my opinion today.
18 Q. Let me ask you this question,
19 Mrs. Cohen: It has been repeatedly alleged
20 throughout these proceedings, and you heard it
21 many times in court last week, that what, in
22 effect, happened in California was an action for
23 grandparent visitation. In your opinion, if it
24 was, in fact, grandparent visitation, would that
25 have been for your benefit, or would that have

1 been for Abbie's benefit? Assume with me for the
2 moment that it was a case of grandparent
3 visitation. Would that have been for your
4 benefit?
5 A. It was always for Abbie's benefit.
6 Q. And if it had been, in fact, a case of
7 grandparent visitation -- you're the
8 grandparent -- it would have been for your
9 benefit, correct?
10 A. Had it been, but it was not for my
11 benefit. It was always 100 percent for Abbie.
12 She's my primary concern and has been since this
13 happened. I devoted my life to her.
14 Q. I understand. As you're aware,
15 Mrs. Cohen -- and let me ask you this: Throughout
16 this process, as you know, the Department of
17 Health, South Carolina DHSS, has been a party to
18 these proceedings?
19 A. Yes, right.
20 Q. And do you understand that we've made
21 them aware of this proceeding from the outset?
22 A. Yes.
23 Q. From the beginning --
24 MR. DAN SLOTCHIVER: Your Honor, I
25 would object to the reference that they're aware

1 of this proceeding, and the reason I say that is
2 because I myself contacted the department two
3 weeks ago before the trial to see if they were
4 coming. The response was they weren't even aware
5 the trial was going forward. I notified them that
6 it was, and they said they were going to monitor
7 it, but they weren't going to come to the trial.
8 They were interested in knowing what the decision
9 is.
10 I've got a copy of an email I can
11 provide to the court, if so inclined, but I'd like
12 for her to lay a foundation as to the basis of
13 this opinion that they're aware of it, because
14 it's not what I understand.
15 And as an officer of the court, I want
16 to advise the court that I did notify them, to
17 make sure they were aware, and I do have a receipt
18 email from Shealy Reibold, who is the attorney who
19 is monitoring this case.
20 MR. BOYD: Your Honor, I'm merely
21 asking the witness if she is aware, as she's
22 received correspondence throughout this
23 proceeding. I'm merely asking the witness her
24 knowledge, is she aware that the department has
25 been a party to this proceeding and has been

1 served, cc'ed on correspondence that she's
2 received, which she can speak to her direct
3 knowledge.
4 THE COURT: I'll certainly allow that.
5 MR. DAN SLOTCHIVER: No objection to
6 that, Your Honor.
7 THE COURT: Thank you.
8 BY MR. BOYD:
9 Q. Mrs. Cohen, again I would ask you,
10 you're aware that the department is a party to the
11 petition filed by Mr. Davis originally?
12 A. Yes, I am aware.
13 Q. And you are aware that they were the
14 party receiving notice of these proceedings?
15 A. I am aware.
16 Q. Has anyone from the Department of
17 Health and Human Services, either in South
18 Carolina or California, ever contacted you and
19 questioned your use of the funds in California or
20 your attempting to secure a third-party benefit
21 for yourself out of the trust?
22 A. No, no one's ever contacted me.
23 Q. The document on Page 2 that we just
24 reviewed, Mrs. Cohen, references an annual --
25 excuse me, a monthly annuity payment of $31,000.

1 That number has changed, correct?
2 A. That's correct.
3 Q. What is the current amount of the
4 annuity that payment is being received on a
5 monthly basis?
6 A. It's a little over $36,000.
7 Q. And is that amount sufficient to meet
8 Abbie's medical needs currently?
9 A. Currently, it definitely is. We're,
10 thank God, able to take her out now to therapy,
11 since she's doing so much better. We don't have
12 to have so many in-home therapies.
13 Q. Mrs. Cohen, we spent a fair amount of
14 time on Tuesday covering the divorce proceeding.
15 In the interest of time, I'm not going to go back
16 over that. I think we covered that. What I'd
17 like to ask you about now is a document that's
18 already been introduced into evidence. This is a
19 copy of the Abbie Dorn Special Needs Trust. Are
20 you familiar with that document, Mrs. Cohen?
21 A. Yes, I am.
22 Q. Mrs. Cohen, on Tuesday -- first of
23 all, you didn't write that document, did you?
24 A. No, I didn't. This was prepared --
25 should I tell you?

1 Q. Yeah. You can tell me who prepared it
2 if you know.
3 A. The Abbie Dorn Special Needs Trust was
4 prepared by John Payne -- I'm sorry. I'm getting
5 myself -- yeah, John Payne for the trust.
6 Q. And Mrs. Cohen, on Tuesday, we did
7 speak, as I recall, about several advisers that
8 the trust -- that you did have to assist you with
9 the trust.
10 A. That's right.
11 Q. And I believe Mr. Slotchiver
12 questioned you in some length on is it prudent for
13 a trust trustee to have advisers. Obviously, you
14 haven't made all the decisions in this process
15 concerning the trust?
16 MR. DAN SLOTCHIVER: Your Honor, I
17 don't recall this line of testimony that took
18 place on Tuesday. I don't recall asking her about
19 her line of advisers or about the prudence of
20 having advisers. I just don't recall that taking
21 place. My recollection was that the
22 cross-examination was very short on Tuesday. It
23 was really limited to the issue of payment of
24 attorneys fees for research, and we really didn't
25 get into much more at that time.

1 But I don't recall this line of
2 testimony that she's being asked about, and I want
3 to object to it insomuch as it's referencing a
4 line of questioning that I don't recall. He
5 certainly can ask her about it, but I wanted to
6 make sure the context was correct.
7 MR. BOYD: Your Honor, I believe, if
8 I'm not mistaken, Mr. Slotchiver specifically
9 asked the witness during his direct that was it
10 not prudent for a trustee to retain advisers, and
11 if he doesn't recall, I mean, I'd just strike the
12 reference. That was my impression of -- or
13 recollection, rather, of Mr. Slotchiver's
14 questioning. And we did speak specifically
15 Tuesday toward the end of the testimony about
16 specifically certain individuals who had been
17 retained, but again --
18 THE COURT: I don't recall that he
19 necessarily got into some of those things.
20 MR. BOYD: Excuse me, Your Honor.
21 THE COURT: Certainly.
22 MR. DAN SLOTCHIVER: And I'm not
23 objecting to her necessarily responding to it. I
24 just don't believe that we talked about those
25 things, Your Honor, and if it's going to go back

1 to something we talked about, I don't believe it's
2 in the record.
3 MR. BOYD: Fair enough, Your Honor. I
4 don't have the reference -- we can strike the
5 reference to Mr. Slotchiver's question.
6 THE COURT: So we'll strike that.
7 Thank you.
8 BY MR. BOYD:
9 Q. But Mrs. Cohen, the question remains.
10 You did have advisers throughout this process.
11 You didn't write the trust document?
12 A. No, I did not.
13 Q. I believe on Tuesday we mentioned
14 Louis Michelson?
15 A. Louis Michelson worked with --
16 Q. Can you tell the court who Louis
17 Michelson is?
18 A. Louis Michelson is a tax attorney in
19 California, and he worked with Robin Morris.
20 Q. Was Mr. Michelson involved in the
21 Medicaid eligibility issue?
22 A. Mr. Michelson?
23 Q. Yes.
24 A. Well, he discussed it with Robin
25 Morris.

1 Q. And who is Robin Morris?
2 A. Robin Morris was my counsel here in
3 South Carolina.
4 Q. Did you retain her to move the trust
5 from California to South Carolina?
6 A. Yes.
7 Q. So let's take a look at the trust,
8 Mrs. Cohen. I'm also going to let you take a look
9 in just a minute at some other documents,
10 Mrs. Cohen, but for now I just want to ask you
11 about the trust.
12 What was your impression of the trust
13 document and the power that it gave the trustee to
14 pursue, for example, the marital dissolution
15 proceedings in California?
16 A. My understanding was that I would
17 pursue it --
18 MR. DAN SLOTCHIVER: Your Honor, I
19 would object without a foundation as to what her
20 understanding was. If she's going to testify as
21 to communications with other counsel, then I would
22 object to it, and I want to place the objection on
23 the record now before we go into that territory.
24 THE COURT: Mr. Boyd?
25 MR. BOYD: Your Honor, I'm simply

1 asking her what her understanding of the trust
2 document is that has been introduced into evidence
3 that she's been questioned on and is in front of
4 her.
5 THE COURT: I'll allow that to the
6 extent of the trust document. Thank you.
7 BY MR. BOYD:
8 Q. So Mrs. Cohen, do you have --
9 A. Do you want me to find the page?
10 Q. Yes, if you would.
11 Let me ask you this question,
12 Mrs. Cohen: Was it your understanding that -- I'm
13 going to ask you to read Paragraph 10 of the
14 trust, Mrs. Cohen.
15 A. Okay. The trustee may employ and
16 compensate agents, accountants, attorneys-in-fact,
17 attorneys-at-law, brokers, investment advisers,
18 tax specialists, realtors, and other assistants
19 and advisers deemed by the trustee needful for the
20 proper administration of the trust estate.
21 However, the compensation of the trustee's
22 attorney-at-law shall be subject to prior approval
23 of a court of competent jurisdiction.
24 Q. Thank you. And if you would, read
25 that same page. Go down two paragraphs. Read

1 Paragraph 12 for us, if you would.
2 A. The trustee may employ attorneys,
3 accountants, and financial advisers and
4 consultants at the expense of the trust estate to
5 represent the beneficiary in connection with any
6 and all matters involved in any way related to
7 beneficiary, any property in which beneficiary has
8 or may have an interest or responsibility. Any
9 and all legal, equitable, judicial, or
10 administrative hearings, actions, suits,
11 proceedings, attachments, or distresses involving
12 beneficiary in any way, including, but not limited
13 to, claims by beneficiary arising out of property
14 damages or personal injury suffered by
15 beneficiary, actions in any court, and otherwise
16 engage in litigation involving beneficiary. The
17 compensation of the trustee's attorney-at-law
18 shall be subject to prior approval of a court of
19 competent jurisdiction.
20 Q. Thank you, Mrs. Cohen.
21 Mrs. Cohen, you testified on Tuesday,
22 as I recall, that you are not a legal expert. Is
23 that correct?
24 A. That's correct.
25 Q. But based on what you did understand

1 concerning the trust, your due diligence as a
2 trustee, what was your impression of the
3 requirement for prior approval of the court when
4 an attorney was retained by the trustee to
5 represent the ward, the ward being Abbie?
6 MR. DAN SLOTCHIVER: Your Honor, if I
7 may place an objection on the record.
8 THE COURT: Yes, sir.
9 MR. DAN SLOTCHIVER: In the question,
10 there was a comment made, your due diligence as a
11 trustee, and I don't believe there's any
12 foundation to show what the due diligence, if any,
13 was that was taken, so while the question itself
14 may -- the substance may be appropriate, I think
15 the way the question was asked assumed or
16 presented to the court that there was due
17 diligence, and I don't believe there's any
18 foundation to show that.
19 THE COURT: Mr. Boyd?
20 MR. BOYD: Your Honor, I can rephrase
21 the question.
22 THE COURT: Rephrase it. Thank you.
23 BY MR. BOYD:
24 Q. Mrs. Cohen, again, based on your
25 knowledge of the document and your knowledge as

1 the trustee, what was your understanding of the
2 requirements of the trust specifically related to
3 obtaining prior court approval, specifically
4 related to when an attorney was retained to
5 represent Abbie? Did you have an understanding
6 about those circumstances?
7 A. I understood that I needed to have an
8 attorney in South Carolina and that I needed to
9 explain to her the circumstances of the transfer
10 and --
11 Q. I'm not talking about the transfer of
12 jurisdiction.
13 A. Right, but I needed to have her advise
14 me because --
15 THE WITNESS: Am I allowed to say the
16 word Dan Dorn or not -- had asked for divorce.
17 Can I say Dan Dorn?
18 THE COURT: Yes, ma'am.
19 BY MR. BOYD:
20 Q. Yes, you can, certainly.
21 A. He said he wanted to -- he wanted to
22 move on with his life, he wanted a divorce, that
23 we needed to proceed with a divorce, and I wanted
24 to do it, obviously, according to the documents,
25 and she advised me on exactly what I need to do.

1 MR. DAN SLOTCHIVER: Objection, Your
2 Honor. Objection, Your Honor, as to what she
3 advised.
4 THE WITNESS: What should I say?
5 THE COURT: Sustained.
6 MR. BOYD: First of all, Dan --
7 BY MR. BOYD:
8 Q. I didn't even quite hear you,
9 Mrs. Cohen. When you say she, I'm not --
10 A. I mean Robin Morris.
11 THE COURT: Yes, ma'am.
12 BY MR. BOYD:
13 Q. Just one second, Mrs. Cohen.
14 A. Talked to me, not advised.
15 Q. Don't make references to statements
16 that were stated to you, if you could.
17 MR. DAN SLOTCHIVER: Can we strike
18 that from the record, Your Honor?
19 THE COURT: We'll strike that, that
20 part about she said.
21 MR. DAN SLOTCHIVER: Yes, Your Honor.
22 THE COURT: Thank you.
23 THE WITNESS: Okay. I obtained
24 information.
25 BY MR. BOYD:

1 Q. Just tell us what your understanding
2 was.
3 A. My understanding was that I needed to
4 speak -- I needed to have counsel, and I needed to
5 have the approval from South Carolina, and that's
6 what I obtained. And I believe that I did
7 everything that the trust document required that I
8 do and that I was completely supported in what I
9 needed to do to follow through with the actions
10 for the divorce and everything involved with the
11 divorce, which Abbie's children were paramount to
12 Abbie. She -- I mean, she just would stare at
13 their pictures all the time. It was the most
14 important thing in her world. It was what kept
15 her alive.
16 Q. Thank you, Mrs. Cohen. I think that's
17 fine.
18 I'm going to show you two other
19 documents, Mrs. Cohen, and let's go back to
20 California. I'm going to show you a document that
21 has already been entered into evidence. Those are
22 the letters of conservatorship, Mrs. Cohen, that
23 were issued by the California court.
24 A. Yes.
25 Q. Do you recognize that document?

1 A. Yes, letters of conservatorship.
2 Q. And you're familiar -- you recall the
3 proceedings which caused the court in California
4 to issue those letters of conservatorship?
5 A. Do you mean what led up to them?
6 Q. Yes.
7 A. We wanted to move Abbie back to our
8 home in South Carolina, and we had, as I said,
9 initially planned to stay in California, but we
10 were not -- when we were discouraged from living
11 where we could help with the children and have
12 Abbie see her children on a daily -- frequent
13 basis, we needed to move her, and to be able to do
14 that, we needed to obtain conservatorship in
15 California.
16 Q. And just for the record, I believe you
17 testified to this fact on Tuesday, but when you
18 say you were discouraged from staying in
19 California to help, who discouraged you?
20 A. Dan Dorn.
21 Q. I'm going to ask you to turn to Page 4
22 of the exhibit, Mrs. Cohen, and would you just
23 read the bottom two paragraphs, under
24 Attachment 3(d)?
25 A. The conservators are part of the

1 independent power under Probate Code Section
2 2591(a) to settle the pending personal injury
3 claim brought on behalf of the proposed
4 conservatee and to compromise or to settle any
5 dissolution action between the proposed
6 conservatee and her husband, Daniel Bernard Dorn.
7 The conservators are granted the independent power
8 under Probate Code Section 2591(q) to employ
9 attorneys to file an action for dissolution of the
10 marriage between the proposed conservatee and her
11 husband, Daniel Bernard Dorn, and to pay the
12 attorneys fees thereby incurred.
13 Q. Thank you, Mrs. Cohen. So Mrs. Cohen,
14 in your own words, as you understood it, what did
15 the court in California empower you to do?
16 A. To settle everything relating to the
17 divorce between Abbie and Dan, and that included
18 visitation, which was what Abbie needed.
19 MR. DAN SLOTCHIVER: Objection, Your
20 Honor, as to the comment that is what Abbie
21 needed. There's no foundation to support that.
22 MR. BOYD: Your Honor, she's --
23 MR. DAN SLOTCHIVER: I'm trying to
24 give her a lot of latitude, Your Honor, with
25 reference to it, but in this case, there are

1 matters that the court is aware and we've
2 discussed about -- there's a separation between
3 what the trustee believes what other documents
4 reference, and because of that, I would ask that
5 without a foundation, which I don't believe they
6 can support through the documents they provided to
7 us, that that part be stricken.
8 She certainly can testify as to what
9 her understanding was. I'm not opposed to that.
10 I understand she's done that at this point. But
11 to the same end, a few moments ago, she said that
12 Abbie would stare at the pictures, and now she's
13 saying that Abbie needed this. I have to place an
14 objection on the record.
15 THE COURT: Mr. Boyd?
16 MR. BOYD: Your Honor, the witness
17 lives with Ms. Dorn 24 hours a day, seven days a
18 week. I'm not sure that there's anyone alive -- I
19 dare say there's no one alive more qualified to
20 testify as to the needs/preferences/desires of
21 Abbie Dorn. She's testifying from personal
22 knowledge.
23 MR. DAN SLOTCHIVER: We've got a court
24 order that states otherwise, we've got other
25 documents that reference all this, and I would

1 object to it.
2 THE COURT: I'll allow her to state it
3 as far as her opinion.
4 MR. DAN SLOTCHIVER: Yes, Your Honor.
5 THE COURT: Thank you.
6 BY MR. BOYD:
7 Q. Were you aware of any limitations in
8 the California order that we just reviewed?
9 A. No. I was not aware of any
10 limitations on the California order.
11 Q. Does it say you may not do this or you
12 may not do that?
13 A. No, it does not say that.
14 Q. Mrs. Cohen, I'm going to show you one
15 more document -- actually, I have several more.
16 Let me just start with -- Mrs. Cohen, that's also
17 a document which has already been entered into
18 evidence, which is the South Carolina order for
19 transfer of jurisdiction of the trust. Do you
20 recognize that document?
21 A. Yes.
22 Q. And can you briefly again -- I believe
23 we talked about this on Tuesday, but explain the
24 circumstances of the transfer of the trust to
25 South Carolina, if you would, Mrs. Cohen.

1 A. We flew Abbie here to South Carolina,
2 and before we did this, I arranged --
3 THE WITNESS: Am I allowed to say
4 Robin Morris?
5 THE COURT: You can say her name.
6 THE WITNESS: Okay. I just arranged
7 for everything that would take place. Is that
8 okay? I arranged for everything to take place.
9 BY MR. BOYD:
10 Q. And just let me qualify that. By
11 everything that would take place, are you talking
12 about to transfer the jurisdiction of the trust to
13 South Carolina?
14 A. Yes, yes. I'm talking about those --
15 the matters relating to this trust. And we had to
16 start work on things before we came out. We
17 started working several months before. So when we
18 came back, of course, she knew that we were here,
19 and we started working on the matters, and then it
20 finally was brought to court, and we were given
21 written orders that we could pursue all of the
22 matters to completion.
23 MR. DAN SLOTCHIVER: Your Honor, I
24 object to the statement about written letters
25 allowing them to pursue. I don't know what she is

1 referring to.
2 THE WITNESS: This.
3 MR. BOYD: Well, I'm going to ask her
4 about the document, Your Honor.
5 THE COURT: He can clarify that.
6 MR. DAN SLOTCHIVER: If that can be
7 stricken until it's clarified, Your Honor, please.
8 THE COURT: Thank you. We'll strike
9 that until she clarifies that.
10 MR. BOYD: No objection, Your Honor.
11 THE COURT: Thank you.
12 BY MR. BOYD:
13 Q. Let's just look at this, Mrs. Cohen,
14 together. I'm on Page -- so again, to the
15 background of the transfer, I'm at the top of
16 Page 3. So you transferred the trust to South
17 Carolina for what reason?
18 A. Because we moved Abbie to South
19 Carolina, and we knew that we needed orders.
20 Q. So let's take a look at the top of
21 Page 3, Your Honor, Paragraph -- excuse me,
22 Mrs. Cohen, Paragraph 6. Could you just briefly
23 read Paragraph 6 for us if you would?
24 A. The co-conservators established
25 residency for Abbie Ilene Dorn, the ward, on or

1 about November 26th, 2007, in Horry County, at
2 1060 Waterway Lane, Myrtle Beach, South Carolina,
3 29572. Such residence is also the residence of
4 co-conservators, who are also the parents of Abbie
5 Ilene Dorn, the ward.
6 Q. Are those all correct statements?
7 A. They are.
8 Q. Do you disagree with any of that?
9 A. No, I do not.
10 Q. Let's look at the next paragraph,
11 Mrs. Cohen. Would you read Paragraph 7 for us?
12 A. By further order of the Superior Court
13 of California, County of Kern, Metropolitan
14 Division, co-conservators were authorized and
15 granted independent power to employ attorneys to
16 file an action of dissolution of the marriage
17 between the ward and her husband, Daniel Bernard
18 Dorn. On January 8th, 2008, the co-conservators
19 commenced an action for dissolution of the
20 marriage pursuant to the California court order.
21 Q. And Mrs. Cohen, is all of that true,
22 in your estimation? Do you agree with those
23 statements?
24 A. Yes, I do.
25 Q. The marital action was commenced? We

1 talked about that on Tuesday.
2 MR. DAN SLOTCHIVER: Objection, Your
3 Honor. There was a dissolution of marriage
4 action, I believe is the appropriate term.
5 THE COURT: I'm sorry. I didn't catch
6 the distinction.
7 MR. BOYD: I believe it was a divorce
8 proceeding, Your Honor. I can refer to it as the
9 dissolution action. I believe we've referred to
10 it in both ways throughout the --
11 MR. DAN SLOTCHIVER: I believe it
12 actually is a dissolution of marriage action, Your
13 Honor, and I think the term is significant in this
14 case, as it applies to both the orders and the
15 appointments and so forth that we've discussed.
16 THE COURT: Mr. Boyd?
17 MR. BOYD: Your Honor, I believe the
18 document does speak for itself. We have referred
19 to the case generally as a marital action or a
20 divorce proceeding at times in this courtroom, I
21 believe.
22 BY MR. BOYD:
23 Q. Let me just ask the question this way:
24 Mrs. Cohen, with respect to Paragraph 7, what was
25 your understanding of the authority that had been

1 granted you as -- in your capacities under
2 Paragraph 7?
3 A. To be able to hire attorneys and to
4 completely settle anything related to the divorce
5 for Abbie and Dan.
6 THE COURT: I'll certainly allow that.
7 MR. DAN SLOTCHIVER: Thank you, Your
8 Honor.
9 THE COURT: Thank you.
10 BY MR. BOYD:
11 Q. Let me ask you, if you would,
12 Mrs. Cohen, to look at Paragraph 16 on Page 5 of
13 the exhibit. Does that paragraph just
14 generally -- does that paragraph include specific
15 authorizations with respect to attorneys fees?
16 Who is the --
17 A. Yes. Did you want me to read this
18 line here?
19 Q. Actually, the first sentence of
20 Paragraph 16 refers to whom?
21 A. V. Lee Moore, Esquire, who is in the
22 room.
23 Q. Who is Ms. Moore, Mrs. Cohen?
24 A. She was the guardian ad litem for
25 Abbie.

1 Q. And does this paragraph approve
2 certain fees incurred by Ms. Moore in the matter?
3 A. Yes, it does.
4 Q. And Paragraph 17, following at the
5 bottom of the page, Paragraph 17 also references
6 certain attorneys fees. Is that correct?
7 A. That's correct.
8 Q. Do you recall whose fees those are a
9 reference to?
10 A. Those are in reference, I believe, to
11 Robin Morris.
12 Q. And what is the -- can you just read
13 the last sentence of Paragraph 17, Mrs. Cohen?
14 A. The aforementioned attorneys fees,
15 costs, and expenditures incurred and additional
16 fees, costs, and expenditures incurred to the
17 conclusion of services by petitioner are thereby
18 deemed fair and reasonable and shall be a proper
19 disbursement from the Abbie Dorn Special Needs
20 Trust.
21 Q. Is that ambiguous in your mind? Do
22 you understand that sentence? Do you understand
23 what the court was saying with that provision?
24 A. Yes. It was very, very clear that I
25 had the authority to disburse funds.

1 Q. Let's flip forward, Mrs. Cohen, to
2 Page 8 of the order, if you would, and let's look
3 at Paragraph 9 of the order. Go ahead and read
4 Paragraph 9 for us, if you would.
5 A. That the sums and amounts reflected to
6 hereinabove and previously paid and disbursed and
7 those to be paid at the conclusion of these
8 matters to the attorneys for Petitioners Cohen are
9 approved and constitute a proper disbursement from
10 the estate and funds of the Abbie Dorn Special
11 Needs Trust.
12 Q. And Mrs. Cohen, when you read Line 3
13 of that paragraph that says: Conclusion of these
14 matters, what was your understanding of that
15 reference, and what was the court referring to?
16 A. The court was --
17 MR. DAN SLOTCHIVER: Objection,
18 objection, Your Honor. I do not believe that
19 Mrs. Cohen can testify as to what the court was
20 referring to. She certainly can testify as to her
21 understanding.
22 THE COURT: Mr. Boyd, I agree.
23 MR. BOYD: I agree.
24 THE COURT: Thank you.
25 MR. BOYD: My apologies, Your Honor.

1 THE COURT: Thank you.
2 Your understanding, ma'am.
3 BY MR. BOYD:
4 Q. What was your understanding of that
5 provision, Mrs. Cohen?
6 A. My understanding of that provision and
7 of everything that's gone on is that we had
8 complete and full authority to disburse all fees
9 for everything for the entire conclusion of the
10 divorce.
11 Q. I'm going to ask you about one more
12 paragraph, Mrs. Cohen, if you'll bear with me.
13 I'd ask you to turn to the last paragraph of the
14 document, Mrs. Cohen. That's Page 9,
15 Paragraph 16. Why don't you just read that
16 paragraph for us, if you would.
17 A. This court's acceptance of
18 jurisdiction of the Abbie Dorn Special Needs Trust
19 shall not result in the continuing advisory
20 supervisory proceedings by this --
21 Q. Excuse me, Mrs. Cohen. I believe you
22 misread that. Would you try that again for me?
23 A. I'm sorry. This court's acceptance of
24 jurisdiction of the Abbie Dorn Special Needs Trust
25 shall not result in the continuing supervisory

1 proceedings by this court. The management and
2 distribution of the trust estate and other aspects
3 of the administration of the trust shall proceed
4 consistent with the terms of the Abbie Dorn
5 Special Needs Trust, free of judicial
6 intervention, but subject to the jurisdiction of
7 this court as invoked by interested persons or as
8 provided by law or by the terms of such trust.
9 Q. And Mrs. Cohen, again, I would ask you
10 what was your -- or is your understanding of that
11 paragraph?
12 A. My understanding is the court wanted
13 me to proceed on my own understanding, to go
14 forward with a full divorce without bringing other
15 matters to their attention.
16 Q. So, Mrs. Cohen, just to recap, reading
17 those documents together and understanding that
18 there was a lot of information that you were
19 processing at the time, did you have any
20 understanding other than that you were authorized
21 to pursue the divorce proceedings, the marital
22 dissolution action in California?
23 A. My understanding was that I had -- my
24 husband and I had every, every authority to pursue
25 the complete divorce to its completion.

1 Q. Thank you, Mrs. Cohen.
2 THE COURT: While Mr. Boyd gets his
3 next documents, do y'all want to take five
4 minutes?
5 MR. BOYD: Thank you.
6 (A recess transpired from 9:30 AM to
7 9:39 AM.)
8 BY MR. BOYD:
9 Q. Mrs. Cohen, we're back on the record.
10 Thank you.
11 So in a moment, Mrs. Cohen, we'll turn
12 to the divorce action, the marital dissolution
13 action in California, but I just want to make sure
14 I understand your position. We reviewed the
15 documents related to the trust, specifically the
16 trust document itself, the letters of
17 conservatorship from California, and the order of
18 transfer of jurisdiction which was issued by this
19 court, correct?
20 A. That's correct.
21 Q. And Mrs. Cohen, you indicated that you
22 had assistance moving the trust from South
23 Carolina -- excuse me, from California to South
24 Carolina?
25 A. That's correct.

1 Q. In the form of Robin Morris?
2 A. That's correct.
3 Q. You had other advisers in California
4 who were assisting you?
5 A. That's correct.
6 MR. DAN SLOTCHIVER: Your Honor, I'd
7 object to other advisers. I don't know -- other
8 than there was reference to the adviser that
9 drafted the trust, but I certainly want to have a
10 clear record. If she's talking about somebody
11 else, I don't know who that would be. I believe
12 the only discussion we've had so far was the
13 lawyer that drafted the trust and then Robin
14 Morris here and then Lee Moore here. Those are
15 the only names that I believe I've seen so far,
16 and I think the lawyer that drafted it was
17 Michelson.
18 MR. BOYD: The lawyer that drafted the
19 trust was John Payne, in California.
20 THE COURT: Louis Michelson.
21 MR. BOYD: Louis Michelson was the tax
22 attorney.
23 THE COURT: Who I think she's referred
24 to several times.
25 MR. BOYD: Yes.

1 THE WITNESS: That's right.
2 BY MR. BOYD:
3 Q. So you did, in fact, consult with
4 these counselors, correct?
5 A. That's correct.
6 Q. You didn't make these decisions on
7 your own?
8 MR. DAN SLOTCHIVER: Your Honor, I
9 object. He is trying to infer that she was given
10 an opinion from these counselors, and there's no
11 foundation to support the opinion, there's no
12 documents to support the opinion, and I would
13 object to him trying to make that inference
14 without some type of foundation, which I do not
15 believe to be proper based on the testimony given
16 thus far and based on the discovery exchanged, and
17 it would be violative of hearsay and violative of
18 the attorney-client privilege which has been
19 asserted in this case.
20 MR. BOYD: Your Honor, I'm not
21 offering any particular statement for the truth of
22 the matter asserted or evidenced in that
23 statement. I've simply asked her if she retained
24 counsel. That's all I've asked her.
25 MR. DAN SLOTCHIVER: Actually, he went

1 a little further than that -- the court reporter
2 can read it back -- but he was asking what did she
3 rely on.
4 MR. BOYD: Your Honor, the mere fact
5 that a witness relies on counsel is a fact. It's
6 not hearsay. I'm not offering any statement
7 rendered by counsel for purposes of the truth of
8 the matter asserted. I'm simply asking her did
9 she just up on a whim and decide to move the trust
10 to South Carolina and do that without assistance,
11 as a layman, pro se, or did she, in fact, retain a
12 series of advisers to assist her through the
13 process. It's a fact. It either happened one way
14 or it happened the other way. And she has
15 personal knowledge. She can testify to the manner
16 in which she undertook the move.
17 MR. DAN SLOTCHIVER: Well, your Honor,
18 the problem is that that's not the question that
19 he asked her. And we certainly don't dispute the
20 fact that she retained a counsel in association
21 with moving the matter to South Carolina. We
22 actually put the document into evidence that it
23 was moved to South Carolina.
24 We've heard substantial testimony
25 about the fact that Robin Morris was involved in

1 it. In fact, we've seen a copy of the court order
2 authorizing the payment of fees to Robin Morris in
3 association with it and the payment of fees to Lee
4 Moore in association with it, but what he's doing
5 now is he's attempting to elicit testimony from
6 her that she relied on a series of counselors in
7 making her decisions, and what's improper about
8 that, in our opinion, is that he is attempting to
9 allow her to testify of reliance on communications
10 with counsel, although previously, throughout the
11 discovery process, they have objected to us
12 receiving the records or knowledge about the
13 California counsel's communications because it was
14 privileged, and it would not be fair to do it both
15 ways.
16 And at this juncture, they've made
17 their decision on which way they wanted to go.
18 They've blocked us from getting it. We have
19 previously come to court, if you recall, and
20 asserted that since the California action was
21 concluded, we thought it would be appropriate for
22 us to be able to review everything in California
23 in order to know what took place, so we can
24 question her about that and about her
25 decision-making, but they objected and said they

1 thought it was privileged, or they asserted it was
2 privileged, and Your Honor ruled on it that it was
3 privileged.
4 Now we're in court, and in court on
5 the same matter, on the same action that they
6 previously claimed privilege for, they're now
7 attempting to allude to this attorney reliance
8 defense when they won't provide that information
9 to us historically, and I would object to it. I
10 don't believe it would be proper to come in.
11 Now, her reference that she hired an
12 attorney who filed the paperwork and assisted in
13 the South Carolina action, certainly, we don't
14 dispute that, because that's something that
15 everybody knows, and the record speaks for itself,
16 the document speaks for itself, but alluding to
17 her reliance on counsel and advising her as to
18 what to do, we certainly do object to it.
19 MR. BOYD: Your Honor, if I may, the
20 issue is one of degree, and again, the fact that
21 Mrs. Cohen retained counsel to assist her with the
22 process is clearly not hearsay. As Mr. Slotchiver
23 just said, the record speaks for itself. The
24 record is replete with references to counsel. The
25 mere fact that she relied on the advice of that

1 counsel is not hearsay. The record is
2 sufficiently established that she, in fact, did
3 rely on counsel.
4 The issue of attorney-client
5 privilege, Mr. Slotchiver would like to suggest
6 that we have attempted to shield all matters of
7 discovery in this case by way of the
8 attorney-client privilege, and that's simply not
9 the case, Your Honor.
10 Your Honor will recall with regard to
11 Robin Morris, what we objected to was a subpoena
12 issued by Mr. Slotchiver to Mrs. Morris for the
13 production of the entirety of her file. There's a
14 distinction, Your Honor, to be drawn between the
15 entirety of the file and the mere fact that
16 Mrs. Cohen relied on evidence -- excuse me, advice
17 of counsel from Robin Morris. Mrs. Cohen
18 testified to that fact in her deposition.
19 The fact that we did not agree with
20 Mr. Slotchiver's efforts to simply produce the
21 entirety of Ms. Morris's file, Your Honor, at that
22 time I'd never seen Ms. Morris's file. I had no
23 idea what was in there. I assumed, as anybody
24 would, that certainly the file would be replete
25 with information that was subject to the

1 attorney-client privilege on any number of
2 questions, any number of issues, many of which I
3 wouldn't even be aware of, and so, Your Honor, to
4 sit there and say, well, you can't --
5 And again, Your Honor, we objected to
6 the subpoena for the wholesale discovery of the
7 file, with no limitation, simply give me your file
8 with respect to the Cohens and Abbie Dorn and the
9 Abbie Dorn Special Needs Trust. We objected to
10 that, properly, and --
11 But again, as we discussed last week,
12 we contacted counsel and attempted to make
13 arrangements for limited discovery of Robin Morris
14 with respect to either written interrogatories or
15 a deposition of Robin Morris that would provide
16 for discovery into the manner in which Ms. Morris
17 advised the trustees and the manner in which they
18 relied on her counsel. The petitioner did not
19 follow through, once Your Honor agreed with us.
20 And the reason we objected to that
21 subpoena, Your Honor, is it would have just opened
22 up a fishing expedition. I have no idea what was
23 in the file. I still don't know what was in the
24 entirety of the file to this day, but I naturally
25 assumed that it was containing information that

1 was subject to the attorney-client privilege in
2 various degrees on various issues, and so just to
3 agree to give the entirety of the file was
4 something that Ms. Morris objected to, and it was
5 something that I objected to, but it doesn't mean
6 that we didn't attempt to accommodate their
7 reasonable discovery into the role that Ms. Morris
8 played, which we read into the record on Tuesday.
9 We certainly did.
10 MR. DAN SLOTCHIVER: Your Honor, if I
11 may?
12 THE COURT: Yes, sir.
13 MR. DAN SLOTCHIVER: Mr. Boyd states
14 now in court, on the record, that he was not aware
15 of what was inside the file at the time he
16 objected to it as being attorney-client privilege.
17 He came into court, as the record reflects -- you
18 recall I read from the transcript earlier last
19 week -- that he made an objection, that everything
20 with Robin Morris was privileged, that Robin
21 Morris came in and made the same objection, and
22 now I understand that he's come into court and
23 stating: I never even looked at it before I made
24 that objection, which I have a concern with,
25 number one. We've already been here, Your Honor,

1 twice and had sanctions given for discovery abuse.
2 We had another issue a
3 week-and-a-half -- last week with reference to
4 documents that they attempted to assert, which we
5 had not been given. Your Honor, based on their
6 representation that there was a privilege, which
7 is what Mr. Boyd argued and Ms. Morris argued,
8 both of them, in the transcript, in front of Your
9 Honor -- we read it into the record, I can get it
10 again if you would like -- we had an opportunity
11 to make a decision which way do we want to go, do
12 I want to proceed with the limited basis that he
13 afforded me, I'll let you do it only if you agree
14 to written depositions and so forth, or do I
15 decide you know what, she's not listed as a
16 witness, she's not listed as an expert, there's no
17 reason for me to do it, and I decided my strategy,
18 my decision as counsel, that I wasn't going to
19 pursue it at that point, based on their assertion
20 that it was attorney-client privilege. Now what
21 I'm hearing is we hadn't looked at it before we
22 decided it was attorney-client privilege, number
23 one.
24 Number two is that was limited. We
25 should be able to talk about it. Well, in the

1 discovery, it contemplates giving us the
2 information which is going to be used as a
3 defense, which they did not do. If they had an
4 opportunity after we had this conversation in the
5 court, this argument in court, they certainly had
6 the right to go back to the file to look at it,
7 since they hadn't done it beforehand, and to
8 provide us with information which was
9 appropriately discoverable. They have not done
10 that either.
11 So what is being attempted now is an
12 opportunity to create this reliance defense by
13 Mrs. Cohen, without ever having given us an
14 opportunity to know what that was all about, and
15 you can't have it both ways. You can't assert an
16 attorney-client privilege on the one hand, but on
17 the other hand, talk about those factors that
18 assist you. That was a strategic decision that
19 they made, and I'm asking that they be required to
20 follow the rules with reference to that decision.
21 And having made that, it would be improper to
22 elicit testimony from their witness, from the
23 party, as to information that we should have had
24 that we could have had an opportunity to review,
25 that we could have had an opportunity to do more

1 things with, assuming we thought it was necessary.
2 We certainly made an effort, Your Honor. We came
3 to court and filed a motion to get these
4 documents, they vehemently defended it, and now I
5 object to this line of testimony, based on what we
6 just discussed.
7 THE COURT: Mr. Boyd?
8 MR. BOYD: Your Honor, again -- and
9 let me just correct the statement that was just
10 made, and I will say this, Your Honor: I had not
11 looked at every particular document in
12 Ms. Morris's file because Ms. Morris didn't have
13 it at the time, I didn't have it at the time.
14 What documents were available -- I was
15 aware of certain documents in the file, I was
16 aware of certain documents in the file, obviously,
17 that I felt would be subject to the
18 attorney-client privilege. And again, we objected
19 to a subpoena that asked for the wholesale turning
20 over of the attorney's file to Mr. Slotchiver, and
21 there was clearly a good faith basis for doing
22 that, Your Honor, because clearly, just based on
23 the information that I did have -- no. Had I
24 reviewed every single document in the file at that
25 time, no, I had not, but clearly, based on what I

1 knew in the file, I had reason to know that there
2 were documents in there that were protected by the
3 attorney-client privilege, not all of which, by
4 the way, were related to the particular issue that
5 we're discussing, which is reliance --
6 Mrs. Cohen's reliance on Ms. Morris's advice with
7 respect to the particular issue we're talking
8 about.
9 I mean, the fact of the matter is,
10 again, Your Honor, we attempted to engage limited
11 discovery with respect to Ms. Morris, and
12 Mr. Slotchiver did not avail himself of any of
13 that. We received no further questioning with
14 respect to Ms. Morris.
15 The only thing I objected to was a
16 subpoena that said give me your entire file. I
17 had good faith reasons to object to that. It
18 would have been -- it would have been absolutely
19 imprudent of me to do otherwise.
20 THE COURT: Mr. Slotchiver?
21 MR. DAN SLOTCHIVER: Your Honor, the
22 discovery rules really trump the subpoena. At the
23 time that we sent the subpoena, we weren't aware
24 of the fact that these records were in the
25 possession of counsel for the Cohens, and so at

1 the time we sent the subpoena, we sent it because
2 we weren't aware of it. The testimony in court
3 was, among other things, that it was commingled,
4 and there's no way to determine what belonged to
5 her versus us. Now I'm hearing they could
6 determine it, and they had her separate file.
7 Once again, I'm raising these as
8 concerns to the court because this is not what we
9 were told before. I want to remind the court --
10 and this is -- I'm happy to submit a copy of this,
11 Your Honor, if you'd like a copy of the transcript
12 taken on July 25th, 2011, where particularly:
13 Dear Dan, the documents you requested, either in
14 the subpoena or in response, documents you are
15 requesting via subpoena are privileged, pursuant
16 to the attorney-client privilege.
17 And this is not a surprise. This was
18 addressed directly with counsel to get the
19 records. If they had them in their file, then
20 they should have -- and if they wanted to use them
21 and weren't going to assert the privilege, they
22 should have sent them to us.
23 We had no duty to send a subpoena. We
24 only sent the subpoena because we didn't know they
25 had them. We thought Robin Morris had them. Had

1 we not -- and we thought that because of the
2 testimony elicited regarding Robin Morris. Had we
3 thought they had them directly, we would have
4 assumed that they would have sent them to us in
5 response to discovery, unless they were asserting
6 the attorney-client privilege, which they have.
7 So once again, Your Honor, I'm happy
8 to submit this document to the court for your
9 review, if you'd like to take a moment to review
10 it, but clearly, this matter has been hashed out
11 in court, and based on the attorney-client defense
12 that they raised, Your Honor ruled they were
13 entitled to raise that defense. I had no duty to
14 do anything further from that point.
15 MR. BOYD: Your Honor, it is the
16 specific communications from Ms. Morris -- and I'm
17 just going to say hypothetically, if Ms. Morris
18 had said: Yes, Mrs. Cohen, you're empowered to
19 buy a minivan with the proceeds of the trust, but
20 it has to be four-wheel drive, or it has to be
21 orange, those specific communications -- and for
22 these reasons. The specific communications from
23 attorney to client, clearly subject to the
24 attorney-client privilege.
25 But set aside the privilege for the

1 moment, the mere fact that she had advisers and
2 that she relied on advisers throughout this
3 process, again, is not subject to the hearsay
4 exclusion, nor is it even subject to the
5 privilege. It's not a privileged piece of
6 information. It's a mere statement of fact that
7 throughout this process --
8 THE COURT: Mr. Boyd, I think if
9 you're going to claim the privilege of those
10 documents and claim that in not providing those to
11 Mr. Slotchiver, I think you're hard-pressed to now
12 come in and have your client rely on that advice
13 in getting this testimony in. I think if you felt
14 like that they were not subject to the privilege,
15 then I think you did have an obligation under the
16 discovery rules to provide that to Mr. Slotchiver.
17 I'm going to sustain his objection --
18 MR. DAN SLOTCHIVER: Thank you, Your
19 Honor.
20 THE COURT: -- with respect to this
21 testimony.
22 MR. BOYD: Thank you, Your Honor.
23 And Your Honor, I just want to clarify
24 for the record. She is able to testify that she
25 did retain counsel?

1 THE COURT: Yes. I'll certainly allow
2 that.
3 MR. DAN SLOTCHIVER: We don't dispute
4 that, Your Honor.
5 BY MR. BOYD:
6 Q. So again, Mrs. Cohen, we've referenced
7 several attorneys that were involved: Mr. Payne,
8 John Payne, Mr. Michelson, Robin Morris.
9 Throughout this process, you did retain counsel to
10 assist you, correct?
11 A. Yes.
12 Q. And I just -- I've asked you this
13 question, but I just want to ask you to recap and
14 clarify. Based on all that you knew, Mrs. Cohen,
15 what was your understanding of your authority as a
16 trustee, as a cotrustee with your husband, under
17 all of these documents that we've discussed?
18 MR. DAN SLOTCHIVER: This is asked and
19 answered, Your Honor. He asked the same question
20 about 15 minutes ago, and she recapped very
21 clearly that she understood she had the authority
22 to do it.
23 MR. BOYD: I'll move along, Your
24 Honor.
25 THE COURT: Thank you.

1 BY MR. BOYD:
2 Q. Mrs. Cohen, I'm going to share with
3 you a document which has not been entered into
4 evidence.
5 MR. BOYD: And Your Honor, I'm going
6 to skip around a little bit on the numbers, if I
7 may. I'd like this to be R-7, assuming there's no
8 objection to the introduction of this.
9 (RES. EXH. 7, Petition for Dissolution
10 of Marriage, was marked for identification.)
11 BY MR. BOYD:
12 Q. Mrs. Cohen, could you tell me --
13 THE COURT: Mr. Boyd, real quick, we
14 have documents through what, Respondent's 4
15 previously, and you wanted to --
16 MR. BOYD: I'm going to skip to -- I'm
17 going to go out of order, if I may, Your Honor, if
18 I can skip to -- because these were prenumbered,
19 so I'd like to go to R-7, if I may.
20 BY MR. BOYD:
21 Q. Mrs. Cohen, do you recognize that
22 document?
23 A. Yes, I do.
24 Q. Can you tell the court briefly what
25 that document is?

1 A. This is the petition filed by Marina
2 Korol regarding the marriage of Abbie and Dan.
3 Q. Is it the petition that she filed on
4 your -- is it a petition she filed in California?
5 A. Yes. It's a petition she filed.
6 MR. BOYD: Your Honor, if there's no
7 objection, I'd like to introduce that into
8 evidence.
9 MR. DAN SLOTCHIVER: No objection from
10 us, Your Honor.
11 THE COURT: Thank you. Court will
12 admit Respondent's No. 7 without objection.
13 (RES. EXH. 7 was admitted into
14 evidence.)
15 MR. BOYD: That would be
16 Respondent's 7, Your Honor.
17 THE COURT: Thank you.
18 BY MR. BOYD:
19 Q. And just for the record, Mrs. Cohen,
20 who was the attorney that prepared this document?
21 A. Marina Korol.
22 Q. And Mrs. Cohen, I'd just like you --
23 I'd like for you to turn, if you would -- turn to
24 Page 2 of that document. And do you see about
25 halfway down the page, there's a paragraph,

1 Paragraph No. 7?
2 A. Yes.
3 Q. Petitioner requests that the court --
4 could you read that line for us, please?
5 A. Petitioner requests that the court
6 grant the above relief and make adjunctive,
7 including restraining and other orders, as
8 follows.
9 Q. And then what's the first line under
10 Paragraph 7? It's labeled A.
11 A. Legal custody of children to, and
12 then --
13 Q. And which box is checked on this form?
14 A. Respondent.
15 Q. And who was the respondent in this
16 action?
17 A. Dan Dorn.
18 Q. And Line B is a -- could you read
19 Line B for us, please?
20 A. Physical custody of children to
21 respondent.
22 Q. And again, the respondent is?
23 A. Dan Dorn.
24 Q. And Line C, you've asked for?
25 A. Child visitation be granted to

1 petitioner. That's Abbie Dorn.
2 Q. Mrs. Cohen, do you recall the
3 deposition of Dan Dorn in this matter?
4 A. Yes.
5 Q. Do you recall if Mr. Dorn testified
6 during his deposition that you tried to take his
7 children away from him?
8 A. Yes, he did testify.
9 Q. Did you ever attempt to take the
10 children away from Dan Dorn?
11 A. Never.
12 Q. Has anyone in your family ever
13 attempted to take the children away from Dan Dorn?
14 A. Never.
15 Q. Do you want or would you ever have
16 wanted custody of the grandchildren, Mrs. Cohen?
17 A. No. I don't have the time.
18 Q. Is your time fully consumed by caring
19 for Abbie?
20 A. My time is fully consumed.
21 Q. And there's no one else in your family
22 who wants custody of those children?
23 A. No one in my family. Good forbid if
24 it was needed, we would find a way, but nobody has
25 wanted it.

1 Q. I'll take that, Mrs. Cohen.
2 (RES. EXH. 8, Response to Petition,
3 was marked for identification.)
4 BY MR. BOYD:
5 Q. Mrs. Cohen, next I'm going to show you
6 a document which is Respondent's 8. And could you
7 explain to the court what that document is, if you
8 recognize it?
9 MR. DAN SLOTCHIVER: Your Honor?
10 THE COURT: Yes, sir.
11 MR. DAN SLOTCHIVER: I don't believe
12 I've been provided this document before. I'm not
13 opposing to its introduction into evidence, but I
14 don't want to waive the right to oppose other
15 documents being introduced into evidence by
16 allowing this one to be, under that limited basis,
17 if that's okay with Your Honor.
18 THE COURT: So noted. Thank you.
19 THE WITNESS: This is the original
20 document from Dan Dorn's first attorney.
21 BY MR. BOYD:
22 Q. That's his response to the petition we
23 just reviewed?
24 A. I'm sorry. Are you asking me, or are
25 you telling me?

1 Q. I'm asking you.
2 A. Oh, yes.
3 THE COURT: I believe, Mr. Slotchiver,
4 you indicated no objection to that particular
5 document?
6 MR. DAN SLOTCHIVER: If I could have
7 one moment, Your Honor, to review one more thing.
8 THE COURT: Oh, sure.
9 MR. BOYD: Your Honor, if I may just
10 briefly comment. This document has been filed
11 with the court in this matter, so I think the
12 court could take notice of it, but my
13 understanding is this document was in a series of
14 documents that were produced to Mr. Slotchiver at
15 the court in December of 2010, the day after they
16 were filed in this action.
17 THE COURT: Thank you.
18 MR. DAN SLOTCHIVER: With the limited
19 caveat, Your Honor, I don't object to it.
20 THE COURT: Thank you. So No. 8
21 without objection.
22 (RES. EXH. 8 was admitted into
23 evidence.)
24 MR. BOYD: Thank you, Your Honor.
25 THE COURT: Respondent's No. 8.

1 (RES. EXH. 9, Notice of Motion to
2 Bifurcate and Conduct Trial, was marked for
3 identification.)
4 BY MR. BOYD:
5 Q. Mrs. Cohen, next I'm going to show you
6 a document which has been labeled Respondent's 9.
7 Mrs. Cohen, do you recognize this document?
8 A. Yes. This was filed by Vicki Greene.
9 Q. And if you have an understanding of
10 the document --
11 MR. DAN SLOTCHIVER: Your Honor, if I
12 may?
13 THE COURT: Yes, sir.
14 MR. DAN SLOTCHIVER: I'd like to place
15 an objection.
16 THE COURT: Yes, sir.
17 MR. DAN SLOTCHIVER: The document
18 being presented now deals with the bifurcation
19 paperwork in California. I object to the
20 relevancy of it.
21 The matter before the court is
22 predicated on did the trustees have authority,
23 were their actions reasonable, and now what we're
24 doing is we're putting in all the documentations
25 from the divorce proceeding in California, none of

1 which, to my knowledge, have any bearing or place
2 any authority on Susan Cohen.
3 If she relied on these for authority
4 to do something, that's a different matter, but if
5 all we're doing is putting in documents to show
6 what transpired in California, I will object to
7 the relevancy of it.
8 MR. BOYD: Your Honor, one of the key
9 claims that's being leveled against the trustees
10 in this action, and you heard it many times, was
11 that their actions were not reasonable. All we're
12 doing with these documents is putting the actions
13 of the trustees in the context of what was
14 happening.
15 These are historical documents. They
16 were documents that were transpiring in California
17 that provide the context of the setting in which
18 the trustees made these decisions. How can you
19 attack the reasonableness of the trustees' actions
20 and then exclude all evidence of what they were
21 responding to?
22 THE COURT: I will allow the document
23 if the only objection is based on relevance.
24 MR. DAN SLOTCHIVER: Well, Your Honor,
25 this also was not submitted to us as a document

1 they were going to rely on in the defense of their
2 case through discovery.
3 MR. BOYD: Your Honor, there were many
4 documents that had been provided to Mr. Slotchiver
5 from the outset in this matter. I'm not sure that
6 there's any specific document request that
7 specifies exactly what I'm going to rely upon. If
8 we've provided the documents to counsel, we've
9 provided the documents to counsel. That's the
10 purpose of discovery.
11 MR. DAN SLOTCHIVER: If the request,
12 Your Honor, were to provide documents that support
13 the defense, if it doesn't support the defense, I
14 don't know why it would be brought into this case.
15 I've heard repeatedly through this
16 proceeding, since we started it last Monday, that:
17 I've given a lot of documents to counsel, there
18 really are a lot of documents, Your Honor, as if
19 that is a justification as to why having not given
20 a document would be defendable. I believe that
21 the discovery rules require that if you're going
22 to rely on a document, if you're going to rely on
23 evidence to support your case, I've asked for it,
24 give it to me.
25 THE COURT: And are you saying you did

1 not receive that document, Mr. Slotchiver?
2 MR. DAN SLOTCHIVER: No, I did not.
3 MR. BOYD: Your Honor, all these
4 documents --
5 MR. DAN SLOTCHIVER: Every document
6 I've received, Your Honor, from Mr. Boyd has been
7 Bates labeled.
8 MR. BOYD: That's not correct, Your
9 Honor.
10 THE COURT: Ms. Hedgepath, were you
11 going to say something?
12 MS. HEDGEPATH: I have seen all of
13 these documents, and I believe they were all
14 possibly attached to the declaration of Lisa Meyer
15 that was filed with the record, which all counsel
16 should have gotten a copy of.
17 MR. BOYD: Your Honor, if I may, let
18 me just briefly --
19 THE COURT: Thank you, Ms. Hedgepath.
20 MR. BOYD: I want to briefly turn to
21 Exhibit 3, which was previously admitted into
22 evidence by Mr. Slotchiver.
23 THE COURT: And what was Exhibit 3,
24 Mr. Boyd?
25 MR. BOYD: Your Honor, Exhibit 3 is a

1 transcript of the hearing taken before Your Honor
2 on December 15, 2010, Your Honor. And I just want
3 to point out the hearing December 15, 2010, all of
4 these documents which Mr. Slotchiver is now
5 objecting to bear the seal -- excuse me, bear the
6 stamp of this court December 14, 2010.
7 In the proceeding on the 15th of
8 December 2010, this is Mr. Slotchiver speaking: I
9 have had the opportunity -- this is Line 18 on
10 Page 14, Your Honor, which I'll be glad to pass it
11 up in just a second. I have had the opportunity,
12 Your Honor, this morning -- Mr. Davis has handed
13 me a copy of filings that he made in the court
14 yesterday, primarily a declaration from Lisa
15 Helfend Meyer, who is an attorney of Meyer, Olson,
16 Lowy & Myers in California who represents the
17 Cohens or, you know, as trustees for their
18 daughter. It's the same firm referenced in his
19 package that he submitted to the court in his
20 pleadings, which showed yadda-yadda-yadda.
21 So Your Honor, not only did we hand
22 the documents to counsel in court, if there's a
23 requirement in the rules, we Bates number. We
24 Bates number as a matter of convenience and to
25 avoid confusion. There is no requirement in the

1 rules that documents be Bates numbered.
2 In fact, some of the documents that
3 I've given to Mr. Slotchiver were not Bates
4 numbered because at certain times, the software
5 that we use to Bates number was out of service,
6 and we produced a couple of packets of documents
7 to counsel that, in fact, were not Bates numbered.
8 We Bates number simply as a matter of convenience.
9 There's no requirement in the rules that documents
10 be Bates numbered.
11 THE COURT: Mr. Slotchiver?
12 MR. DAN SLOTCHIVER: Your Honor, I
13 think there's a distinction between filing
14 paperwork with the court and providing responses
15 to discovery. And the only documents that I
16 recall offhand that weren't Bates numbered were
17 most recently the dump truck of documents that
18 arrived at my office a week ago Friday that we've
19 already discussed.
20 THE COURT: That I have not yet ruled
21 on.
22 MR. DAN SLOTCHIVER: Well, you ruled
23 temporarily that it was not admissible. You have
24 not yet ruled with finality as to whether or not
25 it would or would not be. We'll be happy to argue

1 that whenever you're so inclined.
2 THE COURT: Thank you.
3 MR. DAN SLOTCHIVER: But with
4 reference to discovery, they're now putting in
5 documents that were not delivered to us, to my
6 knowledge. The fact that someone filed a document
7 in the court, I don't believe that that
8 circumvents the discovery rule, and I would object
9 to it. I don't believe it's relevant. I don't
10 believe that she relied on it, that I think they
11 have an opportunity to show is this a part of
12 their defense, and it's specifically stated.
13 MR. BOYD: Your Honor?
14 THE COURT: Yes, sir.
15 MR. BOYD: The rules of discovery do
16 not require that a document be Bates numbered.
17 The rules of discovery specifically provide that
18 hand-delivery is an acceptable means of service
19 under the rules.
20 MR. DAN SLOTCHIVER: I'm not arguing
21 Bates number.
22 MR. BOYD: The documents were
23 specifically hand-delivered to counsel in this
24 courtroom. As Your Honor will recall, we stood
25 right at that table and redacted a significant

1 portion of the affidavit of Lisa Meyer, simply
2 because there was a protective order in California
3 which required confidentiality with respect to the
4 minor children. We redacted that. Every counsel
5 involved received copies, along with the
6 attachments.
7 THE COURT: I'm going to allow it.
8 Thank you.
9 MR. BOYD: Would Your Honor like to
10 see the transcript?
11 THE COURT: No, sir. I'm fine. Thank
12 you.
13 MR. BOYD: Thank you, Your Honor.
14 THE COURT: Could you identify what
15 the document, No. 9, is?
16 MR. BOYD: Yes, Your Honor. Bear with
17 me one second.
18 Your Honor, this is a response -- this
19 is a pleading -- if you want my characterization
20 of the document, Your Honor, this is a document
21 filed by Mr. Dorn's counsel in California
22 bifurcating the divorce proceeding.
23 THE COURT: Thank you.
24 BY MR. BOYD:
25 Q. Mrs. Cohen, did you have any -- are

1 you familiar with what's been marked as R-9 as an
2 exhibit?
3 A. Yes.
4 Q. And what was your understanding of the
5 bifurcation motion in California, Mrs. Cohen?
6 A. My understanding was that Dan just
7 wanted to be able to move on as quickly as
8 possible, and he wanted to settle it by having a
9 legal -- I don't know what you call it, a
10 dissolution quickly, but that it would -- he
11 didn't want to discuss any of the important
12 issues, and I objected to it.
13 Q. And what, in your opinion, were the
14 important issues that were being avoided,
15 Mrs. Cohen?
16 A. Well, the most important issue was his
17 demand for child support and also visitation.
18 Q. Thank you, Mrs. Cohen.
19 (RES. EXH. 10, Order to Show Cause for
20 Child Support, was marked for identification.)
21 BY MR. BOYD:
22 Q. Mrs. Cohen, I'm now going to show you
23 a document which we've marked as Respondent's 10.
24 Same question.
25 MR. DAN SLOTCHIVER: I'd like to place

1 the same objection on the record with regard to
2 this document, Your Honor, the same as the last
3 one.
4 THE COURT: Thank you.
5 MR. DAN SLOTCHIVER: Based on
6 relevancy and prior disclosure.
7 THE COURT: Mr. Boyd?
8 MR. BOYD: Your Honor, if I can just
9 incorporate my previous argument for the same
10 reason, we think it's relevant, it places the
11 actions of the trustees in their historical
12 context in the California proceeding.
13 THE COURT: And was this a document
14 that was previously --
15 MR. BOYD: It's also Bates stamped --
16 excuse me, Your Honor. It's also clock stamped by
17 the probate court on 14 December 2010 and also a
18 part of the document package.
19 THE COURT: And it was provided to
20 Mr. Slotchiver at the hearing in the probate
21 court?
22 MR. BOYD: Yes, Your Honor.
23 THE COURT: Thank you. The court will
24 overrule the objection, but note the objection on
25 the record.

1 BY MR. BOYD:
2 Q. Mrs. Cohen, do you understand what
3 this document is? Can you explain that to the
4 court?
5 A. Yes. This is also from Vicki Greene,
6 and he was again not only asking for child
7 support, but also additional needs, including the
8 education of the children.
9 Do you want me to read nine?
10 Q. Go ahead.
11 A. Respondent asks the court to order the
12 following: As additional child support, costs
13 related to educational and other special needs of
14 the children and contributions toward uninsured
15 medical expenses of the children.
16 Q. And again, we've talked about it at
17 length, Mrs. Cohen. I'm not going to go back
18 through it, but what were the source of funds --
19 if there had been an order of child support, what
20 were the sources of funds available to Abbie to
21 pay such an order?
22 A. Abbie had no money except the Abbie
23 Dorn Special Needs Trust, which would have been
24 violated.
25 THE COURT: And I'm sorry. Mr. Boyd,

1 exactly what was that document, No. 10?
2 MR. BOYD: Your Honor, this was an
3 order to show cause filed by Vicki Greene in
4 California in support of the claim of child
5 support in the California proceeding.
6 THE COURT: Thank you.
7 BY MR. BOYD:
8 Q. And again, Mrs. Cohen, if the court
9 had awarded child support from the trust, in your
10 understanding, based on your knowledge, that would
11 have been a problem?
12 MR. DAN SLOTCHIVER: Asked and
13 answered, Your Honor.
14 THE WITNESS: Yes.
15 THE COURT: Thank you.
16 (RES. EXH. 11, Notice of Motion for
17 Attorneys Fees, was marked for identification.)
18 BY MR. BOYD:
19 Q. Mrs. Cohen, I'm going to show you
20 another document from the California proceeding.
21 MR. DAN SLOTCHIVER: Same objection on
22 this document, Your Honor. It's the same
23 situation as the last two.
24 THE COURT: Thank you.
25 MR. BOYD: And same response, Your

1 Honor, previously filed in the record in the
2 matter and provided to counsel at the hearing on
3 December 15.
4 THE COURT: Court overrules the
5 objection.
6 Is this No. 11?
7 MR. BOYD: This is Respondent's 11,
8 Your Honor.
9 THE COURT: Thank you.
10 MR. BOYD: And Your Honor, just for
11 the record, this also is a document filed by
12 Mr. Dorn's counsel in California, Ms. Greene,
13 related to the issue of -- it's a motion to stay.
14 I'm just going to read the caption, Your Honor, so
15 that I'm not accused of anything. It's
16 Respondent's Motion to Stay Any Judicial
17 Determination of Visitation Rights. And the
18 caption, Your Honor, is on Page 4.
19 It is respondent's motion, that being
20 Mr. Dorn, motion to stay any judicial
21 determination of visitation rights asserted by the
22 conservators until petitioner is adjudged
23 competent to assert her own wishes and desires, as
24 the conservators lack standing to assert such
25 personal rights on behalf of the incompetent

1 conservatee.
2 BY MR. BOYD:
3 Q. Mrs. Cohen, do you recognize that
4 document?
5 A. Yes, I do.
6 Q. And what was your understanding of
7 what Mr. Dorn's counsel was attempting to
8 accomplish with that?
9 MR. DAN SLOTCHIVER: Your Honor, I
10 would object to her testifying as to her
11 understanding of what Dan Dorn's counsel was
12 trying to accomplish. I don't believe there's any
13 foundation as to how she could opine as to what
14 Ms. Greene was thinking in her head at the time
15 she filed this motion.
16 MR. BOYD: I'll restate the question,
17 Your Honor.
18 THE COURT: Thank you.
19 BY MR. BOYD:
20 Q. What was your understanding of the
21 purpose of this document, Mrs. Cohen?
22 A. My understanding of the purpose of
23 this document was to keep the court from granting
24 any visitation to Abbie at the time.
25 Q. Did you understand the issue of

1 standing as it was being raised?
2 A. It was a difficult issue, but as you
3 know, it was -- a great deal of money was spent on
4 it. It was brought up twice, and it was asserted
5 that we did not have standing, and, of course, we
6 won both times.
7 Q. And based on your knowledge of the
8 billings you received, which you've reviewed at
9 length on the record, is it your understanding
10 that this increased the fees associated with the
11 marital action in California?
12 A. That was the majority of it was on
13 standing. That was probably 80 percent of it.
14 Q. Thank you, Mrs. Cohen.
15 And I just want to clarify,
16 Mrs. Cohen. Did you say -- what did you say the
17 court ultimately ruled on that question?
18 A. Both times they ruled that we did have
19 standing.
20 MR. DAN SLOTCHIVER: Your Honor, on
21 this next exhibit, same objections, understanding
22 your ruling. I just want to preserve the record.
23 THE COURT: Thank you. Certainly.
24 BY MR. BOYD:
25 Q. Bear with me Mrs. Cohen. I'm getting

1 close to the bottom of my stack.
2 (RES. EXH. 12, Respondent's Motion for
3 Bifurcation be Transferred or Dismissed, was
4 marked for identification.)
5 BY MR. BOYD:
6 Q. I'm now showing you what's been marked
7 as Respondent's Exhibit 12, and let me ask you if
8 you -- take a moment to review that if you need
9 to, Mrs. Cohen.
10 A. Okay.
11 Q. Can I ask you a few questions,
12 Mrs. Cohen?
13 A. Yes.
14 Q. Mrs. Cohen, you mentioned just now
15 that Mr. Dorn's counsel or Mr. Dorn in California
16 raised the issue of standing?
17 A. Yes.
18 Q. On more than one occasion?
19 A. Twice we went for two very, very
20 costly hearings because she claimed we didn't have
21 standing to even object to paying child support or
22 to ask for visitation.
23 Q. And do you recognize -- this is a
24 document filed by your counsel, correct?
25 A. Yes.

1 Q. Is it a responsive -- is it a
2 responsive filing on the standing issue?
3 A. Yes.
4 Q. And I believe, Mrs. Cohen -- is it a
5 response to the second attempt to raise the
6 standing issue? Is that correct?
7 A. Well, it says on here on Page 1 that
8 Dan lost on this issue on April 20th, 2010. This
9 is Page 1.
10 Q. I'm sorry. What page are you on?
11 A. Line 9.
12 Q. Why don't you read that sentence,
13 Mrs. Cohen.
14 A. Dan lost on this issue on April 20th,
15 2010. On that date -- should I go on?
16 Q. Sure.
17 MR. DAN SLOTCHIVER: Your Honor, if I
18 may?
19 THE COURT: Yes, sir.
20 MR. DAN SLOTCHIVER: This is a
21 memorandum submitted by Mrs. Cohen's counsel.
22 This is not a court order. And now he's having
23 her -- and I certainly understand your ruling, and
24 she can testify to it as a basis as to why she
25 continued litigation, but to read into the record

1 part of a transcript as if it was the law I
2 believe would be inappropriate. It's not a
3 finding of fact by anybody. It's just that she
4 hired an attorney, and the attorney obviously made
5 the assertion, but I don't believe it's proper to
6 have her read it in as if it is the law of the
7 land.
8 MR. BOYD: Your Honor, I'm not having
9 her read that sentence for the truth of the
10 statement. I'm asking her simply if she
11 recognized the document, and that sentence helped
12 her identify parts of the document.
13 MR. DAN SLOTCHIVER: Your Honor, if I
14 may approach the bench also at this point?
15 THE COURT: Yes, sir.
16 MR. DAN SLOTCHIVER: On a separate
17 matter.
18 THE COURT: Do we need to step
19 outside?
20 MR. DAN SLOTCHIVER: I would like to,
21 yes.
22 THE COURT: Yes. Let's go off the
23 record for a second, and we'll step out in the
24 back hallway, and then I'll rule on that
25 objection.

1 MR. DAN SLOTCHIVER: Thank you, Judge.
2 THE COURT: Thank you.
3 (A bench conference was held outside
4 the hearing of the court reporter.)
5 THE COURT: We're going to go back on
6 the record. And I believe we were discussing an
7 objection to Respondent's No. 12.
8 MR. DAN SLOTCHIVER: Your Honor, if we
9 could just place on the record that we made a
10 motion in chambers for the sequestration of Lisa
11 Meyer, who was here who walked into the
12 courtroom --
13 THE COURT: Yes, sir.
14 MR. DAN SLOTCHIVER: -- as she's not
15 an expert, and we don't know what her testimony is
16 going to be, and it was consented to.
17 THE COURT: Without objection.
18 MR. BOYD: We had no objection.
19 MR. DAN SLOTCHIVER: And my objection
20 to No. 12, Your Honor, is the same as the others.
21 THE COURT: And No. 12, if you could
22 identify it.
23 MR. BOYD: Your Honor, the
24 sequestration issue has raised an issue. If I can
25 just ask counsel to identify who's in the

1 courtroom behind us.
2 MR. DAN SLOTCHIVER: Absolutely. IT
3 for us in a few minutes, because the other one
4 couldn't be here today, and then it's one of your
5 employees.
6 MR. KACHMARSKY: Cody Decker. He's an
7 employee of mine.
8 THE COURT: Thank you.
9 MR. BOYD: Thank you, Judge.
10 THE COURT: So No. 12, objection noted
11 on the record.
12 MR. DAN SLOTCHIVER: Thank you.
13 THE COURT: Overruled.
14 MR. BOYD: Your Honor, and our
15 response would be the same, just for the record,
16 that these were records previously filed with the
17 court and transferred via hand-to-hand delivery at
18 the court on December 15, 2010, Your Honor.
19 And this is, Your Honor, just for the
20 record, a responsive pleading filed by Lisa Meyer
21 in California on the issues of bifurcation and
22 standing.
23 MR. DAN SLOTCHIVER: And I believe the
24 objection we were raising, Your Honor, dealt with
25 the issue of her reading into the record the

1 transcript in here, as opposed to letting it in as
2 part of the process that had been filed with the
3 court. We're not opposed to it coming into the
4 record, limited to that objection we made earlier,
5 but for this new objection, we're not opposed to
6 it coming in the record based on the fact that it
7 is a pleading that was filed with the court in
8 California and was submitted to this court. We're
9 opposed to it coming into the record at this
10 juncture as if it were -- because it's not a
11 decision.
12 And she can testify as to what she did
13 or why she did, I believe, but she can't testify
14 as to this or read from it as if it's the record
15 of the case, and I wanted to be clear with
16 reference to the court. As Your Honor was taking
17 notes, I wanted to make sure that there was no
18 confusion as to what was a court order versus what
19 was a memorandum submitted by her counsel.
20 MR. BOYD: As I'm sure Your Honor
21 knows, the court understands that the California
22 proceedings involved lots of documents going back
23 and forth, Your Honor. I was trying to elicit
24 testimony from the witness that she understood the
25 nature of the document and the purpose of the

1 document, the context in which the document was
2 filed.
3 The witness identified a sentence
4 which helped her place the document in context. I
5 simply asked her to read that sentence. I'm not
6 asserting any argument, per se, just that she was
7 able to identify the document and the purpose of
8 the filing.
9 THE COURT: I'll allow the testimony
10 to that extent.
11 MR. DAN SLOTCHIVER: Thank you, Your
12 Honor.
13 MR. BOYD: Thank you, Your Honor.
14 BY MR. BOYD:
15 Q. Mrs. Cohen, I believe you had
16 indicated there was a sentence that helped you
17 understand what the purpose of this document was
18 for?
19 A. Yes. This was related to standing,
20 and as I said when I read the sentence, that Dan
21 lost on this issue April 10th, or whatever,
22 April 20th, 2010, that this was the second time
23 that Vicki Greene had challenged standing, and it
24 was my understanding that it was as if -- as if
25 we'd been invaded by an army, and we had to defend

1 ourselves. That was -- we had to defend. It was
2 defensive.
3 Q. So Mrs. Cohen, we reviewed a few of
4 the pleadings that were filed, a few of the
5 documents that were filed in California, and you
6 previously reviewed the bills that were submitted
7 into evidence in this matter with Mr. Slotchiver?
8 A. Yes.
9 Q. There is no doubt that the California
10 proceedings were expensive. Is that correct?
11 A. Yes.
12 Q. I believe you have previously
13 testified, Mrs. Cohen, that your understanding was
14 that the bills for both sides were approximately
15 equivalent?
16 A. That's correct.
17 MR. DAN SLOTCHIVER: Objection, Your
18 Honor. I don't believe it's relevant if they were
19 equivalent or not. And the basis for this, Your
20 Honor, is that whatever decisions the trustees
21 made on behalf of the ward cannot fairly be
22 balanced equally with any decisions that a private
23 person makes. Whatever decision Dan Dorn made to
24 spend money or not spend money, however much it
25 was, it was his decision to spend his money.

1 As testified to in direct examination
2 of Mrs. Cohen, she had a different duty. She was
3 a fiduciary, and the fact that they were or were
4 not similar, the amounts, it has no basis at all.
5 Her decision to spend the money has got to be done
6 with prudence, as I understand it, and it's got to
7 be reasonable, and it has to be authorized, and
8 any attempt to show that the amounts of monies
9 expended were similar in nature I don't believe
10 would have any relevance at all in this hearing.
11 THE COURT: Mr. Boyd?
12 MR. BOYD: Your Honor, not true.
13 Mr. Wingate, our expert, testified at deposition,
14 and his opinion remains, that one of the
15 factors -- and again, Your Honor, we're trying to
16 contain where we go.
17 MR. DAN SLOTCHIVER: And I would
18 object to any reference to Mr. Wingate at this
19 point, Your Honor, until he comes to testify.
20 MR. BOYD: One of the factors, Your
21 Honor, in evaluating reasonableness, and again,
22 this case comes down to, at the end of the day,
23 were the actions of Dr. and Mrs. Cohen reasonable
24 as trustees of the trust. Many, many factors, as
25 the court is well aware, go into the determination

1 of whether the actions were or were not
2 reasonable.
3 One of the factors that helps the
4 court, any finder of fact, to assess the
5 reasonableness of the actions in this regard, and
6 particularly as it relates to the retention of
7 counsel, is was there effectively parity between
8 one side of the litigation and the other.
9 If one side is pro se and spends
10 $1,000, $500, $200, legalzoom.com, and the other
11 side spends $1 million with a top-flight law firm
12 in California, then obviously, that has relevance
13 and bearing on the reasonableness of the trustees'
14 actions under the circumstances.
15 Conversely, if the fees are
16 effectively in parity, Your Honor, then that, too,
17 has bearing on the reasonableness of the trustees'
18 actions, and the court's entitled to consider
19 that.
20 MR. DAN SLOTCHIVER: I would agree
21 with this, Your Honor, were it a simple divorce
22 case, but the distinction here is that we've
23 already got a court ruling stating that there was
24 no benefit at all to Abbie, so the reasonableness
25 of the amount of money spent by my client should

1 not be a factor.
2 This is -- we're not comparing apples
3 to apples. These are very different entities.
4 The question here is whether or not the
5 reasonableness of spending money was appropriate,
6 the reasonableness of spending this much money,
7 for example, on the issue of visitation was
8 appropriate, was it authorized, was it reasonable.
9 Those are the issues for the court. What's not
10 before the court -- and I believe this is the red
11 herring that we're considerably -- constantly
12 being dragged into is comparing the two fees.
13 That's not what's before the court.
14 THE COURT: Let me hear from
15 Ms. Hedgepath, please.
16 MS. HEDGEPATH: Your Honor, the
17 petitioner's expert, John Freeman, in his
18 deposition, submitted an exhibit, Exhibit 17, and
19 I think he also discussed one of the factors in
20 determining what is reasonable, and he did not
21 distinguish between whether it's reasonable for a
22 trustee or reasonable otherwise. What is a
23 reasonable fee to be incurred in the litigation is
24 what each side incurred. That is set forth in his
25 Exhibit 17. So the petitioners have relied on

1 their expert for that opinion, and it now seems
2 odd that they would come in and take an opposite
3 position.
4 THE COURT: I'm going to allow it in,
5 and I'm going to give it whatever weight I deem
6 appropriate.
7 MR. BOYD: Thank you, Your Honor.
8 THE COURT: Thank you.
9 (RES. EXH. 13, Documents for 2/11/13
10 Deposition of Dan Dorn, Part 2 (Document F) were
11 marked for identification.)
12 MR. BOYD: Your Honor, in anticipating
13 another objection, quite frankly, what I'd like to
14 do is lay a little foundation for this document.
15 This is another document that does not have a
16 Bates number. It is a document -- and we've
17 marked it as R-13. It is a document that we
18 produced, Your Honor, to all parties to the
19 action, all counsel, and the reason I can --
20 MR. DAN SLOTCHIVER: When was this one
21 produced, please?
22 MR. BOYD: This was produced
23 February 11th, 2013. These were part of the
24 documents that were produced, Your Honor, in
25 preparation for the deposition of Dan Dorn, and

1 these documents were produced to counsel in hard
2 copy at the deposition. They were also emailed to
3 all counsel prior to the deposition, Your Honor.
4 Without objection, I'd like to admit
5 that into evidence, Your Honor.
6 MR. DAN SLOTCHIVER: We would object
7 to the relevancy of this document, Your Honor.
8 Once again, this is a document submitted from
9 California, and we don't believe they're relevant
10 in this particular case. If he can show a
11 foundation as to why it would be relevant, we
12 certainly would be willing to withdraw it, but
13 we're not sure as to the relevancy of these
14 documents, other than putting in more documents
15 from the California litigation that we don't
16 believe substantiate the defenses in this case.
17 MR. BOYD: Again, Your Honor, we just
18 discussed -- we just discussed the relevance of --
19 THE COURT: I'm sorry. What is the
20 document?
21 MR. BOYD: Your Honor, this is a
22 document filed in the California action by Vicki
23 Greene, counsel for Dan Dorn. It is captioned:
24 Income and Expense Declaration, Your Honor, and it
25 contains information, but significantly, it

1 contains -- approximately five pages from the end,
2 Your Honor -- excuse me, six pages from the end,
3 Your Honor, it simply contains a recap prepared by
4 Ms. Greene concerning the fees that were incurred
5 or owed, paid and/or owed by Mr. Dorn in the
6 California proceeding.
7 And again, Your Honor, this goes to
8 the relevant issue of parity of fees between the
9 parties, which, as we've just discussed, the court
10 can consider it in the weight that it deems
11 appropriate, but does go to the reasonableness of
12 the trustees' actions.
13 MR. DAN SLOTCHIVER: And Your Honor,
14 understanding your ruling earlier, if you're
15 inclined to allow it in, I would ask that the
16 particular portion of it that addresses that issue
17 be allowed, but the other portions of this
18 document not be allowed, because this is about a
19 15-page document, and what's happening is we're
20 referencing this page as relevant, is the
21 argument, but the rest of it, we'll just put it
22 all into the record.
23 THE COURT: What is the rest of it?
24 MR. BOYD: It's an income and expense
25 declaration, Your Honor, which, again, was filed

1 by Mr. Dorn's counsel. And Your Honor, I believe
2 that the document --
3 MR. DAN SLOTCHIVER: The amount of
4 income that my client makes, I don't understand
5 how that would be relevant to this particular
6 issue, Your Honor.
7 MR. BOYD: Your Honor, I think that
8 the entirety of the document is relevant, and the
9 document stands. It speaks for itself. It is a
10 document that Ms. Greene prepared on Mr. Dorn's
11 behalf. It was filed in the record in California.
12 And I did not edit the document; I simply
13 presented the document as it was presented to us.
14 It's a matter, again, of record in California, and
15 if Mr. Dorn -- excuse me, Mr. Slotchiver wants to
16 question anybody on the other portions of the
17 document, that's certainly his privilege.
18 MR. DAN SLOTCHIVER: Income and
19 expense declaration, I don't understand how this
20 part is relevant to this, Your Honor,
21 understanding your ruling earlier that you believe
22 that it would be proper to put into evidence the
23 amount of the disparity between the fees, but we
24 can accomplish that, Your Honor, with this one
25 page.

1 THE COURT: Mr. Boyd, I'm not sure how
2 a declaration by Dan Dorn as to his income and
3 expenses is relevant to the matter before the
4 court.
5 MR. BOYD: Your Honor, it may well be
6 that -- well, Your Honor, for the time being, if
7 the court wants to just have us reduce the
8 document to --
9 THE COURT: Maybe you could take that
10 front page that has the respondent's exhibit
11 number and attach it just to the last six pages, I
12 believe you said.
13 MR. BOYD: Yes, Your Honor. That
14 would be fine. I don't have an objection to
15 removing the prior pages at this juncture.
16 THE COURT: Would you like to do that
17 now? We can accommodate that. If you want to use
18 that to take out the objectionable matters that I
19 find not relevant to the proceeding.
20 MR. BOYD: Your Honor, I'm going to
21 remove Page 2, Page 3, Page 4, Page 5, Page 6.
22 THE COURT: So it starts with the
23 attachment to income and expense declaration?
24 MR. BOYD: Yes, Your Honor.
25 MR. DAN SLOTCHIVER: I'm sorry. Where

1 does it start, Your Honor, the attachment?
2 THE COURT: Yes, sir.
3 MR. DAN SLOTCHIVER: And how far does
4 it go from that point forward?
5 THE COURT: To the end of the
6 document.
7 MR. DAN SLOTCHIVER: Thank you, Your
8 Honor.
9 THE COURT: Thank you.
10 MR. BOYD: And again, Your Honor, I
11 think one reason why we captured the entirety of
12 the document was in providing the context for when
13 the document was filed.
14 THE COURT: I understand.
15 MR. BOYD: Bear with me one second, if
16 you would, please.
17 BY MR. BOYD:
18 Q. Mrs. Cohen, let me ask you to turn in
19 your copy of the document to -- let me show you
20 which page. Yes. Do you see the summary of fees
21 that are contained on this page which is
22 captioned: Attachment to Income and Expense
23 Declaration, Attorneys Fees and Costs?
24 A. Yes.
25 Q. And what amount is shown as having

1 been paid up until that point by Mr. Dorn?
2 A. He paid at that point $269,717, and he
3 owed $657,936.77.
4 Q. Does this document which we've just
5 admitted, Mrs. Cohen, does this support your
6 belief that there was effectively parity between
7 the parties in terms of legal fees in California?
8 A. Exactly.
9 Q. Thank you, Mrs. Cohen.
10 MS. MOORE: Reese, do you have another
11 copy of that, by chance?
12 MR. BOYD: Yes.
13 BY MR. BOYD:
14 Q. And Mrs. Cohen, I don't want to go
15 back through the entirety of the divorce
16 proceeding in California -- we spent a fair amount
17 of time talking about that on Tuesday -- but was
18 it ever your anticipation in California that the
19 marital action in California would be as involved
20 and as expensive as it turned out to be?
21 A. No, it never was.
22 Q. Once you got into the litigation --
23 we've reviewed some of the significant strategic
24 filings that were made -- did you ever feel like
25 you could get out of the litigation?

1 A. I felt like I was in a box, and if I
2 turned one way, there were wild dogs in the front,
3 if I turned the other way, there were wild dogs in
4 the back. There didn't seem to be any way out. I
5 spent many, many days struggling with this, as I
6 said, I sought advice of many sources, and I could
7 not find a way out of this.
8 MR. DAN SLOTCHIVER: Objection, Your
9 Honor, to the extent that the comment asserts that
10 she sought advice and couldn't find a way out if
11 it relies on the advice of other people.
12 THE COURT: Sustain that objection.
13 Court will strike that.
14 THE WITNESS: Should I restate, or
15 what?
16 THE COURT: You're fine, ma'am.
17 BY MR. BOYD:
18 Q. Did you attempt to settle the
19 California litigation?
20 A. Many, many, many times. I sent many
21 emails.
22 MR. DAN SLOTCHIVER: Your Honor, I
23 object to the relevancy of any attempt to settle
24 the case. The decision that she made was to
25 continue to litigate the case. Settlement

1 discussions, generally by their nature, they're
2 not allowed in court, number one.
3 Number two is it was her decision, and
4 her decision or inability to decide to pursue this
5 case, but I want to make sure that we certainly
6 put on the record that we object to any attempt to
7 discuss settlement negotiations between the
8 parties because, as I believe the court can take
9 judicial notice, a party, whenever they want to,
10 has the right to dismiss an action.
11 MR. BOYD: Your Honor, the settlement
12 privilege or the exclusion is owned by the party
13 that submits the offer. She's -- again, she's on
14 trial for acting unreasonably as a trustee, so the
15 reasonableness of her actions are specifically
16 what's at issue in this case. So if she made
17 many, multiple, redundant, reiterated attempts to
18 settle this litigation, to make it go away, she's
19 entitled to testify to that. It's directly
20 relevant.
21 MR. DAN SLOTCHIVER: Your Honor, any
22 attempt -- all she had to do to end it is withdraw
23 the action for visitation, so the settlement
24 attempts, by their very nature, would be
25 irrelevant, if not inadmissible, because she could

1 have stopped it any time she wanted to.
2 THE COURT: And I think,
3 Mr. Slotchiver, you can argue that, that point of
4 law as to that she could have done that at any
5 time, but I think it's relevant in this matter, so
6 I'm going to allow it.
7 MR. DAN SLOTCHIVER: Thank you, Your
8 Honor.
9 THE COURT: Thank you.
10 BY MR. BOYD:
11 Q. And Mrs. Cohen, what was the general
12 response to your efforts to settle the case?
13 A. It was always negative. No matter
14 what I suggested, I was always consistently
15 rebuffed. When I offered to pay him more than the
16 amount for child support, to give him more than he
17 was asking for, rebuffed. When I asked him to
18 please meet with me, rebuffed. When I came to his
19 house, I wanted to see him, he didn't even come
20 back. He said: I'll be back in a few minutes,
21 didn't even come back. I offered to take him and
22 his father, if he was afraid to be with me, to
23 dinner to talk, rebuffed.
24 We had an attorney who offered pro
25 bono --

1 MR. DAN SLOTCHIVER: Your Honor,
2 objection as to any offer from her attorney.
3 THE WITNESS: It wasn't my attorney.
4 MR. BOYD: She's not referring to her
5 attorney.
6 THE WITNESS: I'm not referring to my
7 attorney. It was a kind woman who had a child
8 with cancer.
9 MR. DAN SLOTCHIVER: Your Honor,
10 objection to any reference to somebody else who
11 would be offering -- this is offering hearsay
12 testimony. A kind woman, an attorney, or a
13 stranger on the street, it's still hearsay
14 testimony.
15 THE COURT: Sustained.
16 MR. BOYD: Thank you.
17 THE WITNESS: How about she sent a
18 letter?
19 THE COURT: No, ma'am.
20 THE WITNESS: Okay. I'm sorry.
21 BY MR. BOYD:
22 Q. But you did, in fact, make repeated
23 efforts to settle this litigation?
24 A. Over 60 attempts.
25 Q. And did you ever feel that you

1 received a reasonable response from Mr. Dorn?
2 A. Never.
3 Q. All right. Mrs. Cohen, let's turn our
4 attention to -- I'm going to show you what's
5 previously been marked as an exhibit in this
6 matter, Exhibit 88.
7 A. Yes.
8 Q. Can you refresh your memory on what
9 that exhibit is?
10 A. This is about the document that I
11 believe -- well, I don't know who prepared it,
12 about my son's payments.
13 Q. Payments to Jeffrey?
14 A. Payments to Jeffrey for services.
15 Q. Let's go back to the time of the
16 accident, Mrs. Cohen. Can you explain why it was
17 that Jeffrey came to be involved in assisting you
18 with Abbie's care?
19 A. Well, Jeffrey and Abbie were very,
20 very close, and at the time of the accident, he
21 came out, ten days after the accident -- and
22 because there needed to be caretakers, which the
23 hospital was paying for two nurses, $8,000 a month
24 to pay for nurses, but because they were female,
25 under religious law, you can't have a man and a

1 woman in the house together alone. There has to
2 be another party, another person. So he came out
3 to be the other person to --
4 MR. DAN SLOTCHIVER: Your Honor, I
5 object to her testifying as to why Jeffrey Cohen
6 came out. She can certainly testify as to what
7 she observed when he came out, but as to why he
8 came out, that would be improper. There's no
9 foundation to support it. He's not here to
10 testify as to it. Frankly, he hasn't even been
11 listed as a witness.
12 MR. BOYD: Your Honor, she is directly
13 involved in the circumstances related to his
14 retention, to his assistance to the services that
15 he provided. She can speak from her own personal
16 knowledge. There's no exclusionary rule that
17 would prevent her from speaking of her own direct
18 knowledge.
19 MR. DAN SLOTCHIVER: That's not what
20 he asked her. He asked her why he came out. And
21 we go back to the same thing over and over again.
22 We haven't been provided with this information as
23 part of the defense. She can testify as to
24 what -- as to what she saw and what she observed
25 and to the fact that he flew out and to what she

1 saw him do. We don't object to that at all. It's
2 all proper. But I certainly don't think that she
3 can testify as to why he did what he did, because
4 in order to do that, she has to place herself into
5 his mind, and I don't believe that she can do
6 that.
7 MR. BOYD: Your Honor, she was
8 directly involved at the time, and in fact, we did
9 name Jeffrey as a witness in our discovery, and
10 he's been --
11 MR. DAN SLOTCHIVER: He has not, Your
12 Honor.
13 MR. BOYD: Your Honor, can I take a
14 couple minutes?
15 THE COURT: Yes, sir.
16 MR. BOYD: Your Honor, I have here in
17 my hands a document which is captioned:
18 Respondent's Answers to Petitioner's
19 Interrogatories, and the date of this document is
20 May the 2nd, 2011.
21 Question 8 of Mr. Slotchiver's
22 interrogatories: State the
23 names/addresses/telephone numbers of all
24 accountants, CPÂs, bookkeepers, or other such
25 persons who have done any bookkeeping or

1 accounting work for you individually or in the
2 capacity as co-trustees of the Abbie Dorn Special
3 Needs Trust.
4 Answer: Jeffrey Cohen, gives his
5 address, as someone providing services to the
6 trust, so --
7 MR. DAN SLOTCHIVER: We agree, Your
8 Honor. That's exactly what it says. However, the
9 question earlier in that document he's referring
10 to were to provide their witnesses. He was not
11 listed as a witness. He was provided to us as
12 someone who provided financial services under a
13 different section, but he was not listed as a
14 witness to this case.
15 And the distinction, Your Honor, is we
16 have the right to review documents, similar to
17 Robin Morris, to subpoena documents in order to
18 see what they look like, to understand them, in
19 order to do an evaluation of the case.
20 For example, to make sure the
21 accounting was done right, we can subpoena the
22 accounting firm's records if we want to, but
23 that's different than who are your witnesses, and
24 those questions are very succinctly different.
25 We asked who the witnesses were.

1 Jeffrey Cohen is not listed as a witness at all.
2 He is listed as a bookkeeper in a separate
3 question. They're not the same. There's no way
4 to create those identical questions. And I've
5 addressed this before, it's no surprise, but he's
6 not a witness to this case.
7 THE COURT: Mr. Boyd?
8 MR. BOYD: Your Honor, the purpose of
9 the rules of discovery are to avoid surprise, to
10 avoid the revelation of new information at trial.
11 I have -- we are splitting hairs here that are so
12 fine, I'm really concerned about some sort of
13 nuclear reaction.
14 We listed Mr. Cohen in our discovery
15 responses as someone who is involved in the
16 affairs of the trust. Mr. Slotchiver, in the
17 process of his case and his questioning of
18 Mrs. Cohen, has attacked directly the
19 reasonableness of Mrs. Cohen paying Jeffrey Cohen
20 the amount of money that they have alleged was
21 paid. She has not disputed the fact that the
22 funds were paid -- it's in the record, we've
23 produced it -- but she is being attacked on the
24 reasonableness of those actions.
25 We did name him as -- we named him as

1 an accounting provider for the trust to -- I don't
2 need Jeffrey Cohen's testimony, per se. Mr. Cohen
3 lives in New York. I don't need his testimony,
4 per se, to testify as to the circumstances which
5 led the trustee to seek Mr. Cohen's help. She
6 needed help.
7 THE COURT: I will allow this to the
8 extent that she's going to testify as to her
9 personal knowledge as to why she retained
10 Mr. Jeffrey Cohen.
11 MR. BOYD: She's not testifying on his
12 behalf, Your Honor; she's testifying as to her
13 personal knowledge.
14 THE COURT: I understand.
15 MR. DAN SLOTCHIVER: But, Your Honor,
16 it is my understanding, then, that would not
17 include any alleged representations from Jeffrey
18 Cohen; it's just her understanding. Would it be
19 limited to that basis? Otherwise --
20 THE COURT: It would be based on what
21 she did and what she knew as to why he came here,
22 based on what she knew.
23 MR. DAN SLOTCHIVER: She knew or
24 observed?
25 THE COURT: Herself, as to why he came

1 here and what he did, which I thought was what she
2 was about to say, but I'm not going to allow her
3 to rely on what Jeffrey Cohen may have told her as
4 to why he was coming.
5 MR. DAN SLOTCHIVER: Your Honor, my
6 only concern is that without a foundation. I
7 don't know how she could opine as to what she knew
8 or observed without using that information that he
9 allegedly provided to her.
10 And if we go back, Your Honor, to this
11 document, under the argument that was made with
12 reference to Jeffrey Cohen being listed as a
13 bookkeeper, there are probably 7,000 pages of
14 documents in which there are probably thousands of
15 names involved. There are no more nameless
16 witnesses than Jeffrey Cohen.
17 Now, we have the right to question her
18 about Jeffrey Cohen, which we have, and we have a
19 right to argue about the payments made to him,
20 which we have and will continue, but that doesn't
21 change the fact that he wasn't listed as a
22 witness.
23 So I would just ask, Your Honor, that
24 you would allow a -- or require a foundation to be
25 made that her testimony is not based on what she

1 was told by him, but based on observations that
2 she would have made.
3 MR. BOYD: Your Honor, if I ask what
4 did Jeffrey say to you about X, Y, Z, then
5 obviously, that would be hearsay. I'm not asking
6 her to opine or testify as to what Jeffrey said or
7 didn't say. I'm asking her about her direct
8 knowledge based on her own experience.
9 THE COURT: And I will allow that.
10 MR. DAN SLOTCHIVER: If I could be
11 heard, Your Honor.
12 THE COURT: Yes, sir.
13 MR. DAN SLOTCHIVER: My concern is
14 it's like saying did you meet with a lawyer? Yes,
15 I did. After meeting with the lawyer, did he give
16 you advice? I object. You can't put it in there.
17 What did you understand after meeting with the
18 lawyer? Well, I understood that these are the
19 rules you have to follow. We're indirectly doing
20 exactly what we're not supposed to do without a
21 foundation, Your Honor.
22 THE COURT: Well, I will instruct the
23 witness that she's not to rely on anything Jeffrey
24 Cohen told her as to why was he coming.
25 MR. DAN SLOTCHIVER: Thank you, Your

1 Honor.
2 THE COURT: I think that was the
3 question, why did he come, and rely just on what
4 she knew from the situation with Abbie and the
5 caregivers as to why he was coming.
6 MR. DAN SLOTCHIVER: Thank you, Your
7 Honor.
8 THE COURT: Without relying on what
9 she was told.
10 MR. DAN SLOTCHIVER: Thank you, Your
11 Honor.
12 THE COURT: Do you understand that,
13 ma'am?
14 THE WITNESS: Yeah. So I should say
15 what I said to him?
16 THE COURT: That is fine, absolutely.
17 THE WITNESS: When I spoke to him --
18 BY MR. BOYD:
19 Q. Just go back to the beginning,
20 Mrs. Cohen, and explain the circumstances when
21 Jeffrey first began to assist you after the
22 accident.
23 A. Well, after the accident, the children
24 were going to be discharged from the hospital.
25 Thank God they were doing well in the nursery, and

1 they were -- discharge was planned, and the
2 hospital at that time was paying $8,000 --
3 THE WITNESS: Can I say that, they
4 were paying $8,000 a month?
5 THE COURT: Yes, ma'am.
6 THE WITNESS: The hospital was paying
7 $8,000 a month for nurses, and the nurses that I
8 was aware of were female. And from my knowledge
9 of religious law, you have to have another person
10 in the house. You can't have a man and a woman
11 alone in a house with babies, because that's not
12 permitted.
13 So when I spoke to Jeffrey, he had
14 wanted to come out anyway, pretty much, and I told
15 him that it might -- we didn't know, obviously,
16 how long it was going to be, it might be a long
17 term, and he offered -- no. I asked him how we
18 could handle this, and he subsequently quit his
19 job.
20 Is that okay?
21 BY MR. BOYD:
22 Q. Yes, if you know.
23 A. He quit his job and flew out, and he
24 stayed in Dan's house for four-and-a-half months.
25 And then where do you want me to go?

1 Q. Well, when he first started doing all
2 these services for you, can you just briefly
3 summarize in a couple of sentences what he was
4 doing?
5 A. When I first asked him, I had just
6 asked him to do simply bookkeeping. He was
7 working at that time for -- whose name I couldn't
8 remember at the deposition, but it's for Accurate
9 Bookkeeping Service, and I didn't remember at that
10 time the name, but that's what it's called. And
11 so he was doing bookkeeping.
12 And I was overwhelmed in how to do
13 things. The only thing I was really capable of
14 doing was sending the things to Medicaid where you
15 have to jot down those -- on the -- what do you
16 call -- statements you get at the end of the month
17 what everything is spent for, so I did know that,
18 because I kept records. But frankly, I don't even
19 balance my checkbook, so I'm not a financial
20 person, and I just was getting very upset with
21 him.
22 So initially, I just asked him to do
23 the accounting for me, and because that was his
24 job, it seemed like a logical thing, and the
25 amount that I was paying him, $25 an hour, was

1 less than he was earning for Accurate Bookkeeping.
2 And as I said, Webster Rogers wanted $95 an hour
3 to do it, and I --
4 Q. Let me ask you to stop, if I may.
5 A. Okay.
6 Q. When he first started working for you,
7 were you paying him anything at all?
8 A. When he first started doing it, I
9 wasn't paying him anything, and then I -- I just
10 was so overwhelmed, I was lost in all the
11 paperwork, and I asked him to do all the
12 bookkeeping. And I insisted that he take money
13 for it, because he was working, and I felt that I
14 would pay anybody else, and I was paying him much
15 less.
16 Q. How long did he work without
17 compensation, if you'd just estimate it to the
18 best of your recollection?
19 A. Maybe six, eight months.
20 Q. And after six to eight months working
21 without compensation, what transpired to cause you
22 to change his circumstance to a paid employee?
23 A. That's when the litigation was getting
24 more intense, and I was -- I was in tears a lot.
25 I was not doing as well at that time in terms of

1 being able to handle things, and I didn't want to
2 make mistakes, so I asked him to basically take
3 over a lot more of the bookkeeping that I just
4 couldn't -- I couldn't handle paperwork.
5 And then eventually, when things got
6 very, very aggressive with Vicki and with all the
7 standing arguments and just everything being
8 fought about in California, I said that I just
9 didn't understand how everything had to be
10 answered, but apparently, that's the law.
11 Anything that anybody throws at you, you can't
12 ignore. You have to answer. And I just -- I was
13 always going through papers. I was just -- my
14 mind was -- I was out of my mind with paperwork,
15 and I called --
16 Can I say I called him? Yes?
17 Q. Yes.
18 A. I called him, and I called his rabbi
19 also, and I said I need him at home. I can't
20 function. I just -- I'm falling apart, and I need
21 help. And Abbie loves him very much. Throughout
22 the entire hospitalization, he was there for her.
23 He called her every single day.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 object.

1 THE WITNESS: I was there.
2 THE COURT: Ma'am --
3 MR. DAN SLOTCHIVER: And I know it's
4 background, but I want to keep as clean a record
5 as we can. I object to the reference as to him
6 calling her every day. I don't believe there's a
7 foundation laid that she can support that
8 position. And if there is, then we certainly
9 won't have an objection, but I want to make sure
10 that there is.
11 MR. BOYD: Your Honor, she's just
12 testifying to her personal knowledge. If she
13 knows that he called her every day, that's just a
14 fact that she knows by observation.
15 MR. DAN SLOTCHIVER: That's not what
16 she testified to, Your Honor. And if she knows
17 that by observation, certainly, she can testify to
18 it, but I don't know if she was really there every
19 day and witnessed him calling her every day, and I
20 want to make sure we have a clean record.
21 THE COURT: Thank you. Mr. Boyd, if
22 you can have your client clarify.
23 BY MR. BOYD:
24 Q. Mrs. Cohen, can you just clarify?
25 When you say these things, are you saying these

1 things because you heard them, or are you speaking
2 to things that you directly know to be true?
3 A. I was there. Abbie does not answer
4 the phone. I answered the phone.
5 Q. So these things that you're speaking
6 of that Jeffrey did for you or for the family for
7 the trust, those are things that you have direct
8 knowledge of?
9 A. Absolutely. I was the one who
10 answered the phone. I put the phone on speaker
11 for Abbie, or I would put Skype on for Abbie so
12 she could see him. And I was there when he would
13 read to her. I was there when he talked to her.
14 I was there when he encouraged her. So yes, that
15 was direct knowledge.
16 Q. And you have direct knowledge of all
17 those things?
18 A. I have direct knowledge of all those
19 things.
20 Q. Is it fair to say, Mrs. Cohen, that
21 Jeffrey did quite a few things that someone at
22 Webster Rogers or any other accounting firm could
23 not do for you?
24 A. Well, yes, because he was family, and
25 I just didn't want to turn over everything. And

1 also, I needed to rest a little bit. I needed
2 somebody -- I have wonderful caretakers,
3 wonderful, but Abbie does not enjoy when they read
4 to her. She just doesn't --
5 MR. DAN SLOTCHIVER: Your Honor, I
6 object. There's no foundation to make that
7 statement.
8 THE COURT: The court will strike
9 that.
10 THE WITNESS: Abbie cries --
11 THE COURT: Ma'am --
12 BY MR. BOYD:
13 Q. Just one second, Mrs. Cohen. Just one
14 second. Mrs. Cohen, from your observation, did
15 you find Yaakov -- Jeffrey's -- interactions with
16 Abbie to be helpful for Abbie, from your
17 observations?
18 MR. DAN SLOTCHIVER: Your Honor, I
19 object. I don't believe there's any foundation
20 for her to give an opinion as to what Abbie was
21 feeling or not feeling, and observations is just
22 an indirect way of asking the same question. She
23 can tell what she saw, she can say what she heard,
24 if it's admissible, but I believe that question,
25 in and of itself, is inappropriate.

1 MR. DAVIS: Your Honor, there's
2 nothing inappropriate about asking someone what
3 their observations are with respect to an
4 individual with whom they share a residence. They
5 know, based on absolute firsthand direct
6 knowledge, from experience, whether Abbie's having
7 a good day or a bad day. She can testify to that,
8 and she can thus testify whether readings with
9 Jeffrey or any other undertaking contributed to a
10 good day or didn't contribute to a good day, if it
11 helped her or if it didn't help.
12 MR. DAN SLOTCHIVER: There was a court
13 order that specifically disagrees with that
14 statement.
15 MR. BOYD: Your Honor, he's
16 mischaracterizing the order. And even if the
17 order did say that, it doesn't have any bearing on
18 her ability to testify on what she observed in
19 this case in her house.
20 MR. DAN SLOTCHIVER: It has to do what
21 she knows, that he said they know because they're
22 there. The court heard the same argument in
23 California and disagreed with it, and I don't
24 think it's proper, Your Honor. I think he can ask
25 what she observed, but I don't believe she can

1 give -- put herself in the position to answer as
2 to what Abbie was thinking.
3 THE COURT: Mr. Boyd, I think you need
4 to limit her testimony to what she observed, how
5 Abbie may have behaved, but not what she felt like
6 Abbie felt or what she liked.
7 MR. BOYD: Your Honor, I would
8 certainly not want to encourage my witness to
9 speak on Abbie's behalf. That's not what I'm
10 trying to do. But I did ask her about what her
11 direct observations were.
12 And I just want to, Your Honor, renew
13 my comment. I think counsel is mischaracterizing
14 the California order, so I want to just state that
15 for the record. I think he's mischaracterized the
16 order. The order speaks for itself. I don't
17 think the order stands for the proposition that
18 there's absolutely no benefit to Abbie in the
19 manner that counsel has characterized it.
20 BY MR. BOYD:
21 Q. But with that said for the record,
22 Mrs. Cohen, can you call Webster Rogers at 3:00 in
23 the morning?
24 A. No, I cannot.
25 Q. Did you have a lot of unexpected

1 issues that come up in the care of Abbie? Is it a
2 stressful situation to respond to, from your
3 perspective?
4 A. It has in the past been extremely
5 stressful. It's getting better, thank God, but at
6 that time I was extremely stressed. It was before
7 Abbie's Baclofen pump, which relieves her pain, so
8 she was in a great deal of pain.
9 MR. DAN SLOTCHIVER: Your Honor, I
10 object. She's now testifying as to the fact that
11 Abbie was in a great deal of pain, and there's
12 certainly testimony in evidence that disagrees
13 with her ability to even give that opinion, let
14 alone the fact that it's similar to her commenting
15 on how Abbie felt. It would be inappropriate.
16 THE WITNESS: All right. She cried
17 out a number of times. I'm sorry.
18 THE COURT: Thank you. I will strike
19 her previous comment that Abbie was in pain.
20 THE WITNESS: Is it okay to say cried
21 out?
22 THE COURT: Yes, ma'am.
23 THE WITNESS: Okay. She cried out in
24 an appearance of pain?
25 THE COURT: She just cried out.

1 THE WITNESS: She cried out, okay.
2 BY MR. BOYD:
3 Q. Mrs. Cohen, let me ask you this, let
4 me ask you this question: In your opinion, based
5 on your observations, does Abbie have good days,
6 and does she have bad days?
7 MR. DAN SLOTCHIVER: Your Honor, I
8 object.
9 MR. BOYD: Your Honor, I'm asking her
10 how easy it is to be in her position dealing with
11 the ward. There are good days. There are bad
12 days. On what possible basis --
13 THE COURT: Well, I think she can
14 testify whether she has good days and bad days.
15 At this point, I'm not sure that she can testify
16 about whether Abbie has good days.
17 MR. DAN SLOTCHIVER: I'm also not even
18 sure why this is relevant.
19 MR. BOYD: Again, Your Honor, I was
20 trying --
21 THE COURT: We were talking about
22 Jeffrey Cohen --
23 MR. BOYD: We're talking about Jeffrey
24 Cohen, Your Honor.
25 THE COURT: -- and his services to

1 Mrs. Cohen, so if we can limit the testimony to
2 that, Mr. Boyd.
3 MR. BOYD: Yes.
4 THE COURT: Thank you.
5 BY MR. BOYD:
6 Q. Mrs. Cohen, are there things in your
7 experience -- having been through these last
8 several years, are there things in your experience
9 that Jeffrey is uniquely qualified to do for
10 Abbie?
11 A. Yes, there are.
12 Q. Could you give us some examples?
13 A. Before Abbie had the Baclofen pump,
14 and she would cry out frequently --
15 Q. Can you just describe to the court --
16 MR. DAN SLOTCHIVER: Same objection,
17 Your Honor. I would ask that she be limited from
18 testifying as to what Abbie would do as the result
19 of somebody else. She can't put herself in the
20 position of knowing that, and it would be improper
21 to allow her to continue to testify. And it's the
22 same objection we've raised over and over again
23 today, but she continues to tell us what Abbie did
24 as a result of something else.
25 THE COURT: Ma'am, if you can limit

1 your testimony, all right. And you can talk about
2 what Abbie did, but not what you think she did
3 based on something else.
4 THE WITNESS: Okay. What I can say,
5 it was that when Yaakov, or Jeffrey, could read to
6 her, he could read to her for up to two hours at a
7 time without once having Abbie cry out. They had
8 a -- can I say that? -- close relationship.
9 THE COURT: No, ma'am.
10 THE WITNESS: Okay. But she would not
11 cry out for two hours. She was very attentive,
12 and she -- I did observe a smile on her face.
13 BY MR. BOYD:
14 Q. Let me ask you this, Mrs. Cohen: In
15 the deposition of John Freeman, Mr. Freeman
16 indicated that you had paid Jeffrey $95 an hour.
17 Is that correct?
18 A. That was -- that never happened. It
19 was -- as I went further in the deposition, you
20 could say I had said specifically that I couldn't
21 pay $95 an hour. I was referring to the $25 that
22 I clearly was paying him.
23 Q. I'm going to show you your deposition,
24 Mrs. Cohen, and I'm going to ask you to look at
25 Page 52, Line 8. Actually, read the question that

1 precedes it, beginning on Line 5, if you would.
2 A. And did you ever consult or meet with
3 or entertain hiring any -- somebody local as a
4 bookkeeper or an accountant to handle this matter?
5 Well, I had the Webster office.
6 Q. Well, that's your answer, correct?
7 A. My answer is: Well, I had the Webster
8 office. They were charging me $95 an hour.
9 That's why I said I need someone. I can't pay $95
10 an hour.
11 Q. And did you mean by that, in fact,
12 that you were paying Jeffrey less than $95 an
13 hour?
14 A. That's correct. I was paying him
15 $25 an hour.
16 (RES. EXH. 14, Payroll Register, Bates
17 No. 3152, 3160, 3168, 3178, 3194, 3210, and 3218,
18 was marked for identification.)
19 BY MR. BOYD:
20 Q. Mrs. Cohen, I'm going to show you what
21 has been marked as Respondent's Exhibit 14. Can
22 you take a look at that for me, please?
23 A. I'm sorry, Reese. I didn't hear you.
24 Q. Excuse me?
25 A. I'm sorry. I didn't hear you.

1 Q. Can you take a look at that document?
2 A. Yes.
3 Q. And tell me if you recognize these
4 pages.
5 A. Yes.
6 Q. Do you recognize what those documents
7 are, Mrs. Cohen?
8 A. Yes. This is -- what would you call
9 it? -- a recapturing of AccuChex.
10 Q. And let me just tell you, Mrs. Cohen,
11 that these are documents that you provided to us,
12 your counsel, and that we subsequently provided to
13 Mr. Dorn's counsel, which were provided to
14 Mr. Freeman, their expert, which Mr. Freeman
15 relied upon in his opinion in his deposition.
16 A. Right.
17 Q. And if you would, Mrs. Cohen, look at
18 Page 1 of the exhibit.
19 MR. BOYD: Your Honor, without
20 objection, we'd offer that into evidence.
21 THE COURT: Any objection?
22 MR. DAN SLOTCHIVER: None from us,
23 Your Honor.
24 THE COURT: Thank you.
25 (RES. EXH. 14 was admitted into

1 evidence.)
2 BY MR. BOYD:
3 Q. Mrs. Cohen, would you look at Page 1
4 of what has been marked as Exhibit R-14?
5 A. Yes.
6 Q. Do you see Jeffrey Cohen -- it looks
7 like it didn't all come through, but Jeffrey Cohen
8 referenced on the left-hand column?
9 A. Yes, I do.
10 Q. And what is under the rate? What is
11 the rate referenced?
12 A. $25 an hour.
13 Q. And flip to the second page,
14 Mrs. Cohen, if you would. And what rate is
15 reflected for Jeffrey on that page?
16 A. $25 an hour.
17 Q. And the third page?
18 A. $25 an hour.
19 Q. And the fourth page, Mrs. Cohen?
20 A. $25 an hour.
21 Q. And the fifth page, Mrs. Cohen?
22 A. $25 an hour.
23 Q. And the next page, the sixth page?
24 A. $25 an hour.
25 Q. And the last page?

1 A. $25 an hour.
2 Q. Mrs. Cohen, did you ever pay Jeffrey
3 more than $25 an hour?
4 A. Never.
5 Q. Let me ask you about Exhibit --
6 Mrs. Cohen, I'm going to show you a document which
7 has previously been marked as Exhibit 100 in this
8 matter, and do you recognize that document? Flip
9 to Page 3, and see if that assists you.
10 A. Obviously, this is the document that
11 we filed with the court.
12 THE COURT: Ma'am, you need to speak
13 up.
14 THE WITNESS: This is the amended
15 petition to affirm payment of fees from the
16 special needs trust and to reform the terms of the
17 trust.
18 BY MR. BOYD:
19 Q. And do you recognize that as the
20 petition that was filed on your behalf in this
21 matter?
22 A. Yes.
23 Q. Mrs. Cohen, what did you understand
24 the purpose, generally, of this document to be?
25 A. To have the documents all look the

1 same.
2 Q. Let me ask you to read Paragraph 11 of
3 that document, if you would.
4 A. The petitioners were previously
5 granted authority to employ attorneys on behalf of
6 the protected person for matters related to the
7 divorce action and to pay for such services from
8 the funds of the protected person and/or the
9 trust, as evidenced by the letters of
10 conservatorship issued by the Superior Court of
11 California, County of Kern, Metropolitan Division,
12 filed November 15, 2007 (copy attached as
13 Exhibit C), and by this court's order of transfer
14 of jurisdiction.
15 Q. Let me also ask you to read one other
16 provision of the document, Mrs. Cohen. I'm going
17 to ask you to turn to Page 5 on the -- look at
18 Paragraph E, Mrs. Cohen, under the prayer, and
19 read that provision, if you would, please.
20 A. Directs that no child support or fees
21 or costs incurred by Daniel Bernard Dorn be paid
22 from the trust estate.
23 Q. Thank you, Mrs. Cohen.
24 So, Mrs. Cohen, was there anything in
25 your mind, as you understood it -- you've

1 testified that you believed you had authority to
2 pursue the marital action in California?
3 A. That's correct.
4 Q. As far as you understood it -- and
5 you've also testified that you're not a legal
6 expert?
7 A. That's correct.
8 MR. DAN SLOTCHIVER: Your Honor, this
9 has been asked and answered at least three other
10 times.
11 MR. BOYD: Your Honor, I'm just trying
12 to draw the comparison --
13 THE COURT: I'll allow it.
14 MR. BOYD: -- because much has been
15 made of this document.
16 THE COURT: Thank you.
17 BY MR. BOYD:
18 Q. Mrs. Cohen, in your estimation, as you
19 understood it at the time, was there anything
20 inconsistent between that document, the petition
21 that you filed, and the authority that you
22 believed you had as the trustee in California?
23 A. No inconsistencies.
24 Q. Mrs. Cohen, you received a few
25 questions from Mr. Slotchiver concerning the

1 opinion of Dr. Mamelak in California?
2 A. Yes.
3 Q. And I believe you testified that you
4 didn't spend a lot of time reading Dr. Mamelak's
5 materials. Is that correct?
6 A. I didn't read it at all.
7 Q. What were your concerns with
8 Dr. Mamelak's opinions?
9 A. That he had not seen her since she was
10 in intensive care, and he had no basis for his
11 opinions.
12 Q. As you understood it, what was the
13 length of time between Dr. Mamelak's examination
14 of Abbie and the time when he rendered his
15 opinions?
16 A. Four years.
17 Q. Were there any other opinions, medical
18 opinions, that you considered to be relevant in
19 the California proceeding?
20 A. Yes, absolutely, especially the
21 court-ordered physician.
22 MR. DAN SLOTCHIVER: Your Honor?
23 THE COURT: Yes, sir.
24 MR. DAN SLOTCHIVER: I want to place
25 an objection insomuch as I don't know where this

1 testimony is going to go with reference to
2 eliciting other opinions, but in light of the fact
3 this is a bench trial, not a jury trial, I wanted
4 to be a little more proactive than reactive, based
5 on what's happening so far. I want to make sure
6 the limiting ruling still affects that she can't
7 testify about what somebody else might have told
8 her, in particular somebody whose notes we would
9 not have been -- or whose records or whose
10 identification we have not been provided.
11 THE COURT: Mr. Boyd?
12 MR. BOYD: Your Honor, I'm not really
13 attempting to elicit testimony on any subject or
14 item that they've not been provided.
15 Let me ask you -- let me approach it
16 this way, Your Honor. Let me just move to a
17 document.
18 (RES. EXH. 6, 6/13/10 Letter to Erica
19 Swensson from Angela Hays, was marked for
20 identification.)
21 BY MR. BOYD:
22 Q. Mrs. Cohen, I'm going to show you what
23 has been marked for identification purposes as
24 Respondent's Exhibit 6.
25 A. Yes.

1 Q. Are you familiar with that document?
2 A. Yes, I am.
3 Q. And perhaps you should flip to the
4 back. Do you recognize who the author of this
5 document is?
6 A. Yes, I do.
7 Q. Who is that?
8 A. It's Dr. Angela Hays, from the Medical
9 University of South Carolina, the expert witness.
10 Q. And who is the letter addressed to?
11 A. It's addressed to Ms. Swensson, who
12 was the associate in the case.
13 Q. At the Meyer Olson firm?
14 A. At the Meyer Olson firm.
15 Q. My understanding is there were other
16 copies of this letter addressed to other
17 individuals as well. Is that correct?
18 A. I believe there were, yes. I had a
19 copy.
20 Q. I'd like to -- and do you understand
21 this opinion to have been cited by the court in
22 California?
23 A. Very briefly.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 would object to this opinion coming in, other than

1 to the extent that it has been cited by the
2 court's order in California.
3 MR. BOYD: Your Honor, the opinion was
4 cited in California, and it's medical -- it's a
5 medical diagnosis, it's the result of a medical
6 examination, so it -- and it's previously been
7 provided to counsel as well.
8 MR. DAN SLOTCHIVER: Actually, to be
9 clear, Your Honor, in the court's final decision,
10 their order, they cited portions of that document.
11 They didn't cite the whole opinion. They didn't
12 attach the whole opinion to the order.
13 If they want to address it as a
14 document that she's seen, then certainly we don't
15 have any opposition to the fact that it was, in
16 fact -- it was a document that she's seen before,
17 that her lawyer's seen, but to put it into
18 evidence as a document that speaks for the truth
19 of the matter, I would object to that. That's not
20 what it stands for at this particular juncture,
21 Your Honor.
22 MR. BOYD: Your Honor, I think the
23 court's entitled -- the document is cited in the
24 opinion of the California court. It's previously
25 been provided to counsel, as the other documents

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1 that we've introduced, and it speaks for itself.
2 It is what it is. The witness is familiar with
3 the document, she's familiar with the provenance
4 of the document, and I don't understand on what
5 other basis there would be to object to the
6 document.
7 MR. DAN SLOTCHIVER: Your Honor, my
8 understanding is that the deposition was cited by
9 the court, not this document. Now, this document
10 purports to be a letter from a doctor, which
11 counsel is attempting to introduce to be evidence
12 of an expert testifying in this case, an expert
13 who has not been listed by counsel as an expert in
14 this case, so I don't believe that accurately that
15 the reflection is accurate that it was -- that
16 this document was included in the court's order.
17 I don't believe it was. I believe it was excerpts
18 from the deposition that were included in the
19 court's order to begin with.
20 Secondly, this document, in and of
21 itself, would be an attempt to put in evidence an
22 expert's testimony which has not been provided to
23 us. We don't know him to be an expert in this
24 case being called by them.
25 MR. BOYD: Your Honor, we

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1 incorporated -- first of all, the document is what
2 it is. The witness is familiar with the
3 provenance of the document. The witness can
4 testify as to her understanding of the document,
5 why the document was written, when it was written,
6 why it was written. And if the court can take the
7 document for whatever it's worth, the court is
8 free to assess the importance of the document in
9 the context of everything else that's been
10 presented, Your Honor.
11 MR. DAN SLOTCHIVER: And once we get
12 to the point of the witness testifying as to her
13 understanding of a document, then we're at the
14 point that the witness is going to testify as to
15 her understanding of each and every conversation
16 she had with each and every lawyer, who we're
17 hearing about for the first time.
18 Your Honor, this is -- it's not -- the
19 protocol is if you're going to rely on the
20 document -- if you're going to rely on the
21 document as an expert testimony, then list the
22 person as an expert, but this is not even a
23 document the court relied on, Your Honor.
24 MR. BOYD: Your Honor, I've not asked
25 her to do anything other than comment on a

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1 document which speaks for itself which has been
2 submitted into evidence and is in the record and
3 has been provided to counsel.
4 THE COURT: Let me hear from
5 Ms. Hedgepath real quick.
6 MS. HEDGEPATH: Your Honor, this
7 letter, as I understand it, the letter from
8 Dr. Hays, would go to Susan Cohen's state of mind,
9 and the whole center of this case, as I understand
10 it, is the reasonableness in the Cohens, as
11 trustees, paying the fees to fund the litigation
12 in California.
13 Now, in relying on documents such as
14 this, did that go to their reasonableness in
15 continuing the litigation to establish the
16 visitation? Did letters such as this, in their
17 mind, go to their state of mind that, yes, it will
18 benefit Abbie? It's not whether this letter is
19 true or not, Your Honor. This goes to her state
20 of mind after reading this letter.
21 THE COURT: Mr. Slotchiver?
22 MR. DAN SLOTCHIVER: I disagree
23 completely, Your Honor. They're attempting to
24 provide a document as evidence into this court for
25 your consideration, which they allege speaks for

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1 itself as to her state of mind. They can do that.
2 If we allow them to do that, then within the
3 parameters of discovery, she can say everything
4 she wants to say with reference to her state of
5 mind. She can testify, clearly, as to her state
6 of mind, but to submit this document for the
7 court's review as to support her state of mind
8 would be inappropriate.
9 We're not opposed to her saying: I
10 believe -- and she's done that already. She's
11 clearly done that. She's told us what her state
12 of mind was. She thinks she has authority. She
13 shows the documents as to why. She thinks it's
14 reasonable. She's told us why. She thinks it
15 benefits Abbie. In her opinion, she says it
16 benefits Abbie. She's done that already.
17 This is an inappropriate document to
18 come in, and without -- I don't want to read it to
19 the court, Your Honor, because I disagree that
20 it's appropriate, and I think that once the court
21 looks at the document, the court would agree, but
22 the problem is the court's looked at the document.
23 It's a self -- or a letter from a doctor to a
24 lawyer is what they're trying to submit.
25 MR. BOYD: Your Honor?

1 MR. DAN SLOTCHIVER: If I could
2 finish. This is a letter written from Dr. Hays to
3 the Meyer Law Firm, and they're saying let's admit
4 this as being some evidence of what she's done,
5 and I think that within the rules of more
6 prejudicial than probative, the question is is it
7 more prejudicial to allow a document to come in
8 from a doctor, written to a lawyer, that wasn't
9 entertained by the court or utilized by the court
10 in making its decision, is that more probative
11 than it is prejudicial when Mrs. Cohen clearly can
12 and has testified to her state of mind. And if
13 that's the only basis for it to come in is the
14 state of mind, I don't believe there's any basis
15 for it to be allowed.
16 MR. BOYD: Your Honor, the entirety of
17 the trial, in essence, again, is going directly to
18 the reasonableness of the trustees' actions, and
19 the court is entitled to see the historical
20 context of exactly what led the trustee to form
21 the opinions that she formed.
22 MR. DAN SLOTCHIVER: Her opinions,
23 Your Honor, were formed long before this letter
24 was written.
25 MR. BOYD: Your Honor, he's got no

1 basis to make that statement.
2 THE COURT: I'm going to overrule the
3 objection. I'm going to allow them to admit this
4 into evidence to show the trustees' reliance on
5 this or what her belief was based on this, not for
6 the truth of the matter of what the doctor said in
7 the letter, but as the basis of their actions.
8 MR. DAN SLOTCHIVER: If I could
9 proffer to the court, Your Honor --
10 MR. BOYD: Let me say one thing --
11 THE COURT: Wait. Not twice, please.
12 MR. DAN SLOTCHIVER: This letter is
13 dated July 13th, 2010. She's already testified,
14 Your Honor, that her belief was made at the time
15 of the transfer. She had had the belief, based on
16 the transfer of jurisdiction from California to
17 South Carolina, that she could do anything at all
18 related to it, so I'm not sure, Your Honor, how it
19 is that this could be submitted to be her belief
20 when at the time --
21 THE COURT: I don't know what the
22 basis of that is, so I don't know what she's going
23 to testify to as to based on that she believed
24 what, whatever. I don't know what she's going to
25 testify to. I think she's entitled to admit that

1 into evidence to show, based on that, whatever she
2 believed.
3 MR. DAN SLOTCHIVER: If my objection
4 could be so noted, though, Your Honor.
5 THE COURT: Yes, sir.
6 MR. BOYD: And I just wanted to
7 clarify for the record, Your Honor --
8 THE COURT: Yes, sir.
9 MR. BOYD: -- Mr. Dorn, Mr. Slotchiver
10 had maintained throughout these proceedings that
11 the actions of the trustee were not authorized and
12 that there was an unreasonable course of action
13 undertaken that continued. It was a continuing
14 course of action.
15 And so this goes to show the ongoing
16 state of mind and the reliance of the trustee on
17 various information, including this letter. It
18 speaks for itself. It's been produced to
19 everyone.
20 And quite frankly, it's not just a
21 letter to Ms. Swensson, Your Honor. We didn't
22 mark it because it's duplicative, but we can
23 certainly locate them and introduce them into
24 evidence, if it will make Mr. Slotchiver feel
25 better, but there were multiple versions of this

1 letter. The same letter, a copy of this letter,
2 if I'm not mistaken, went to -- and I don't
3 remember the exact individual. It either went to
4 Vicki Greene or her associate. So this was a
5 widely-disseminated opinion letter from Dr. Hays,
6 Your Honor.
7 So again, there's no -- there was no
8 surprise initially, and it's been produced
9 previously in this record, in this matter, so
10 there's nothing, again, I think, that should
11 prevent the witness from testifying to her
12 opinions with regard to the letter.
13 THE COURT: Thank you. The court will
14 allow that.
15 That's Respondent's No. 6?
16 MR. BOYD: Yes, Your Honor. Thank
17 you.
18 (RES. EXH. 6 was admitted into
19 evidence.)
20 THE COURT: Based upon that
21 qualification that it's not admitted for the truth
22 of the matter set forth in the letter, but based
23 upon the trustees' reliance on it.
24 MR. BOYD: Excuse me, Your Honor.
25 BY MR. BOYD:

1 Q. Mrs. Cohen, let me ask you this
2 question: Do you understand who retained
3 Dr. Hays?
4 A. Yes. It was the -- Vicki Greene asked
5 her to be appointed by the courts, and she was.
6 Q. Let me just -- I don't want to go
7 through the letter point by point, but let me ask
8 you to turn to the last page of the letter, if you
9 would, Mrs. Cohen.
10 MR. DAN SLOTCHIVER: Your Honor, my
11 understanding is that the letter is being
12 introduced for the purposes of what she relied on
13 that. Based on that, I would ask that rather than
14 counsel show her certain portions, that she could
15 testify as to what she relied on in the letter,
16 without instructions from counsel.
17 THE COURT: Thank you.
18 MR. DAN SLOTCHIVER: If that is purely
19 the basis.
20 THE COURT: Sustained.
21 BY MR. BOYD:
22 Q. Mrs. Cohen, were there any provisions
23 of this letter that you found particularly
24 insightful?
25 A. Well, yes. She confirmed what we

1 already knew. She does talk about without more
2 specialized testing -- I believe further before
3 that, she talked about evoked potentials. I'll
4 hold that thought for a minute and go forward with
5 this. Without more specialized testing, it's
6 impossible to determine whether Ms. Dorn retains
7 the ability to comprehend speech or --
8 Q. I'm sorry. Could you speak a little
9 more clearly and perhaps not read quite so fast?
10 A. I was unable to assess her visual --
11 MR. DAN SLOTCHIVER: Your Honor, now
12 she's testifying -- now she's reading the letter,
13 as opposed to giving her opinion.
14 THE WITNESS: Well, this is what I
15 relied on. That's what I was asked.
16 MR. BOYD: She's answering the
17 question, Your Honor, that I asked at the
18 instruction of Mr. Slotchiver.
19 MR. DAN SLOTCHIVER: I believe she can
20 testify, Your Honor, as to what she relied on
21 without reading the letter to the court. There is
22 a huge distinction. Reading the letter goes
23 towards it speaking for the truth of the matter
24 asserted. Reliance on it is as a result of
25 reading this letter, what was your opinion.

1 THE COURT: Thank you.
2 MR. BOYD: Your Honor, I simply asked
3 her to identify the provisions of the letter that
4 she relied upon, and she's identifying those
5 provisions.
6 THE COURT: Okay. Without reading it
7 to the court. I don't think it's necessary.
8 THE WITNESS: I'll just talk about
9 these two concepts.
10 THE COURT: Ma'am --
11 THE WITNESS: Oh, I'm sorry.
12 THE COURT: Just one second, please.
13 So I don't think she can read the
14 letter to the court. I think she can identify
15 those portions of the letter, the opinion from
16 Dr. Hays that she relied on in taking whatever
17 actions she took.
18 MR. BOYD: Your Honor, if this -- I'm
19 not asserting -- I'm not asserting the provision
20 for the truth of the matter asserted. It was
21 Dr. Hays's opinion, rendered to multiple parties
22 at the time, and I'm asking her to identify those
23 provisions of the letter that she found, for her,
24 important.
25 THE COURT: I will allow her to

1 identify those portions of the letter without
2 necessarily having to read it to the court.
3 MR. BOYD: Okay.
4 THE WITNESS: So I'm just going to
5 rely on some terms. One of the things that she
6 talks about, there's a presence of optokinetic
7 nystagmus, which means she can see.
8 MR. DAN SLOTCHIVER: Your Honor, I
9 object. She's not testifying as to what the
10 medical -- what the doctor has testified to.
11 THE WITNESS: We're talking about
12 vision.
13 MR. BOYD: We're talking about being
14 in a box that you can't get out of.
15 MR. DAN SLOTCHIVER: It's not a box,
16 Your Honor. She cannot testify as to the fact
17 that her daughter could see. That's a medical
18 opinion that is highly disputed.
19 MR. BOYD: Your Honor, she's giving
20 her opinion of the letter.
21 THE COURT: Okay. She can testify as
22 to what she relied on this letter in making
23 whatever decisions she made.
24 I don't think, Mrs. Cohen, you can
25 interject your understanding of what those medical

1 terms mean.
2 THE WITNESS: Okay.
3 THE COURT: Thank you.
4 THE WITNESS: Well, she does say she
5 has that presence of optokinetic nystagmus. And
6 this is not a medical term particularly, but she
7 says she has a startle response, which simply
8 means if you clap your hands, can the person hear
9 it.
10 MR. DAN SLOTCHIVER: Your Honor, once
11 again, once again, Your Honor.
12 THE COURT: Yes, ma'am. You can just
13 tell me what you relied on in the letter, and
14 without going into detail about what you think
15 that means.
16 THE WITNESS: Okay. I also relied
17 upon she may retain the capacity to recognize
18 family members and derive some enjoyment of social
19 interaction.
20 BY MR. BOYD:
21 Q. And is that opinion, Mrs. Cohen,
22 consistent with your own observations of Abbie?
23 A. Absolutely.
24 MS. MOORE: Judge Edmonds, I don't
25 know how much longer Mr. Boyd intends to go. I

1 just need a quick bathroom break.
2 THE COURT: Okay. Well, they're going
3 to speak just a moment. We'll take five minutes,
4 if that's okay.
5 MR. BOYD: Thank you, Your Honor.
6 THE COURT: Thank you.
7 (A recess transpired from 11:44 AM to
8 11:55 AM.)
9 THE COURT: Mr. Boyd?
10 MR. BOYD: Thank you, Your Honor.
11 Back on the record?
12 THE COURT: We are back on the record.
13 Thank you.
14 BY MR. BOYD:
15 Q. Mrs. Cohen, thank you for your
16 patience. I just -- I want to review -- we just
17 had some time to talk about this letter, and what
18 was it about the Hays letter --
19 THE COURT: And I'm guessing you mean
20 that we talked about this letter on the record?
21 MR. BOYD: Yes.
22 THE COURT: And not during the break?
23 MR. BOYD: Oh, yes. I'm sorry.
24 MR. DAN SLOTCHIVER: I believe she's
25 already testified as to what she relied on with

1 the Hays letter.
2 THE COURT: Yes, she did.
3 MR. BOYD: Well, your Honor, I'd just
4 like to ask her again to clarify if there was
5 anything else in the letter that she found
6 relevant or compelling or that influenced her
7 decision-making as a trustee.
8 THE COURT: If there's anything else?
9 MR. BOYD: Yes.
10 THE COURT: Yes. Thank you.
11 THE WITNESS: She is talking in this
12 letter about various procedures that have also
13 been --
14 MR. DAN SLOTCHIVER: Your Honor, I
15 would object to what she's talking about. I
16 understand the question was is there anything else
17 in the letter that she relied on, but not to have
18 an opportunity to read part of the letter to the
19 court.
20 THE COURT: Okay.
21 THE WITNESS: She's talking about --
22 okay. There is no --
23 MR. BOYD: Your Honor, can the witness
24 just be instructed to describe those passages of
25 the letter that she's referring to?

1 THE COURT: Yes. You can do that,
2 ma'am.
3 THE WITNESS: Okay. One of the things
4 that she's talking about is some things that have
5 developed since the time that Abbie was
6 hospitalized, and one of the things that would be
7 a newer innovation would be studies that show
8 whether or not there's damage to the nerves that
9 are called evoked potentials.
10 Is it okay to say that?
11 Evoked potentials, and we did since
12 have those done, and they did show that there's --
13 MR. DAN SLOTCHIVER: Your Honor, I
14 would object to any studies that have since been
15 done, if they have been done, if we don't have
16 knowledge or evidence of those documents, and I
17 don't believe that we do. Once again, these are
18 unchecked issues. We want to make sure that when
19 we address matters in the court, that these are
20 issues that we've been presented with before, and
21 we've had an opportunity to look into, rather than
22 just have a blanket statement that something was
23 done.
24 MR. BOYD: She's simply
25 explaining her -- Your Honor, counsel's objected

1 to the reading of the letter, per se. I'm simply
2 asking her to explain her reaction to the letter.
3 THE COURT: But then she went on to
4 say that there were some things that they -- I
5 believe some tests that they had performed on
6 Abbie, I guess based on --
7 THE WITNESS: They did not perform,
8 but she said the --
9 MR. DAN SLOTCHIVER: Your Honor, I
10 would object to what she said.
11 THE COURT: She's trying to clarify.
12 Let me just hear her clarification,
13 Mr. Slotchiver.
14 THE WITNESS: They did not perform,
15 but she's saying that would show evidence, and I
16 had those tests done, and they showed that there
17 was clear evidence there's no damage.
18 MR. DAN SLOTCHIVER: Your Honor, once
19 again, same objection.
20 THE COURT: Mr. Boyd?
21 MR. BOYD: Your Honor, again, counsel
22 has objected to the reading of the letter. I'm
23 simply asking her to give me her impressions of
24 the letter, how she relied upon it, how that
25 influenced her thinking and her actions as

1 trustee, which is directly relevant, because it's
2 directly what's under attack here.
3 THE COURT: Okay. But based on this
4 letter, Mrs. Cohen, you went forward and had
5 certain tests done on Abbie?
6 THE WITNESS: That's correct.
7 THE COURT: Thank you.
8 MR. BOYD: Thank you.
9 THE COURT: I will allow that.
10 MR. BOYD: Thank you, Your Honor.
11 BY MR. BOYD:
12 Q. Mrs. Cohen, I've just got a couple
13 more questions for you. I want to show you what
14 has previously been marked as Plaintiff's Exhibit
15 No. 86 in this matter. Do you recognize that
16 document?
17 A. Dissolution of marriage. Yes. This
18 is from 2008.
19 Q. Is that the opinion -- is that the
20 opinion of the court order that we've just been
21 discussing here on the record just recently? Is
22 that the opinion of the California court that
23 we've just been discussing?
24 A. It's a decision, yes.
25 Q. Let me ask you this, Mrs. Cohen: What

1 is the date of that document?
2 A. 4/7/2011.
3 Q. So obviously, Mrs. Cohen, for
4 decisions that you made prior to April of 2011,
5 this document would have had no bearing for you
6 because it didn't exist, correct?
7 A. That's correct.
8 Q. Let me ask you, the first -- second
9 paragraph under -- second paragraph under
10 Section 1, would you read the first sentence of
11 the second paragraph, please?
12 A. Who have transferred their home into a
13 virtual hospital.
14 Q. No, excuse me, first sentence.
15 A. There is no doubt in the court's mind
16 that Abbie suffers from a profound brain injury --
17 is that what you want?
18 Q. Yes.
19 A. -- that has lead to her nearly total
20 and complete disability. Abbie suffered --
21 Q. That's good. Does the court say total
22 and complete disability?
23 A. No, nearly total.
24 Q. What do you infer from that statement?
25 A. That nearly means that it was not

1 complete, even in their minds.
2 MR. DAN SLOTCHIVER: I object, Your
3 Honor, with reference to the comment about their
4 minds.
5 THE WITNESS: It's nearly complete.
6 THE COURT: Thank you. The court will
7 strike that.
8 BY MR. BOYD:
9 Q. Later in that paragraph, Mrs. Cohen,
10 the court states that Abbie's conservators,
11 referring to you and your husband, have
12 transformed their home into a virtual hospital to
13 accommodate Abbie's special needs. Is that a true
14 statement?
15 A. That is absolutely a true statement.
16 Q. Can you briefly describe some of the
17 ways you've transformed your home?
18 MR. DAN SLOTCHIVER: Object to
19 relevancy, Your Honor. No doubt about the fact
20 that she sustained horrific injuries, but the fact
21 they transformed their home has nothing to do with
22 the case at hand, and we're going to spend a lot
23 of time talking about something that really
24 doesn't make any difference at the end of the day.
25 THE COURT: Well, I guess did they use

1 funds from the trust to pay for it?
2 MR. DAN SLOTCHIVER: There's no
3 argument that the funds from the trust to pay for
4 the transformation of their home was improper. We
5 have not alleged that in any way whatsoever.
6 THE COURT: Mr. Boyd?
7 MR. DAVIS: I'll withdraw the
8 question, Your Honor.
9 THE COURT: Thank you.
10 BY MR. BOYD:
11 Q. Did you understand, in the California
12 proceeding, Mrs. Cohen, that Abbie was
13 characterized by Mr. Dorn as an unfit parent?
14 A. Yes.
15 Q. Let me also -- on Page 2, at the last
16 full paragraph, not the quote, but the last full
17 paragraph of the court's order, would you read the
18 first sentence of that paragraph, please?
19 A. However, the court does not agree with
20 Dan that Abbie's profound and permanent disability
21 alone makes Abbie an unfit parent, which would
22 disqualify her conservators from seeking
23 visitation.
24 Q. And did, in fact, the court order
25 visitation for Abbie on a regular basis as a

1 result of this order?
2 MR. DAN SLOTCHIVER: Objection, Your
3 Honor. That's mischaracterizing the statement.
4 It ordered visitation of the children to Abbie,
5 not visitation of Abbie with the children, and
6 there's a fine distinction made in the court's
7 order.
8 THE COURT: Mr. Boyd?
9 MR. BOYD: Your Honor, the order
10 speaks for itself and --
11 MR. DAN SLOTCHIVER: It does, Your
12 Honor.
13 THE COURT: So I'll review it.
14 MR. BOYD: Excuse me?
15 THE COURT: So I'll review it.
16 MR. BOYD: Okay.
17 THE COURT: Thank you.
18 BY MR. BOYD:
19 Q. The court also mentions in the order
20 life expectancy of Abbie?
21 A. Yes.
22 Q. Let me ask you, on Page 4, the second
23 full paragraph, second sentence, let me ask you,
24 would you read that provision from the court
25 order?

1 A. Abbie has already outlived the life
2 expectancy given to her by her treating physicians
3 because of Susan's -- because of Susan's extremely
4 persistent devoted attention to every detail of
5 Abbie's life.
6 Q. Mrs. Cohen, what was Mr. Dorn's
7 initial -- or what was his position with respect
8 to visitation in the matter when the issue first
9 arose?
10 A. When it first arose, he checked that
11 she could have visitation.
12 Q. But then later he opposed visitation?
13 A. That's correct.
14 Q. Did he ever advise you that visitation
15 would be appropriate when the children were six or
16 seven?
17 A. That may have been one of the things
18 he said. He was always going back and forth.
19 Q. What was the initial life expectancy
20 of Abbie when she first was released from
21 Cedars-Sinai?
22 MR. DAN SLOTCHIVER: Your Honor, if
23 she can lay a foundation. Otherwise, I would
24 object.
25 BY MR. BOYD:

1 Q. What was your understanding to be --
2 MR. DAN SLOTCHIVER: Once again, I
3 think there needs to be a foundation to give an
4 understanding as to someone's life expectancy.
5 BY MR. BOYD:
6 Q. Did you have any information, Susan,
7 as to what life expectancy could be expected as a
8 result of Abbie's injuries?
9 MR. DAN SLOTCHIVER: Your Honor, once
10 again, I'll object. Other than the reference in
11 the court's order, we're not aware of any document
12 that sets that forth, so whatever testimony she's
13 going to be giving at this point would not be
14 proper.
15 MR. BOYD: Your Honor, she's free to
16 testify to the extent of her knowledge. She
17 hasn't even identified -- we're trying to -- he
18 wants a foundation. I'm trying to lay it. And
19 she's not even given -- she's not even given the
20 specific opportunity to provide the specific
21 source of her information.
22 THE COURT: If you'd like to lay a
23 foundation, Mr. Boyd.
24 BY MR. BOYD:
25 Q. Did you have any basis to form an

1 understanding, Mrs. Cohen, as to the life
2 expectancy of Abbie Dorn at any point following
3 the accident?
4 A. Yes.
5 Q. And what was that?
6 A. Can I mention doctors or not? What am
7 I supposed to --
8 Q. Yes, whatever was the basis for your
9 information.
10 A. Yes. The doctors did tell me --
11 MR. DAN SLOTCHIVER: Your Honor, I
12 would object, and partly, Your Honor, because on
13 direct examination, she testified that, God
14 willing, she'll live for decades.
15 THE WITNESS: And God willing, she
16 will.
17 MR. DAN SLOTCHIVER: And now she's
18 giving a basis, but she has no -- she's telling us
19 what a doctor said, and it's not proper testimony.
20 MR. BOYD: Your Honor, the initial
21 life expectancy of Abbie Dorn following this
22 accident was far surpassed by the six to seven
23 years that Dan Dorn wanted the conservators, the
24 trustees, to wait for an appropriate time for
25 visitation.

1 MR. DAN SLOTCHIVER: Your Honor, now
2 he's testifying. I believe Your Honor stated
3 earlier that you would look at the order, and it
4 speaks for itself is what we talked about. The
5 order does give a life expectancy. She's
6 testified also. But other than that, I don't
7 think it would be proper.
8 MR. BOYD: Your Honor, she's giving
9 us -- he asked for a foundation. She's giving us
10 the basis for her information, which, by the way,
11 you can't have a specific objection to until she
12 identifies the specific source.
13 MR. DAN SLOTCHIVER: Number one, Your
14 Honor, I asked for a proper foundation, as opposed
15 to saying what the doctor told me, X, Y, Z, and
16 she started to testify a moment ago that based on
17 the doctor's conversations and talking to the
18 doctors. Unless she has some -- I don't believe
19 she has any knowledge of her own will that she can
20 testify to or any basis of her own -- any
21 determination that she's made based on her own
22 training, and without that, I believe that the
23 document speaks for itself. She can guess, but to
24 give an opinion would be improper.
25 MR. BOYD: She's not giving an

1 opinion, Your Honor. She's giving a
2 recapitulation based on her personal knowledge,
3 which was formed by consulting with whoever the
4 treating physicians, the other parties involved
5 were at the time, what was generally represented
6 to the trustees as the life expectancy of Abbie
7 Dorn.
8 MR. DAN SLOTCHIVER: And once again,
9 Your Honor, we're back to the same place we've
10 been over and over again in this case. A
11 recapitulation based on all my conversations I had
12 with all these people is hearsay.
13 MR. BOYD: No, Your Honor, actually,
14 it's not. In Rule 803, Subpart 4, statements for
15 purposes of medical diagnosis or treatment:
16 Statements made for purposes of medical diagnosis
17 or treatment in describing medical history, past
18 or present symptoms, pain sensations, or the
19 inception of general character/cause of the
20 external source effectively related to diagnosis
21 or treatment are a specific exception to the
22 hearsay rule.
23 MR. DAN SLOTCHIVER: None of those
24 applied to life expectancy.
25 MR. BOYD: Your Honor, we're talking

1 about statements made in the context of medical
2 treatment and prognosis. Part of prognosis is
3 life expectancy.
4 THE COURT: I will allow it. Thank
5 you.
6 BY MR. BOYD:
7 Q. Mrs. Cohen, again, I would ask you do
8 you recall any conversations at the time which
9 gave you a basis to form an opinion as to what
10 Abbie Dorn's life expectancy was?
11 A. Yes, I do, and as I said, God willing,
12 she'll live, and we will. But I did have many
13 conversations with her pulmonologist and her
14 infectious disease doctor about the risk, that she
15 was at high risk, and I certainly was very aware
16 and very concerned, and it was very important to
17 me that she have what was most important to her in
18 her world, and that was to see her children.
19 MR. DAN SLOTCHIVER: Your Honor, I
20 would like to object. This has gone well beyond
21 the issue. And once again, this is just another
22 example over and over again of interjecting facts
23 that are not before the court.
24 THE COURT: I will strike that
25 statement.

1 MR. DAN SLOTCHIVER: Could you please
2 admonish the witness to please answer the question
3 presented and not use it as a podium to talk about
4 what she wants to talk about?
5 THE COURT: Yes, ma'am. You can't
6 tell me what you believe Abbie wanted or that this
7 is what she wanted, this is most important to her,
8 when you talk about pursuing visitation with her.
9 THE WITNESS: Can I talk about what
10 was important to me?
11 THE COURT: Yes, ma'am, you can talk
12 about what was important to you, all right.
13 THE WITNESS: It was important to me
14 that Abbie have what she --
15 MR. DAN SLOTCHIVER: Your Honor --
16 THE COURT: Not what she needed, not
17 what she wanted.
18 THE WITNESS: That it be for Abbie.
19 Is that okay?
20 THE COURT: That's fine.
21 THE WITNESS: Okay.
22 BY MR. BOYD:
23 Q. Let me ask you this, Mrs. Cohen, and
24 we'll wrap up: Let's turn to Page 8 of the order,
25 and I just ask you to read the first sentence of

1 this paragraph near the bottom of the page. If
2 you'd just read that first --
3 A. Yes. The court does not agree with
4 Dan's desire to delay the visitation until the
5 children are six or seven, because Abbie has
6 already outlived her life expectancy.
7 Q. And, Mrs. Cohen, if you would also
8 read just the first sentence of Paragraph B of
9 that same section.
10 A. Abbie, by and through her
11 conservators, is granted visitation one time each
12 year for a period of five consecutive days,
13 commencing in the summer 2011.
14 Q. Mrs. Cohen, does it say the children
15 are granted visitation, or does it say Abbie is
16 granted visitation?
17 A. It says Abbie is granted visitation.
18 Q. So ultimately, at the end of all this,
19 the court found that Abbie had a right to
20 visitation with her children?
21 A. Yes.
22 Q. Mrs. Cohen, let me ask you this --
23 MR. DAN SLOTCHIVER: Your Honor, I
24 object to that statement. I believe it's taken
25 out of context, and the order speaks for itself.

1 THE COURT: Thank you. So noted.
2 BY MR. BOYD:
3 Q. Mrs. Cohen, let me ask you this: Do
4 you believe, based on your experience, the
5 totality of your experience serving as Abbie's
6 caretaker, her guardian, her trustee, and her
7 conservator, do you believe, based on your years
8 of experience caring and providing for Abbie, do
9 you believe that she receives a benefit from
10 visitation with the children?
11 MR. DAN SLOTCHIVER: Objection, Your
12 Honor.
13 THE WITNESS: Absolutely.
14 MR. DAN SLOTCHIVER: Objection, Your
15 Honor. This goes back to the same issue. She
16 cannot testify as to a benefit that Abbie
17 receives. She can testify as to what she wants
18 and what she knows and what she observes, but not
19 as to what Abbie perceives. It would be no
20 different than testifying as to what's inside Dan
21 Dorn's mind or a lawyer's mind or anybody else's
22 mind. It's improper, Your Honor.
23 MR. BOYD: I'm asking for her
24 observations and her opinion formed on the basis
25 of her observations over the years caring for her

1 daughter, Your Honor.
2 THE COURT: I will allow it to that
3 extent only, her opinion.
4 BY MR. BOYD:
5 Q. And I would again repeat my question
6 without restating it.
7 A. In my opinion, absolutely Abbie
8 receives great benefit from seeing her children.
9 MR. DAN SLOTCHIVER: And your Honor,
10 if I may add one more thing. Mrs. Cohen's not
11 even present during the visits, so I'm not really
12 sure how this testimony could even come into
13 evidence to begin with. The visits do not allow
14 her to be present when the children are there.
15 MR. BOYD: Your Honor, she's --
16 MR. DAN SLOTCHIVER: Once again, I
17 would just reiterate my objection to it, Your
18 Honor. I believe it would be improper for her to
19 testify as to a benefit in her opinion when she's
20 not even present to see the children when they go
21 to visit.
22 MR. BOYD: Your Honor, she is around
23 Abbie constantly. She may be not physically
24 present in the room during the visit itself, but
25 she's around Abbie before the visit, she's in the

1 vicinity during the visit, and she's obviously
2 again around Abbie after the visit. She's
3 perfectly capable of testifying as to her opinions
4 formed on the basis of her own observations.
5 THE COURT: I will certainly take note
6 of your objection --
7 MR. DAN SLOTCHIVER: Thank you, Your
8 Honor.
9 THE COURT: -- due to the fact that
10 she's not present during the visit.
11 MR. DAN SLOTCHIVER: Thank you.
12 THE COURT: Thank you.
13 BY MR. BOYD:
14 Q. And again, Mrs. Cohen, is there
15 anything else that you'd like to say in response
16 to that question? I believe you started your
17 answer.
18 A. I am always present before and after,
19 and I see Abbie every day, and I know what I
20 observe.
21 Q. Thank you, Mrs. Cohen.
22 MR. BOYD: No further questions for
23 this witness.
24 THE WITNESS: Thank you. Should I get
25 down?

1 THE COURT: No, ma'am. Just a moment,
2 please.
3 I'm not sure who wants to examine,
4 maybe Ms. Hedgepath.
5 MS. HEDGEPATH: Your Honor, I would,
6 but if it pleases the court, now would be a good
7 time to break for lunch. I need to gather all of
8 the exhibits, since we didn't get copies, that the
9 petitioner submitted -- we saw them only on the
10 screen -- and to also organize those of Mr. Boyd.
11 That would be of benefit to me. I don't know if
12 Mr. Kachmarsky needs to do the same or Ms. Moore.
13 THE COURT: I assume that you will
14 have some questions for Mrs. Cohen, Ms. Hedgepath?
15 MS. HEDGEPATH: I will.
16 THE COURT: Mr. Kachmarsky, are you
17 going to examine?
18 MR. KACHMARSKY: I will, yes.
19 THE COURT: So why don't we break now
20 for lunch, then, if that would be of benefit, to
21 give you a little bit of time. It's 12:15. Come
22 back at 1:30. Is an hour and 15 minutes enough
23 time?
24 MR. DAN SLOTCHIVER: Yes, Your Honor.
25 MR. BOYD: Yes, Your Honor.

1 THE COURT: Then we'll adjourn until
2 after lunch. Thank you. I'll make sure we lock
3 the courtroom, so everybody can leave their things
4 in here.
5 (A luncheon recess transpired from
6 12:16 PM to 1:44 PM.)
7 THE COURT: We are back on the record
8 in the matter of Abbie Dorn, and Mrs. Cohen is
9 back on the stand, and I believe Ms. Hedgepath was
10 going to begin her examination.
11 MS. HEDGEPATH: I don't know how this
12 is going to work, so bear with me.
13 MR. DAN SLOTCHIVER: I couldn't hear.
14 I'm sorry. Could you repeat that?
15 MS. HEDGEPATH: I'm just mumbling. I
16 was telling the judge I didn't know how this was
17 going to work, but hopefully, over here, at least
18 Mrs. Cohen will be looking at me and at the judge
19 and you gentlemen as well.
20 CROSS-EXAMINATION
21 BY MS. HEDGEPATH:
22 Q. Mrs. Cohen, how are you?
23 A. I'm fine. Thank you.
24 Q. You do understand that I represent
25 Abbie Dorn?

1 A. Yes.
2 Q. And Abbie Dorn alone?
3 A. Yes, I do.
4 Q. And I'm going to ask the court for
5 whatever is in Abbie's best interest, regardless
6 of whether it might be in you and Dr. Cohen's best
7 interest. You do understand that?
8 A. I understand that, yes. Thank you.
9 Q. And you do realize that the
10 petitioners in this action and the guardian ad
11 litem for the children, they are all asking not
12 only for you to possibly replace some of the money
13 that's been removed from the trust, you and
14 Dr. Cohen to replace that, but not only that, but
15 for the two of you to be removed as trustees?
16 A. Correct.
17 Q. You are aware of that?
18 A. Yes, I am.
19 Q. I want to ask you if you and Dr. Cohen
20 have in any way personally benefited from any of
21 the monies that went into the trust for Abbie?
22 A. Absolutely not.
23 Q. Have you used any of that money, any
24 whatsoever, for things for yourself personally?
25 A. Absolutely not.

1 Q. Now, you realize that per the trust
2 document, I believe that you're entitled to
3 compensation, you as trustees?
4 A. Correct.
5 Q. Have you taken any compensation for
6 yourself?
7 A. No, none at all.
8 Q. Do you intend to?
9 A. It's not my plan, no.
10 Q. Is it fair to say that the two of you,
11 in essence, have dedicated your lives to caring
12 for Abbie?
13 A. Yes, that would be correct.
14 Q. Tell the court, just briefly, so that
15 she may know, what arrangements you have made for
16 the physical care of Abbie, i.e., your home,
17 caregivers, and so forth.
18 MR. DAN SLOTCHIVER: Your Honor, if I
19 may?
20 THE COURT: Yes, sir.
21 MR. DAN SLOTCHIVER: We had an
22 objection earlier with Mr. Boyd on the same line
23 of questioning. Nobody is disputing the fact
24 that -- we're not disputing the fact that as
25 guardians, they provided their home, they made

1 arrangements to the home, they've done things
2 necessary in order to cater to Abbie, but that's
3 not before the court at this point, and I would
4 object as to the relevancy of going into testimony
5 about what they've done within the home, because
6 nobody -- we're not disputing that.
7 THE COURT: Ms. Hedgepath?
8 MS. HEDGEPATH: Your Honor, they are
9 asking for the removal of these two as trustees,
10 and I want to show Your Honor that there is nobody
11 whom I'm aware that can serve Abbie better than
12 they can, no one that would have Abbie's best
13 interest at heart any more than the two of these.
14 MR. DAN SLOTCHIVER: And this
15 argument, I believe, Your Honor, would more
16 appropriately be fitting if we were seeking to
17 remove them as guardians, but the only issue that
18 we are presented, that we presented to the court,
19 deals with removal as trustees and conservators,
20 money issues, so I believe there is a distinction
21 between the money issues and guardian issues.
22 MS. HEDGEPATH: And Your Honor, I
23 would argue the same thing would apply as to the
24 money issues, because of their love and devotion,
25 as I've seen it, from them to Abbie, they are more

1 likely to be lenient in spending something that
2 might be beneficial to Abbie that a bank over here
3 as trustee may not agree with.
4 No one -- what I'm trying to establish
5 for the court, and I will just go into this
6 briefly, is that they know her better than anyone.
7 A bank or a corporate entity might well be less
8 willing to allow the things that the Cohens
9 believe that she needs by virtue of being there on
10 a day-to-day basis.
11 MR. DAN SLOTCHIVER: I certainly agree
12 that a bank or a corporate trustee would likely be
13 less willing to allow them to do the things that
14 they have done. I disagree also, Your Honor -- I
15 do disagree with the statement that they know her
16 better.
17 We represent her husband, the man that
18 was married to her, that had children with her,
19 and for them to say they know her better, I would
20 disagree with that statement.
21 But the question now is acting in the
22 fiduciary capacity, how does the accommodations
23 they made to the home and the personal care they
24 provided to her as guardians, how does that
25 interplay into the arguments that are before the

1 court dealing with conservators and trustees? I
2 think they really are separate, and I would ask
3 that -- I would argue that it would be irrelevant.
4 THE COURT: I'm going to allow
5 Ms. Hedgepath to go into this testimony a little
6 bit.
7 MR. DAN SLOTCHIVER: Thank you, Your
8 Honor.
9 THE COURT: Thank you.
10 BY MS. HEDGEPATH:
11 Q. Mrs. Cohen, we'll just touch on this
12 briefly.
13 A. Okay.
14 Q. But I want you to let the judge know
15 how you have spent your money and/or Abbie's money
16 for the benefit of Abbie.
17 A. Okay.
18 Q. And if it's been your money that
19 you've spent individually, let the judge know
20 that. Differentiate between that and the trust
21 money.
22 A. From the time that Abbie left Oxnard,
23 which was her first place where she was cared for,
24 we paid for everything. We were paying initially
25 $1,650 a day with cash from our retirement funds.

1 We paid for everything. I did not have a
2 caretaker at night, because that was another $230,
3 and I --
4 Q. Now, you're going to have to slow
5 down. As my husband would say, you're talking
6 faster than I can listen.
7 A. Okay. We did not engage a caretaker
8 at night, which was an option that we had at the
9 facility, because it was an additional $230 a
10 night. We wanted our funds to last as long as it
11 was needed for Abbie to receive the care that we
12 believed that she had qualified to be admitted.
13 She did have to pass tests to be admitted. She
14 had to track. She had to do certain things that
15 would show that her mind was alert enough to
16 benefit by rehab. They don't just take you
17 because you can pay. You have to be accepted.
18 So she had been evaluated and accepted
19 into the facility, so we -- and her insurance did
20 not cover anything on it, didn't even cover the
21 doctor care, because we were taking her out of
22 county. It only covered her medications. That
23 was the only thing that her Blue Cross covered.
24 So we paid for everything, and every
25 additional -- we also brought in additional --

1 arranged for an additional physician to take care
2 of her independently, besides the one that they
3 had there, because we wanted her to have a
4 continuous basis of having a doctor take care of
5 her. So we spent money on a great many things of
6 our own.
7 When we came back, we paid -- we were
8 reimbursed for all this, but we did pay for the
9 private plane to bring her back. We arranged for
10 everything.
11 And I was so overwhelmed by the whole
12 thing that until recently, which you can see from
13 my accounting, I didn't even know that I had not
14 reimbursed myself for $85,000 when we were allowed
15 to reimburse ourselves, because it just didn't
16 matter. All the care --
17 Q. And when you say for the $85,000, what
18 was that for, Mrs. Cohen?
19 A. They were monies that were still owed
20 to the Centre for Neuro Skills because they had
21 not -- I had asked for a particular kind of
22 accounting, so that we could submit the bills, and
23 they had their bills, but they had made a mess of
24 the bills.
25 Q. So do I understand that you had paid

1 that, but did not ask the trust to reimburse you?
2 A. Right, had paid it and did not -- I
3 didn't even know that -- I had it so mixed up, the
4 whole thing, that until the accounting was
5 completed -- I didn't even know until I guess it
6 was 2011 that I had not paid myself back that
7 $85,000.
8 So it was never our intention to do
9 anything but care for our daughter, and we would
10 have cared for our daughter whether or not there
11 had been an award, so that has been -- all of our
12 intention has been in doing what's in Abbie's best
13 interest. It's all been about Abbie, in the
14 beginning, in doing what we felt was the very best
15 for Abbie.
16 Q. And just briefly let the judge know
17 how you have turned your house -- I want to say
18 upside down, but that's certainly not appropriate,
19 how you have changed your house to benefit Abbie.
20 A. Okay. Well, the entire first floor is
21 all for Abbie. There is not a room in the first
22 floor that's not completely dedicated to Abbie.
23 Beginning with the downstairs, the master bedroom,
24 that is completely Abbie's suite, so there's an
25 attached bathroom that's handicapped accessible.

1 There's a ramp that goes to the porch. On the
2 porch, we have a hammock. We did use her funds to
3 enclose the porch, so that she could use it all
4 year. She likes to be in her hammock. That's one
5 of her favorite things.
6 MR. DAN SLOTCHIVER: Your Honor, I
7 object to the relevance as to what she likes.
8 Without the relevance, I object to the testimony,
9 and I ask that it be stricken.
10 THE COURT: I'll strike what she
11 likes.
12 MR. DAN SLOTCHIVER: Thank you, Your
13 Honor.
14 THE WITNESS: Okay. It's pleasant for
15 her to be on the porch.
16 MR. DAN SLOTCHIVER: Your Honor, once
17 again, this has been a perpetual objection
18 throughout Mrs. Cohen's testimony. I would ask
19 that it be stricken.
20 THE COURT: I'll strike that it's what
21 she likes, I believe you said?
22 THE WITNESS: Pleasant for her.
23 THE COURT: Pleasant for her. No,
24 ma'am. I'll strike that too.
25 THE WITNESS: How about it expands the

1 life of the porch to enclose it. We have made
2 that an additional room for -- just for Abbie's
3 needs.
4 And then you move on into the hallway,
5 and you will find that the library that we have
6 designed is all filled with supplies for Abbie,
7 and we put in a water table into that room, which
8 is something that massages her and helps -- just
9 helps, I guess.
10 BY MS. HEDGEPATH:
11 Q. Now, Mrs. Cohen, the changes that were
12 made to the house to accommodate Abbie, did you
13 and Dr. Cohen pay for those, or were they paid for
14 by the trust?
15 A. The only thing that Abbie paid for was
16 the part to enclose her porch and to make that --
17 Q. And when you say Abbie, you mean those
18 funds came from the trust?
19 A. I'm sorry, from the trust.
20 And also, we had already put on
21 hurricane shields, but we made the decision that
22 unless it was a Category 4 or 5, we would not take
23 Abbie if there was a hurricane, so we actually put
24 on hurricane glass out of her trust money on her
25 windows and put the hurricane shutters on her two

1 doors.
2 Q. And other than those things that
3 you've told me about, you and Dr. Cohen paid them
4 personally, and the trust did not?
5 A. Yes, that's correct.
6 Q. Now, I want to -- let's move on to the
7 California action.
8 A. Okay.
9 Q. There's been a lot of discussion, a
10 lot of pleadings, a lot of accusations about the
11 amount of money that was spent in California,
12 okay. I want you to take a look at what has been
13 introduced as R-7. Now, there have been
14 accusations that this California action was
15 basically an action for grandparent rights.
16 You've discussed that briefly about how you could
17 not care for the grandchildren?
18 A. That's correct.
19 Q. You love them, you just don't have the
20 ability to do it?
21 A. That's correct.
22 Q. But you did bring this action in
23 California as conservators and trustees for Abbie.
24 Is that correct?
25 A. That's correct.

1 Q. In fact, you got appointed in order to
2 do that. Is that correct?
3 A. That's correct.
4 Q. Now, I want you to look at R-7, the
5 document that -- the exhibit that is in front of
6 you.
7 A. Okay.
8 Q. And if you'll look in the third box
9 down, that has the petitioner as Abbie Ilene Dorn.
10 Is that correct?
11 A. The third block, declaration regarding
12 minor children?
13 Q. Have I given the wrong thing? The
14 third block down, one, two, three.
15 A. Oh, I'm sorry. I thought you meant
16 No. 3. Okay. Yes, it's Abbie Ilene Dorn is the
17 petitioner.
18 Q. Were you aware, when you filed these
19 documents, that grandparents could not be awarded
20 visitation or custody in the state of California?
21 A. As far as I knew, that was correct.
22 Q. Did you ever inquire into whether or
23 not you could be granted custody or visitation?
24 A. No. I was not capable of custody.
25 Q. Fair to say you were just concerned

1 about getting visitation for Abbie?
2 A. Absolutely.
3 Q. Now, the fourth block down, they have
4 three types of action on this form. And this is a
5 California form, apparently. It has dissolution
6 of marriage, legal separation, nullity of
7 marriage, and then a block for amended?
8 A. Correct.
9 Q. And you checked dissolution of
10 marriage?
11 A. Yes.
12 Q. Did they have a block for child
13 visitation?
14 A. Not on this form. Well, I don't know.
15 Let me look. Let me look.
16 Q. But you checked the block for
17 dissolution of marriage?
18 A. Are you talking about on the next
19 page?
20 Q. No, ma'am. I'm talking about in that
21 fourth block where we just discussed.
22 A. No. There was nothing in the fourth
23 block, if that's what you mean.
24 Q. But in that form, though it was
25 entitled: Dissolution of Marriage, you also

1 entered information concerning the children. Is
2 that correct?
3 A. That's correct.
4 Q. And was it your intent, in filling out
5 this form and filing it with the court, to ask the
6 court to deal with issues concerning the children?
7 A. Absolutely.
8 Q. Especially visitation?
9 A. Visitation for Abbie, that's correct.
10 Q. And in Item 3, you set forth the names
11 and dates of birth of all three children. Is that
12 correct?
13 A. Yes, it is.
14 Q. And not only did you ask for issues
15 concerning the children, in Item 4, you asked
16 about the division of property of the married
17 couple. Is that correct?
18 A. That's correct.
19 Q. Let's go on over to Page 2. In Item
20 No. 6, you have checked that the petitioner, i.e.
21 Abbie, requests dissolution of the marriage?
22 A. Yes.
23 Q. And you gave some testimony briefly
24 early about that?
25 A. Right.

1 Q. And I believe your testimony was that
2 you were doing that at the request of Dan Dorn?
3 A. Yes.
4 Q. Explain to me again why Dan Dorn did
5 not want to pursue the dissolution or the divorce
6 himself.
7 MR. DAN SLOTCHIVER: Objection.
8 THE WITNESS: He told me he'd be
9 embarrassed.
10 MR. DAN SLOTCHIVER: I'll withdraw the
11 objection.
12 THE COURT: Thank you.
13 BY MS. HEDGEPATH:
14 Q. He was embarrassed?
15 A. That's what he told me, that he'd be
16 embarrassed.
17 Q. He wanted to divorce his wife, but he
18 was embarrassed?
19 A. Yes.
20 Q. Now I want you to go down to Item
21 No. 7 for me on that same page.
22 A. Yes.
23 Q. And on 7A, you asked that legal
24 custody of the children be granted to respondent.
25 That was Dan Dorn. Is that correct?

1 A. That's correct.
2 Q. And you asked that physical custody of
3 the children be granted to Dan Dorn. Is that
4 correct?
5 A. That is correct.
6 Q. But you asked that visitation be
7 granted to the petitioner, Abbie, correct?
8 A. That's correct, yes.
9 Q. So all this, all these issues that we
10 have discussed, was filed and was to be heard in
11 one action?
12 A. That's correct.
13 Q. That action being filed on January 8th
14 of 2008 in Los Angeles Superior Court?
15 A. Yes.
16 Q. Under one case number?
17 A. That's correct.
18 Q. Now, let's look at how Mr. Dorn
19 answered and responded to that. I want to show
20 you what has been marked as R-8.
21 If you'll give that one back to me so
22 the court reporter won't spank me.
23 Now, R-8, you're familiar with that
24 document. Am I correct?
25 A. Yes.

1 Q. And you received a copy of this
2 document when it was filed. Is that correct?
3 A. That's correct.
4 Q. And is this the response of Daniel
5 Dorn to the petition to which you've just been
6 testifying?
7 A. Yes, it is.
8 Q. Now, if you'll look in the fourth
9 block down, he sets forth that, too, it's a
10 response to the dissolution of marriage?
11 A. Yes.
12 Q. Though he addresses other issues than
13 just the dissolution. Is that correct?
14 A. That's correct.
15 Q. He, too, sets forth the names and
16 dates of birth of the children, correct?
17 A. Yes.
18 Q. And he, too, mentions the division of
19 the property of the parties in Item 4?
20 A. Yes.
21 Q. Just as you did?
22 A. Yes.
23 Q. And in Item 8, he, too, responded by
24 saying that he requested the dissolution of the
25 marriage, correct?

A. Yes.
Q. Now, let's go down to Item No. 9, issues concerning the children. You see Item No. 9, midway Page 2?
A. Yes, yes.
Q. He requested, as you did, that legal custody of the children be given to him. Is that correct?
A. That's correct.
Q. And he also requested, as you did, that physical custody be given to him?
A. Yes.
Q. Now, in 9C, he also asks that visitation be given to Abbie, did he not?
A. Yes, he did.
Q. But things changed, didn't they?
A. Yes, they did.
Q. In fact, let's look at R-9. This, is it not, is an application where he seeks a separate trial on the issue of divorce?
A. The dissolution part, yes, that's correct.
Q. And why did he want to, if you know -- Or let me ask you this: Did Dan Dorn or his -- did Dan Dorn give you a reason why he

wanted to proceed with the divorce before resolving everything at one time?
A. He wanted to get married again.
Q. Pardon?
A. He wanted to get married again.
Q. Did he tell you that?
A. I believe at some point he did, but he just wanted to end it quickly, the actual legal status.
Q. This pleading that was filed May 30th, that was merely just asking the court to allow him to go ahead and get a divorce and resolve the other issues later. Is that correct?
A. Yes.
MR. DAN SLOTCHIVER: Your Honor, I object. That's not what the language says in the document. It refers to a dissolution of marriage.
MS. HEDGEPATH: We'll let the document speak for itself, Your Honor.
MR. DAN SLOTCHIVER: Be happy to do it, but I wanted to clarify that, Your Honor.
THE COURT: So we'll withdraw that question. We'll let it speak for itself.
MS. HEDGEPATH: Yes, ma'am.
BY MS. HEDGEPATH:

Q. Now, you did not want to proceed in that direction, did you?
A. No, I did not.
Q. I'm going to show you a document that we will mark as --
THE COURT: Is this something you're introducing, Ms. Hedgepath?
MS. HEDGEPATH: Yes, ma'am.
THE COURT: R-1, No. 1.
MS. HEDGEPATH: But we have Reese's --
THE COURT: I know. He's respondent. She's Respondent 2. I'm sorry, Respondent 2, and this will be her first document.
BY MS. HEDGEPATH:
Q. Well, let me make sure you can identify it before I introduce it. Can you identify the document that I am handing you, Mrs. Cohen, as a document that was filed by you?
A. Yes, from Marina Korol.
MR. DAN SLOTCHIVER: Your Honor?
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: If I can make the same objection I made with reference to the documents that Mr. Boyd was attempting to introduce earlier. You overruled my objection,

but it came down to the issue of not being provided pursuant to discovery that was filed with the court and as to relevancy. I understand your ruling earlier, but I wanted to at least put the objection on the record.
THE COURT: All right.
MR. DAN SLOTCHIVER: And I understand that it's being made by different counsel, but I think the distinction is it doesn't really exist, and the reason is because if it's discoverable, it's discoverable, and anything that Ms. Hedgepath would have, she arguably would have had to have gotten either through counsel or through the Cohens, and if she got it through the Cohens, they had an obligation to turn it over via discovery to us. If she obtained it otherwise, certainly, that's a different situation. I just don't know if that's the case.
But anything that's discoverable, the Cohens, through their counsel, should have provided to us. I understand that she received this through the court filing, but it doesn't waive the fact that it was required to have been produced to us, I believe, through discovery, so I wanted to place that objection on the record.

1 THE COURT: Ms. Hedgepath?
2 MS. HEDGEPATH: We need to get this
3 clear, because it will come up again. I have been
4 served with no discovery requests, and I don't
5 think the rules require me to go out and
6 voluntarily guess or surmise what the opposing
7 party might want. He has requested no documents.
8 He hasn't served me with interrogatories. He
9 hasn't served me with a request for production.
10 MR. DAN SLOTCHIVER: And I agree
11 completely with that statement. However, the
12 process requires that the Cohens provide documents
13 to us when we seek discovery from them. It would
14 be improper to allow them to filter the documents
15 through Ms. Hedgepath and not have provided it
16 through themselves, and the scenario, and I think
17 it's quite clear, is that we can't get it in
18 through ourselves, because we haven't given it to
19 you, so let's give it to Ms. Hedgepath and have
20 her put it in, although the only reason she's got
21 this document is because we gave it to her.
22 THE COURT: Mr. Davis?
23 MR. DAVIS: Your Honor, I personally
24 handed him the document in this court. How else
25 could we provide him a copy?

1 MR. DAN SLOTCHIVER: And I don't
2 dispute that. That's why I said it was a filed
3 copy. And it's similar to the same argument I
4 made when Reese presented the documents. He
5 asserted that it was a filed copy that was
6 attached to I believe the affidavit of Lisa Meyer
7 and that he thought it was appropriate. I
8 objected to it. You ruled that it was
9 appropriate.
10 And I'm not disputing the fact that it
11 was provided. There were a lot of documents
12 provided. It was not provided pursuant to the
13 discovery. That's the objection I have. I
14 understand Your Honor has disagreed with that and
15 has overruled the objection, but I wanted to put
16 that on the record.
17 MS. HEDGEPATH: And, Your Honor, I may
18 have come over and copied this from my appointment
19 with the court file. I don't remember the date I
20 was appointed, but I did come over and copy
21 whatever was in the file. I cannot tell you
22 exactly from where I got this, but the point is, I
23 have not been served with discovery responses.
24 THE COURT: Thank you. And I will
25 overrule the objection, allow it in.

1 MR. DAN SLOTCHIVER: Thank you, Your
2 Honor.
3 THE COURT: So that's Respondent
4 No. 2, who is Ms. Hedgepath, on behalf of Abbie
5 Dorn. This is her Exhibit No. 1.
6 (RES. EXH. 2-1, Response of
7 Declaration to the Order to Show Cause as to
8 Request for Bifurcation or to Proceed with
9 Divorce, was marked for identification and
10 admitted into evidence.)
11 THE COURT: Ms. Hedgepath, are you
12 going to have Mrs. Cohen identify that, or did
13 she?
14 MS. HEDGEPATH: I did.
15 THE COURT: I'm sorry. I didn't get
16 what document that is.
17 MS. HEDGEPATH: This is entitled --
18 the petitioner is Abbie Dorn, Respondent Daniel
19 Dorn. It's a response of declaration to the order
20 to show cause as to his request for bifurcation or
21 to proceed with the divorce.
22 BY MS. HEDGEPATH:
23 Q. Mrs. Cohen, I'm handing you what you
24 have identified and what the court has marked as
25 R2-1. Was that document filed with you in the

1 California action?
2 A. Was it filed by me, did you say?
3 Q. Yes, ma'am. Was it filed at your
4 direction?
5 A. At my direction, yes.
6 Q. And I want you to look over to the
7 third page, No. 9.
8 A. Yes.
9 Q. And you indicated that you were
10 opposed to proceeding with the divorce. You
11 wanted to wind everything up, get it over with?
12 A. Exactly.
13 Q. No reason not to tie up all the loose
14 ends and put an end to it. Is that correct?
15 A. Exactly. That's what I wanted.
16 Q. And did you so indicate that in this
17 pleading?
18 A. That's exactly what I indicated.
19 Q. In fact, in Item 9, did you say that
20 you were opposing respondent's motion to bifurcate
21 marital status on the basis that it is premature
22 to terminate the status?
23 A. That's correct.
24 Q. When there are other more pressing
25 issues that need to be resolved?

1 A. That's correct.
2 Q. Did you state in this document that
3 there are no temporary orders which provide for
4 the children to visit?
5 A. That's correct.
6 Q. That discovery's not yet been
7 conducted to delve into the property and financial
8 issues?
9 A. That's correct.
10 Q. And did you further say that it would
11 serve both parties to resolve all the issues in a
12 full and final judgment, rather than parse each
13 issue separately?
14 A. Yes, that's correct.
15 Q. Did you think it would be less
16 expensive or expedient and so forth?
17 A. Much less expensive, exactly.
18 Q. And did you further set forth in the
19 pleading that it's your belief that all the issues
20 would take a back seat, and final resolution of
21 the matter would be further delayed if
22 respondent's motion is granted?
23 A. That's correct.
24 Q. By that, did you mean visitation?
25 A. I meant visitation, child support, all

1 the issues involved.
2 Q. But subsequently, this rule to show
3 cause was granted, and Mr. Dorn was able to
4 proceed with the divorce. Is that correct?
5 A. That's correct.
6 Q. And he was granted the divorce. Is
7 that correct?
8 A. That's correct.
9 MR. DAN SLOTCHIVER: Your Honor, I
10 only put an objection as to the
11 mischaracterization of the language. I believe
12 what he was able to proceed with was the
13 dissolution of the marriage.
14 THE COURT: Thank you. So noted.
15 BY MS. HEDGEPATH:
16 Q. I want to show you another document,
17 and you tell me if you recognize it.
18 MR. DAN SLOTCHIVER: Understanding the
19 court's ruling, it's the same objection as the
20 last document, Your Honor.
21 THE COURT: Thank you.
22 BY MS. HEDGEPATH:
23 Q. Mrs. Cohen, let me show you another
24 document that is entitled: Notice of Entry of
25 Judgment. Have you seen and are you familiar with

1 that document?
2 A. Yes.
3 Q. Is that the document whereby the
4 dissolution of marriage was granted in California?
5 A. Yes.
6 MS. HEDGEPATH: We'd mark this as
7 R2-2, if it please the court.
8 (RES. EXH. 2-2, Notice of Entry of
9 Judgment, was marked for identification.)
10 THE COURT: I will enter it with
11 objection by Mr. Slotchiver.
12 (RES. EXH. 2-2 was admitted into
13 evidence.)
14 THE COURT: And I'm assuming that was
15 also a document of record in this court that was
16 filed back in December of --
17 MR. DAN SLOTCHIVER: I believe this
18 may be a document we already put into evidence,
19 Your Honor.
20 THE COURT: So you're objecting to it?
21 MR. DAN SLOTCHIVER: Well, I mean,
22 under the manner that it was put in, but I believe
23 this is one that we already put into evidence, if
24 I'm not --
25 MS. HEDGEPATH: Please don't make me

1 go back and find it. Let me just duplicate it.
2 MR. DAN SLOTCHIVER: I think it's
3 No. 102.
4 THE COURT: Thank you.
5 MR. BOYD: Your Honor, if I can ask
6 for clarification. Are you reserving judgment, or
7 have you ruled?
8 THE COURT: No, sir. I noted his
9 objection on the record.
10 MR. BOYD: Overruled. Okay. I just
11 wanted to clarify that.
12 THE COURT: Yes. I'm sorry.
13 Overruled his objection. The document was
14 entered, notwithstanding his objection.
15 MR. DAN SLOTCHIVER: Same document.
16 MS. HEDGEPATH: Do you want me to
17 withdraw mine and refer to his, Your Honor?
18 MR. DAN SLOTCHIVER: Well, I want to
19 withdraw my objection insomuch as it appears to be
20 the same document, Your Honor, that was already
21 submitted as 102. I know we're all submitting our
22 own documents, but I believe it's the same thing
23 that's already been submitted.
24 THE COURT: All right. The record
25 notes that Mr. Slotchiver withdrew his objection

1 to Respondent No. 2, Exhibit No. 2.
2 BY MS. HEDGEPATH:
3 Q. Mrs. Cohen, the document that you have
4 just identified and that has been marked as R2-2,
5 this is a notice of entry of judgment for
6 dissolution status only. Is that correct?
7 A. Right, that's correct.
8 Q. And is that set forth by checking the
9 Block 2 on this order?
10 A. Yes.
11 Q. And this was filed with the court in
12 California on September the 11th of 2008. Is that
13 correct?
14 A. That's correct.
15 Q. Now, the argument is being made that
16 you had authority, you and Dr. Cohen as
17 cotrustees, to spend money just on the dissolution
18 of the marriage. Is that correct?
19 A. That was the --
20 Q. That's what you understand?
21 A. That's what I'm understanding.
22 Q. But we've talked about all of these
23 other issues that have been joined in with the
24 dissolution of marriage.
25 A. That's correct.

1 Q. In fact, you identified one pleading
2 that Dan Dorn filed that addressed the same issues
3 that you did and asked for the same thing you did.
4 Is that correct?
5 A. Exactly.
6 Q. But, now, this, at the request of Dan
7 Dorn, the court heard the dissolution early?
8 A. That's correct.
9 Q. Because Dan Dorn wanted to get
10 married?
11 A. Yes.
12 Q. Is that correct?
13 MR. DAN SLOTCHIVER: I object, Your
14 Honor. The court heard it because a motion for
15 bifurcation was filed, and it was granted.
16 THE COURT: The court will sustain the
17 objection.
18 BY MS. HEDGEPATH:
19 Q. But, now, I want you to look down at
20 Item 4G. It's on Page 2. The court reserved the
21 jurisdiction of all of the other issues that had
22 been filed, did it not?
23 A. Yes.
24 Q. So merely granting this order of
25 dissolution didn't end that action, did it?

1 A. It certainly did not.
2 Q. This action where all the other issues
3 including visitation, child support, and so forth,
4 it remained open?
5 A. Absolutely, all of them open.
6 Q. I want to show you what was previously
7 marked as R-10. Now, was that an application or a
8 rule to show cause for child support filed by Dan
9 Dorn on January 8th of 2009?
10 A. Yes, it was, yes, it was.
11 Q. And it had a fairly lengthy memorandum
12 of Vicki Greene attached. Is that correct?
13 A. Yes. It has a very lengthy
14 memorandum.
15 Q. And did your attorney respond to that?
16 A. Yes, she certainly did.
17 MR. DAN SLOTCHIVER: Your Honor, I
18 believe that these documents were introduced into
19 evidence for the limited purpose of her stating
20 what she relied on in making her decision. I
21 believe the argument was that she -- they believed
22 that she could assert that she was reasonable
23 based on relying on documents, not based on the
24 truthfulness of the documents, and now it just
25 seems to me like it's being asserted to show the

1 accuracy of the documents based on what the
2 lawyers were asserting it upon.
3 MS. HEDGEPATH: Your Honor, I mean to
4 show you that the reason that this money was spent
5 in California was because of all the requests that
6 were made. It was not just a simple dissolution
7 of marriage and establishing visitation. They had
8 to do with the bifurcation issue, standing, he
9 wanted the divorce early. Rather than coming to
10 the table and dealing with just the dissolution
11 and visitation, all of these other issues had to
12 be dealt with in the initial petition.
13 And I do not believe -- I may stand
14 corrected if I'm wrong. I don't think child
15 support was requested, but he comes back on
16 January 8th requesting child support, thereby
17 increasing the cost.
18 MR. DAN SLOTCHIVER: Undoubtedly,
19 Mrs. Cohen and Dr. Cohen wanted to be able to
20 litigate everything with the trust funds. It's
21 not the issue before the court. The issue before
22 the court is that the California court clearly
23 stated in its order, our argument, that they were
24 allowed to spend money for the, quote-unquote,
25 dissolution of marriage. Well, there was an order

1 given with reference to dissolution of marriage
2 back in the document she just referenced a moment
3 ago in September, in September of 2008.
4 So I understand that an argument is
5 being asserted that she wanted to do these things,
6 but that doesn't go to the context of what this
7 case is about, did she have authority to do these
8 things. And the fact that these issues were all
9 filed at one time and then bifurcated, that ended
10 the dissolution of marriage, so to assert that
11 because they were all raised and because they
12 still kept the same caption, that extended
13 authority for me to keep on doing all these
14 things, we certainly disagree with, Your Honor.
15 THE COURT: And I understand you
16 disagree with that, but your objection to the
17 introduction of this exhibit, I think it's already
18 been introduced, right?
19 MR. DAN SLOTCHIVER: It has been. It
20 has been introduced.
21 THE COURT: So we need to focus -- I
22 understand what your argument is, Mr. Slotchiver,
23 but you're objecting to the introduction of this
24 for purposes of what the document actually states.
25 MR. DAN SLOTCHIVER: Right. I believe

1 that the order speaks for itself that's come in
2 the document, but this is different. This is a --
3 the document she's now putting in is a memorandum
4 attached by counsel, which is different than the
5 court's order. This is a different document than
6 the one we talked about a few moments ago.
7 THE COURT: So isn't this Respondent's
8 No. 10 that was previously introduced?
9 MS. HEDGEPATH: Yes, sir.
10 MR. DAN SLOTCHIVER: Respondent's
11 No. 10, Your Honor, they're referencing in the
12 back to it, a memorandum, I believe. Let's see
13 real quickly.
14 MR. BOYD: I believe the court, Your
15 Honor, if I may, because these are my exhibits,
16 when we started talking about the reliance of the
17 trustee on certain aspects of the documents in
18 question, we were referring -- that discussion
19 came up in the context of the Hays letter and the
20 opinions set forth within that letter. These
21 California documents from the marital proceeding,
22 the marital dissolution proceeding, are all --
23 they speak for themselves, Your Honor. Whether
24 it's a court filing or whether it's a filing by
25 counsel, the court can look at that and take the

1 context of that filing for what it is. The
2 document speaks for itself. And these documents
3 all go to establish the reasonableness of the
4 actions of the trustee under the circumstances.
5 They are what they are.
6 THE COURT: And your objection is?
7 MR. DAN SLOTCHIVER: Your Honor, my
8 concern is that this is all an attempt, I believe,
9 to create and assert an affirmative defense, and
10 affirmative defenses in South Carolina have got to
11 be pled. There's been no pleading of an
12 affirmative defense in this case. So if what
13 they're saying is we relied on the affirmative
14 defense of relying on this document or relying on
15 what a lawyer told me, the law in South Carolina
16 is very clear that you cannot do it unless you
17 plead it, which they have not done in this case.
18 THE COURT: I'll allow a response.
19 MR. DAN SLOTCHIVER: The most recent
20 case, Your Honor, is 2010, Earthscapes Unlimited,
21 Inc. versus Ulrich, 703 SE 2nd 221, where they
22 asserted that the homeowners waived through a
23 failure to plead their affirmative defense. And
24 there's more cases, Strickland versus Strickland.
25 There's a lot of cases all about you have to

1 assert an affirmative defense. So without
2 asserting an affirmative defense, they're now
3 trying to indirectly chat about this matter that
4 is not properly before the court.
5 MS. HEDGEPATH: Your Honor,
6 Mr. Slotchiver brought up something that we might
7 be able to resolve this.
8 THE COURT: Pardon me?
9 MS. HEDGEPATH: Mr. Slotchiver brought
10 up something that might allow us to resolve this.
11 He indicated that the question was whether or not
12 the Cohens had the authority to pay the cost of
13 the litigation in California. Are they not
14 questioning the amount of the cost? If they're
15 now questioning the authority, that is something
16 Your Honor can determine as a matter of law by
17 reviewing the documents.
18 MR. DAN SLOTCHIVER: The authority,
19 we've already -- we've already discussed the
20 authority, Your Honor. We put in evidence to show
21 the amounts that they've spent, but the questions
22 now, as I understand them, are going towards the
23 reason they did it and relying on other
24 testimonies without having raised an affirmative
25 defense.

1 Whitehead versus State, 2002 case.
2 The failure to plead an affirmative defense is
3 deemed a waiver of the right to assert it. And
4 what we're seeing now is just exactly that
5 defense. It even goes so far, Your Honor, the
6 advice of counsel is an affirmative defense, as
7 has been stated in the Gause versus The First Bank
8 of Mariana case.
9 So all of these matters that are going
10 before the court now are going towards the issue
11 of asserting an affirmative defense. If they're
12 not going towards an affirmative defense, I don't
13 know the relevancy of them, and if they are going
14 towards an affirmative defense, it was not pled
15 before the court.
16 MS. HEDGEPATH: Your Honor, we have
17 been arguing most of the last day, probably the
18 last day we were here before you, and he's just
19 now bringing it up. I think he's waived his right
20 to bring it up, if it has any merit at all.
21 MR. DAVIS: Your Honor, I would like
22 to say something also.
23 THE COURT: Mr. Davis?
24 MR. DAVIS: Mr. Slotchiver keeps
25 saying that the letters of conservatorship from

1 California say dissolution of marriage. He fails
2 to read the paragraph above that where it says:
3 Compromise or settle any dissolution action. He
4 keeps going back to this document from California
5 that says you have the authority to handle a
6 dissolution of marriage, and a dissolution of
7 marriage is granted, therefore, your authority
8 ceases, but he fails to point out a critical part
9 here in this previous paragraph, where it says
10 compromise or settle any, A-N-Y, any dissolution
11 action, and Lynette is simply going into the
12 different matters related to the dissolution
13 action, so what she's doing is entirely
14 appropriate.
15 MR. BOYD: Your Honor, if I may just
16 briefly respond.
17 MR. DAN SLOTCHIVER: Now they're both
18 arguing, Your Honor.
19 MR. BOYD: Your Honor, Mr. Slotchiver
20 has raised -- you know, he's attacked my ability
21 to draft a pleading, and I think I should be able
22 to respond.
23 THE COURT: I'm going to let Mr. Boyd,
24 since he signed the answer, respond.
25 MR. BOYD: I mean, Your Honor --

1 MR. DAN SLOTCHIVER: I'm not attacking
2 his ability --
3 THE COURT: Pardon me?
4 MR. DAN SLOTCHIVER: I'm not attacking
5 his ability to draft a pleading. I'm just trying
6 to hold him to what the pleading says.
7 THE COURT: I understand. He's the
8 defense, so I'm going to allow him to respond.
9 MR. BOYD: And I can understand -- I
10 can understand counsel's desire to win this thing
11 on a technicality, but let's just look at the
12 pleading, Your Honor. We alleged -- in addition
13 to our general denial and our specific fact
14 answers, we alleged a third defense of the good
15 faith exercise of the trustee's authority, which
16 is the trustees never sought to engage in any
17 activity that was improper or unjustified or
18 unreasonable. They attempted to exercise their
19 authority as trustees in a good faith manner. We
20 alleged for a fourth defense, estoppel and unclean
21 hands.
22 Your Honor, all of this goes to
23 show -- all of this evidence relates -- again, it
24 relates to the reasonableness of the trustee, but
25 it also relates to the behavior of Mr. Dorn in

1 this case, behaving unreasonably in California and
2 then coming to South Carolina and saying: Hey,
3 you spent all this money. Well, my point is you
4 can't act unreasonably to create these issues and
5 then come into court and say: Hey, I'm not the
6 fiduciary. I mean, it's an absurd box that this
7 litigation has put the trustee into, Your Honor,
8 as she's testified to again and again.
9 And so yes, we raised estoppel,
10 unclean hands, we raised judicial estoppel as a
11 defense, and so I think there are numerous grounds
12 upon which we can go into this to establish, quite
13 frankly, that Mr. Dorn himself acted unreasonably
14 in various respects, going back to the very
15 beginning, which created many of these issues, and
16 the trustees, in response, Your Honor, have
17 attempted to exercise their authority as trustees
18 in good faith, they've responded to a very
19 difficult situation as best they can, and
20 throughout it all, Your Honor, they have sought,
21 and I would argue, achieved the aim of acting
22 reasonably.
23 MR. DAN SLOTCHIVER: Your Honor, I'm
24 not -- I haven't had the liberty to see what
25 communications the Cohens had with different

1 counsel about different issues, for a variety of
2 reasons that have been discussed before the court,
3 and I disagree with the fact that it's such a
4 difficult box. I don't see it as such a difficult
5 box.
6 I think that the evidence clearly
7 shows and will continue to show that all they had
8 to do is petition the court and get clarity. They
9 could have filed for the dec action that was
10 referenced in the email that was sent to the
11 court. They could have gone through with an
12 action to find out from the court what can we do
13 or at least come to court to find out the answer
14 to that.
15 None of that -- and that's all part of
16 the case, and it'll continue to proceed, but the
17 law on the affirmative defense is clear, and they
18 haven't raised it, and they have raised different
19 defenses, and with those defenses, they have the
20 right to assert whatever they want.
21 We have raised this issue repeatedly
22 about the fact that they're going to come in and
23 try to bring a lawyer to testify, but the law is
24 the law. I can't change it, nor do I wish to.
25 The law -- they cannot come in and say we're

1 relying on the doctor, we're relying on the
2 lawyer, we're relying on these people. They had
3 no right to do it, unless they made an affirmative
4 defense, which they did not do in this case.
5 Now, the standard to which my client
6 acts and the Cohens, in their trustee capacity,
7 act is completely different. We all, as
8 individuals, have the right to do things that are
9 wise or not wise, we all make decisions back and
10 forth, but as a trustee, there's a higher
11 standard.
12 THE COURT: I understand that.
13 MR. DAN SLOTCHIVER: And it's not
14 about the guardianship; it's about the spending of
15 the money.
16 THE COURT: I'm looking over their
17 answer, good faith exercise of trustees' and
18 conservators' authority, and it would seem to me
19 that this line of questioning goes along with that
20 defense.
21 MR. DAN SLOTCHIVER: Even if it's a
22 good faith exercise of their authority, by no
23 means is that an affirmative defense that I relied
24 on advice of counsel or I relied on advice of a
25 doctor. It's a good faith. We did what we

1 thought was right. But there's a far distinction,
2 Your Honor, that I would argue between we did what
3 we thought was right, which is what they put up
4 testimony about so far, I truly believe that she
5 would benefit from this, I truly believe it's the
6 right thing to do for her, I truly believe that's
7 what we should do. There's a distinction from
8 that and asserting: I relied on what counsel told
9 me. I relied on what doctors told me. That would
10 be an affirmative defense from which we would have
11 the opportunity to conduct discovery and to find
12 out what they had said and what they were told.
13 They did not assert that.
14 We clearly understand, from the
15 testimony that she's presented, that she has and
16 will continue to articulate that she, in her
17 opinion, acted reasonably and acted as she thought
18 that she should act, but the standard, we believe,
19 is different than what the person thinks they
20 should do. I believe the standard is what a
21 prudent person would do. So those are arguments
22 that we'll discuss and we'll have further
23 testimony on and we'll argue with the court over,
24 but I don't believe that, in any manner, reaches
25 the level of asserting an affirmative defense.

1 And the law is clear. You have to
2 assert it, and if you don't, it's waived. You
3 cannot come into court and assert it. And all of
4 this, Your Honor, really goes back to the
5 underlying basis of knowing -- having the ability
6 to file a complaint, answer the complaint, see the
7 discovery, but I object to it based on that
8 information.
9 And I understand that Your Honor is
10 inclined to allow her to testify to some extent
11 about what she thought and what she believed, but
12 I do think that's different than what she was told
13 and what she relied on.
14 MR. BOYD: Your Honor?
15 THE COURT: Mr. Boyd.
16 MR. BOYD: If I may just briefly
17 respond. Throughout our complaint, we maintained
18 the consistent position that the trustees had
19 acted -- again, looking at Paragraph 18 --
20 consistent with their fiduciary obligations.
21 Mr. Slotchiver is free and, in fact, did inquire
22 as to all manner of actions by the trustees to
23 ascertain where, in their opinion, there may have
24 been a breach. We continue to hear about that.
25 We've heard about that.

1 The fact is, our position is
2 consistent, and I think Ms. Hedgepath is in that
3 same -- she's squarely in that same spot. She's
4 inquiring into matters that establish, under the
5 totality of the circumstances, the reasonableness
6 of the actions of the trustees.
7 MR. DAN SLOTCHIVER: I was shut out,
8 Your Honor. I was given an objection based on
9 attorney-client privilege, you're not entitled to
10 this information. I was clearly shut out, and to
11 say I was free to ask anything I wanted, I was not
12 free to ask anything I wanted without the
13 objection coming right at me. But to come into
14 court now and to say that we're entitled to rely
15 on information, it's no different than the same
16 argument we've raised over and over throughout
17 this case about discovery.
18 THE COURT: Well, I understand that
19 this document is not a document from her attorney,
20 it's from Mr. Dorn's attorney.
21 MR. DAN SLOTCHIVER: But the question
22 she asked is what elicited my objection. It
23 wasn't the document itself; it was the question
24 that she asked.
25 MR. BOYD: These are records of --

1 these are matters of public record in California,
2 Your Honor.
3 MR. DAN SLOTCHIVER: If you want the
4 record to go in without questioning about it,
5 that's a different scenario.
6 THE COURT: I'm going to allow her to
7 initially question the witness on that. I
8 understand what your objection is. I didn't hear
9 the nature of her question. It's been a while
10 ago. I thought you were objecting to the document
11 and the affidavit, I think, of --
12 MR. DAN SLOTCHIVER: More the context
13 that was coming in, but I'll let her ask, and I'll
14 raise it again if I need to.
15 THE COURT: Go ahead, Ms. Hedgepath.
16 MS. HEDGEPATH: And I've forgotten
17 where we were, but for the record, reliance on
18 counsel, I don't see that listed under 8C as an
19 affirmative defense, and I'll tell you that now
20 for the record.
21 THE COURT: Thank you.
22 BY MS. HEDGEPATH:
23 Q. We were looking at R-10, I believe.
24 A. Thank you.
25 Q. This was after the petition for the

1 dissolution had been filed, and in that petition,
2 you had asked for visitation, you had asked for
3 custody to the father, you had asked for legal and
4 physical custody to the father and visitation, and
5 now, on January 13th, 2009, by pleading filed,
6 R-10, he comes in and seeks child support. Is
7 that correct?
8 A. That's correct.
9 Q. And you have discussed previously the
10 ramifications that child support would have on the
11 trust, so I'm certainly not going into that with
12 you again.
13 A. Yes.
14 Q. Now, thereafter, in Exhibit R-7, I
15 think Ms. Greene, Mr. Dorn's attorney, on
16 March 24th, petitioned the court questioning your
17 standing to pursue the visitation?
18 A. That's correct.
19 Q. Now, that was not until 2010. Is that
20 correct?
21 A. That's correct.
22 Q. And you had filed your petition --
23 when did you file your petition, Susan? You filed
24 your petition back in January of 2008?
25 A. Yes, that's correct.

1 Q. And it is my understanding that
2 Mr. Dorn wanted to proceed with all issues except
3 the issue of visitation. Is that correct?
4 MR. DAN SLOTCHIVER: Your Honor, I
5 object to her understanding of what Mr. Dorn
6 wanted. I think the document speaks for itself.
7 THE COURT: Ms. Hedgepath, do you want
8 to rephrase that?
9 BY MS. HEDGEPATH:
10 Q. Let me introduce a document filed
11 April the 8th of 2010.
12 (RES. EXH. 2-3, Responsive Declaration
13 to Order to Show Cause, was marked for
14 identification.)
15 BY MS. HEDGEPATH:
16 Q. Mrs. Cohen, I've handed you a document
17 that's entitled: Responsive Declaration to Order
18 to Show Cause, and it doesn't have a filing date
19 on these, but do you recognize that document as
20 one having been filed in the California case?
21 A. Yes.
22 Q. It has a hearing date of April 20th of
23 2010?
24 A. Right, that's correct.
25 Q. And is this a document whereby

1 Mr. Dorn sought to pursue all of the issues except
2 child support? I'm sorry, except visitation.
3 A. Yes. He says he does not consent to
4 visitation.
5 MS. HEDGEPATH: We would offer that,
6 Your Honor, as R2-3.
7 THE COURT: Any objection?
8 MR. DAN SLOTCHIVER: Only the same
9 objection we had earlier with reference to
10 Mr. Boyd's line of questioning, but other than
11 that, no objection.
12 THE COURT: Objection is noted, and
13 admitted over objection.
14 (RES. EXH. 2-3, was admitted into
15 evidence.)
16 BY MS. HEDGEPATH:
17 Q. So now you're in April of 2010 and
18 still haven't been able to deal with visitation?
19 A. That's correct.
20 Q. Now, during this time, had Abbie been
21 able to have any visitation with the children?
22 A. She had the first visitation in I
23 believe it's December 2010, so up until that time,
24 she did not have any visitation.
25 Q. So you filed in January of 2008 the

1 action for dissolution?
2 A. That's correct.
3 Q. And now we're already in spring of
4 2010?
5 A. That's correct.
6 Q. And we have discussed pleadings filed
7 to dissolve the marriage?
8 A. That's correct.
9 Q. For bifurcation?
10 A. Right.
11 Q. Motion to allege that you had not had
12 standing?
13 A. Two motions, yes.
14 Q. And various other hearings that's in
15 the record?
16 A. Other issues.
17 Q. Now, Mr. Slotchiver made a comment, if
18 I understood him correctly, that you had -- that
19 you could stop the bleeding, and by that I mean
20 you could stop spending the money from the trust,
21 that you had the right to dismiss the action, and
22 yes, ma'am, you could have walked away if they
23 would have dismissed the child support, but they
24 didn't dismiss the child support, did they?
25 A. No. They never dismissed it.

1 Q. And if they had and you had walked
2 away, what would that have meant?
3 A. If they had dismissed it?
4 Q. If you had walked away from the issue
5 you had pending for visitation.
6 A. And child support? I'm sorry.
7 Q. No, Mrs. Cohen, I'm sorry. And I'm
8 not making myself clear.
9 A. Okay.
10 Q. Was it important, in your opinion, to
11 establish visitation and/or a relationship between
12 Abbie and her three children?
13 A. Yes, it was very important.
14 Q. Did you believe at the time of this
15 litigation and do you believe today that it is in
16 the best interest of Abbie, regardless of what any
17 court order may say, and in the best interest of
18 the children --
19 A. Absolutely.
20 Q. Let me finish. That it is in the best
21 interest of the children and in the best interest
22 of Abbie that there be visitation?
23 A. Yes.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 would object. There's no foundation that she has

1 the ability to testify as to what's in the best
2 interest of Abbie or the children. Understanding
3 your rulings earlier with regard to her
4 observations of Abbie, I understand there may be
5 some leniency on that issue, but with reference to
6 her commentary on the children, her interaction
7 with the children has been extremely minimal
8 throughout the entire time period, and certainly,
9 that, at the very least, should be stricken. I
10 don't believe that would be an appropriate
11 question. I also object with reference to Abbie
12 because she's testifying now as to the best
13 interests of Abbie.
14 MS. HEDGEPATH: Your Honor, who better
15 to know what is in the best interest of Abbie than
16 her own mother, who is there on a day-to-day
17 basis? She may not be in the room when visitation
18 is there, but she knows and sees the reaction and
19 the effect that being around the children has on
20 Abbie.
21 THE COURT: I think she can testify,
22 and I think as a fiduciary, she has to take into
23 consideration what she believes is in the best
24 interest of Abbie.
25 MR. DAN SLOTCHIVER: How about the

1 children?
2 THE COURT: The children, I think
3 that's more problematic. I think with respect to
4 that, because she has a limited, I understand,
5 contact with the children, I don't know that she
6 can testify, so I will sustain the objection as to
7 the testimony regarding what's in the best
8 interest of the children.
9 MS. HEDGEPATH: Which we have the
10 order. That's fine, Your Honor. I'll withdraw
11 that.
12 THE COURT: I'll overrule the
13 objection with regards to what's in the best
14 interest of Abbie and allow the testimony.
15 BY MS. HEDGEPATH:
16 Q. Now, in the opening, Mr. Kachmarsky
17 made a comment about some of the treatments that
18 were being paid -- for which were being paid from
19 the trust.
20 A. Yes.
21 Q. In fact, he defined some of them -- I
22 think he used the term quackery, and I'm not
23 sure -- I don't recall which ones, to which -- to
24 which ones he was referring. But we don't have
25 the time to go into detail, and I know Judge

1 Edmonds is wanting me to hurry up, we've got other
2 people that need to examine you, but just tell the
3 court some of the treatments that Abbie is
4 receiving and what improvement, if any, you have
5 observed or that have been reflected in the
6 doctors' reports?
7 A. Abbie receives a number of treatments.
8 One of the main ones, or several of the main ones,
9 are neurofeedback. We have seen dramatic changes
10 in the waves, her brain waves. In terms of alpha,
11 beta -- I don't know how much you want me to say
12 to that -- in terms of changes, actual changes
13 that are reflected on EEG and her brain waves,
14 they're often good.
15 MR. KACHMARSKY: Your Honor, I would
16 object to this. I mean, there's not a single
17 document that's been admitted into evidence so far
18 that demonstrates that there's been any change, so
19 she's going to rely on -- if she's going to make
20 those sort of statements, then I would like to see
21 what documents they're relying on.
22 MS. HEDGEPATH: Your Honor, I don't
23 have to have a document to have her testify. I
24 mean, she can present oral testimony without a
25 document as to the type treatments.

1 MR. KACHMARSKY: She's testifying that
2 there's been improvement in her condition.
3 There's not been a single document, no evidence
4 that's been admitted in this entire trial, that
5 demonstrates that. There's no foundation for what
6 she's saying.
7 MS. HEDGEPATH: Her observation of
8 Abbie.
9 MR. DAN SLOTCHIVER: That's different,
10 Your Honor, than her commenting about the EEGs and
11 the reports that she's read. I think her
12 observation's different.
13 MS. HEDGEPATH: Well, can she not
14 testify about the treatments for which the trust
15 is paying or they're paying individually for Abbie
16 and the results that she has observed from those
17 things?
18 THE COURT: I think she can testify
19 about the course of the treatments that the trust
20 has paid for and whatever changes in Abbie that
21 she may have seen or witnessed, but I do think
22 she's getting into reports that are not in
23 evidence, doctors' reports, and I don't know if
24 she can testify as to changes in the brain waves,
25 and things of that nature, so I'm going to sustain

1 the objection with respect to that.
2 BY MS. HEDGEPATH:
3 Q. So Mrs. Cohen, on terms that are not
4 technical, that even I can understand, okay,
5 explain to us the type treatments that Abbie is
6 getting and any improvements, if any, that those
7 treatments -- any improvements, if any, you have
8 been able to observe personally as a result of
9 those treatments.
10 A. As a result, on a nontechnical level,
11 I have certainly seen a lot more responsiveness
12 due to her treatments, including the
13 neurofeedback, and in terms of her being able to
14 answer questions, she does occasionally say yeah
15 and no.
16 MR. DAN SLOTCHIVER: Your Honor, I
17 would object to her response as to the fact that
18 Abbie is answering questions or not answering
19 questions. It is inappropriate. There is no
20 document to support this. This is purely her
21 testimony stating what Abbie can and cannot do.
22 THE COURT: And I'm going to allow her
23 to testify as to what Abbie can and cannot do.
24 I'm going to strike that Abbie is responding yes,
25 but I will allow her to testify as to what Abbie

1 has been able to do, what she's physically seen
2 her do.
3 MR. DAN SLOTCHIVER: Thank you, Your
4 Honor.
5 THE COURT: And I'll give her this
6 leeway. I can -- as to her impression, I'll allow
7 her to testify as to her impression of Abbie's
8 behavior.
9 MR. BOYD: Your Honor, if I may, I
10 just want to state one thing. We, in our
11 discovery responses, incorporated all medical
12 providers that the Cohens have used in the care of
13 Abbie. There was no objection to that. And I'm
14 not aware of any requirement that a witness cannot
15 testify to knowledge that's not directly supported
16 by a paper document in evidence. So, I mean,
17 again, I just want to point that out for the
18 record so the court's aware of that.
19 We did incorporate in our responses to
20 Mr. Slotchiver's discovery all medical providers
21 utilized by the Cohens, as referenced in the
22 documentation that we did produce. And so I just
23 think that Ms. Hedgepath is on solid ground here,
24 just wanted to make that comment in the record.
25 THE COURT: Thank you, Mr. Boyd.

1 BY MS. HEDGEPATH:
2 Q. I want you to talk a little slower for
3 us, okay.
4 A. I'm sorry. I'm a little confused. So
5 now am I allowed to mention about the reports?
6 Q. Yes, ma'am. If you say something you
7 shouldn't --
8 THE COURT: Not specifically about the
9 reports and what the reports may have said or
10 maybe what the testing may have identified as
11 changes, but what you have seen, what you've
12 noticed, how you've seen Abbie behave.
13 THE WITNESS: Okay. I personally have
14 seen many changes. Abbie and I read for many,
15 many hours a day. We go over various --
16 MR. DAN SLOTCHIVER: Your Honor, they
17 read. They go over things together, her and
18 Abbie. Are we allowing this?
19 THE COURT: I'll allow her to testify
20 as to what she and Abbie do together.
21 MR. DAN SLOTCHIVER: As to what she
22 observes or what Abbie -- now she's testifying as
23 to what Abbie does.
24 THE COURT: What Mrs. Cohen does with
25 Abbie and what Abbie does with her. Now, if she

1 says: Abbie and I read, then I'd like to know
2 whether Abbie is actually reading or whether
3 Mrs. Cohen is reading. I'm assuming Mrs. Cohen is
4 doing the reading, and Abbie -- in Abbie's
5 presence, with Abbie.
6 THE WITNESS: That is generally
7 correct, although Abbie can read one page at a
8 time on an iPod with it enlarged.
9 MR. DAN SLOTCHIVER: Your Honor, I
10 have to object again. There's no basis to give
11 this testimony that Abbie can read. There has not
12 been -- there is no evidence that's been submitted
13 whatsoever to show that she can read or that she
14 can interpret. It's just not there. We don't
15 have it. And for her to be able to testify to it,
16 I would object, Your Honor.
17 THE COURT: I'm going to allow
18 Ms. Hedgepath to explore that testimony just a
19 little bit, see if she can establish through the
20 testimony how Mrs. Cohen is testifying that Abbie
21 is reading, and then I'll determine whether I
22 should strike that.
23 MR. DAN SLOTCHIVER: Thank you, Your
24 Honor.
25 THE WITNESS: So I see Abbie's eyes

1 move back and forth, like this, and when she comes
2 to the end of the page, I will ask her questions
3 about what was on that page, and she answers --
4 BY MS. HEDGEPATH:
5 Q. And how does she respond, if at all?
6 A. She will respond with a long yes blink
7 to yes or --
8 Q. Now, she blinks, and you take that to
9 mean a yes?
10 A. Yes, or she blinks for a no. We also
11 have yes/no cards, and we have on the iPod yes and
12 no screens so that she can blink for the screens,
13 and we also have something called Eagle Eyes.
14 Q. Eagle Eyes?
15 A. Eagle Eyes. And that's -- I brought
16 someone in from Utah from the technology developed
17 by Boston College, and they worked with Abbie to
18 determine --
19 MR. DAN SLOTCHIVER: Your Honor, I
20 object to what another company did in working with
21 Abbie. That goes beyond the observation. And
22 even the testimony she's giving right now, Your
23 Honor, this has been -- this has already been
24 judged and ruled on and heard upon, the reference
25 to being able to acknowledge and to respond yes or

1 no. By blinking their eyes and looking back and
2 forth between a yes or no, that's been ruled upon
3 by the California court, and they did not find it
4 to be prevalent.
5 MR. BOYD: Your Honor, that order in
6 California, the pendente lite order that was
7 adopted by -- you know, this whole thing is why
8 can't you just put the -- why can't you put the
9 anvil down. Why can't you put the guns down. The
10 parties in California agreed to adopt the order by
11 consent. That order -- that order has limited
12 precedential value, if any.
13 MR. DAN SLOTCHIVER: That order
14 becomes res judicata, Your Honor.
15 THE COURT: Let me ask you: When was
16 that order entered?
17 MR. BOYD: 2011, Your Honor.
18 MR. DAN SLOTCHIVER: And it
19 specifically talked about the vision and about the
20 yes and the no and the blinking of the eyes, what
21 the court did to review it and the court's
22 determination.
23 MR. BOYD: Your Honor, in lieu --
24 MS. HEDGEPATH: Well, Mr. Slotchiver
25 said there can be no improvement, that once the

1 court orders it, you're stuck in time. This is a
2 living, breathing individual.
3 MR. DAN SLOTCHIVER: If there was
4 improvement since that time, number one, we don't
5 have evidence of it. Number two, it does not --
6 the fact that you might improve since the time of
7 the court order does not mean that everything you
8 did from the beginning forward still counts. Your
9 actions have got to be at the time you do them.
10 You've got to exercise prudence for each and every
11 action you do.
12 So even if today, miraculously, Abbie
13 were to wake up and be able to talk, it would not
14 justify the expenditures that were taken at a time
15 when we assert that they were not allowed to be
16 taken, and I think that's what -- this is an
17 attempt to show if she could do something today,
18 then it means everything we've done up until now
19 is okay.
20 The court has ruled on it the same
21 exact hearings, and it's res judicata. We
22 consented to it. Your Honor, we have consent
23 orders all the time in cases throughout the
24 courts. It's an order. When you consent to it,
25 it's an order. It's res judicata.

1 This exact same issue that she's now
2 talking about was heard and evaluated and
3 consented to her as a fiduciary in a different
4 court dealing with the same issues, but instead of
5 the reasonableness, it was dealing with the
6 competency, and now to come into court and assert
7 it again is exactly what they've been accusing us
8 of doing throughout this whole proceeding. They
9 said we want to retry the issue. Actually, we
10 don't. We think that issue's already been heard.
11 And I'll be happy to show you the order. It's
12 been submitted into evidence, Your Honor, by the
13 court.
14 MR. BOYD: Your Honor, may I make one
15 comment, Your Honor, briefly?
16 THE COURT: Yes, sir.
17 MR. BOYD: These are equitable issues.
18 It's the same circumstance in any child visitation
19 circumstance. If the circumstances change, the
20 court is always free to revisit those issues and
21 revamp the child visitation schedule to meet the
22 needs of the parties at that time. It doesn't
23 really matter what the Cohens agreed to in the
24 context of that settlement.
25 And again, they're being attacked on

1 the left for pursuing litigation unreasonably.
2 When they reach a compromise, they settle with the
3 parties, then suddenly, oh, it's all res judicata.
4 It's decided. The fact of the matter remains,
5 Your Honor, if Abbie, her circumstances change,
6 the court is free to revisit those issues at any
7 time. It doesn't matter what the order says.
8 MR. DAN SLOTCHIVER: We don't believe
9 they reached a compromise, Your Honor. We think
10 they got to the end and decided to stop spending
11 money. There's a distinction.
12 MR. BOYD: The fact of the matter is,
13 Your Honor, the order was entered by a consent
14 agreement of the parties.
15 THE COURT: Ms. Hedgepath?
16 MS. HEDGEPATH: Your Honor,
17 Mr. Slotchiver wants, out of one side of his
18 mouth, to say that all of this money was spent in
19 California to establish visitation. Number one,
20 they didn't have authority. Number two, if they
21 did have authority, it was unreasonable to do so,
22 because you've got an individual there that's just
23 breathing. That's all she's doing. He wants you
24 to believe she's brain dead. She's totally
25 incompetent. That is not the case.

1 I'm here to show you and for
2 Mrs. Cohen to testify and to show to you that all
3 that fight in California, all that money that was
4 spent was worth every dime of it if it got Abbie
5 what little bit of time she got to spend with
6 those children, and the only way I know to do that
7 is to convince Your Honor that Abbie, yes, she
8 does more than lay there and breathe and is waited
9 on hand and foot. There is a person in that body.
10 And it was worth it for Susan Cohen, as much as
11 was spent, yes, it was worth it, rather than for
12 the mother to never know the children or the
13 children never to know their mother.
14 MR. DAN SLOTCHIVER: The evidence not
15 only doesn't support it, it absolutely contradicts
16 what was said. Secondly, Your Honor, her desire
17 to let her child be with her children does not
18 disavow the court or anybody, or her as a trustee,
19 from her responsibilities as a fiduciary.
20 You know, our argument is that the
21 records clearly do not give the authority, number
22 one. Number two is even if it did give the
23 authority, it would be unreasonable to do what
24 they did. There's no authority to do it. And
25 that's what this case is about. It's not about a

1 mother's desire not to accept what people have
2 said and that continue to believe it. It's not
3 what the case is about.
4 If they want to concede that as of the
5 date of the final order, that there was no benefit
6 and argue with us that since that date, she's
7 become better, and therefore, they're asking that
8 the court go back and change the ruling of
9 California and change everything to fix it based
10 on some equitable argument, this is the first
11 we've heard about that. That's not contained
12 within the pleadings. It has not been asserted to
13 us in any manner whatsoever, and this is truly the
14 first time I've heard that we think she's better
15 now, and therefore, you should exonerate them from
16 all the expenditures because she's better.
17 And even if she were to get better
18 today, there's no evidence that we've been
19 provided that shows that it's because of the
20 expenditures of the money in California or that
21 it's because of the care that she's gotten that's
22 made her better, as opposed to some other reason.
23 We just don't have it, it's just not before us,
24 and I think this whole line of questioning is
25 improper as it alludes to this issue.

1 THE COURT: Anything else,
2 Ms. Hedgepath?
3 MS. HEDGEPATH: I think it ludicrous
4 that Mr. Slotchiver will come in here and Dan Dorn
5 will come in here and argue with the Cohens about
6 money that they spent to get the children and
7 Abbie visitation with each other when the order
8 specifically said -- and I forget the one word
9 that it said, but it didn't say it would be no
10 benefit to Abbie, it was some limited benefit, but
11 it said that it was a definite benefit to the
12 children. And now they're saying that should not
13 have been established, the money shouldn't have
14 been established, even though it's benefiting the
15 children of Dan Dorn.
16 But be that as it may, I will proceed.
17 We will present evidence later, professional
18 evidence, as to the improvement of the children.
19 THE COURT: I will sustain the
20 objection to the extent that Mrs. Cohen is
21 testifying as to things that Abbie can do, without
22 there being some other direct testimony or
23 evidence presented, that she can read herself,
24 that she can acknowledge yes and no, end of page,
25 things of that nature. I will allow her to

1 continue to say what changes she's seen in Abbie,
2 but not those things that she is inferring that
3 maybe Abbie is doing, without there being some
4 direct testimony that she's -- from medical
5 professionals that she's actually able to
6 comprehend those things.
7 BY MS. HEDGEPATH:
8 Q. Can you do that for us, Mrs. Cohen?
9 MR. DAN SLOTCHIVER: Your Honor?
10 THE COURT: You know, I can't have you
11 say: Abbie is reading. Abbie is -- she
12 acknowledges when she needs me to turn the page by
13 her blinks and so forth. But you can tell me her
14 physical changes, what she's able to do now that
15 she wasn't able to do before. And if she couldn't
16 blink before and she can blink now, then I'm happy
17 to hear that, but not put in your testimony of
18 what you think that means.
19 THE WITNESS: Okay. Well, no. She
20 could blink before. She has always had
21 understanding, so I'm not -- this is not a new
22 assertion.
23 MR. DAN SLOTCHIVER: Your Honor, I
24 object to the reference that she had
25 understanding, and I would advise the court, based

1 on the exhibit that we have presented, which is
2 the order from California, there is a particular
3 paragraph that reads: There is no compelling
4 evidence that the visitations by the children will
5 have any benefit to Abbie.
6 And this is exactly -- we're going
7 back into a child custody case now, Your Honor.
8 This is the order of the court that was consented
9 to, and I would ask, Your Honor, that you consider
10 this in limiting the testimony that's being
11 presented by the Cohens because it talks about all
12 of the issues that they're now changing. It talks
13 about the blinking. It talks about the yes and
14 no. It talks about reviewing the video deposition
15 of Abbie.
16 THE COURT: And I've certainly just
17 instructed her as to that, that I'm not going to
18 consider that testimony. Have I not? I just
19 instructed her that I was not going to consider
20 that testimony.
21 MR. DAN SLOTCHIVER: But she did it
22 again anyhow.
23 THE COURT: I understand, and I'll
24 strike that.
25 MS. MOORE: Your Honor, can I just be

1 heard on one issue?
2 THE COURT: Yes, ma'am.
3 MS. MOORE: The fact that they got to
4 the very end result, whether it was by a
5 determination by a judge or by a consent, simply
6 that fact doesn't mean that whatever steps they
7 took up to and leading into that order were not
8 good fiduciary responsibility.
9 I mean, if the judge had issued an
10 order that was against them, that doesn't mean
11 that whatever steps they took or decisions that
12 they made were automatically a breach of fiduciary
13 duty. So I think that there has to be some
14 ability on the part of the trustee to show, well,
15 here's what we did, here's why we did it, here's
16 who we consulted, and here's how we proceeded
17 accordingly. Just because they got a ruling
18 against them or just because they ultimately made
19 a decision to enter into a settlement, that should
20 not suddenly just automatically make everything
21 they did up to that point a breach of that
22 fiduciary duty.
23 THE COURT: And I agree with that, and
24 I think the court has allowed her to testify as to
25 some of the things she relied on in taking the

1 actions that she did as trustee.
2 MS. MOORE: I think I might have --
3 oh, I'm sorry. Should I let Reese go first?
4 THE COURT: I'm going to go back to
5 Ms. Hedgepath to allow her --
6 I'm sorry. Mr. Boyd?
7 MR. BOYD: I'm sorry, Judge, but I
8 just wanted to respond to Mr. Slotchiver's comment
9 briefly about this order, very briefly.
10 The language from the order, Your
11 Honor, again, is subject -- the language -- the
12 specific sentence is: There is no compelling
13 evidence that the visitation by the children will
14 have any benefit to Abbie. The court doesn't say
15 there's absolutely no evidence. It just said
16 there's no compelling evidence. And again, in the
17 ultimate result, as we pointed out previously, the
18 court ordered that Abbie, not the children, Abbie,
19 in her own name, was entitled to visitation. I
20 think that's very important.
21 THE COURT: Thank you.
22 THE WITNESS: I'm trying to give you
23 an example of something that doesn't -- isn't
24 related to anything outside of my observation.
25 You asked me about therapies. One of the

1 therapies she goes to is vision therapy, and
2 without --
3 BY MS. HEDGEPATH:
4 Q. And who is that?
5 A. That's Dr. Mark Dean, and the
6 therapist, his direct therapist, is Robin
7 Vreeland. And I won't tell you anything about
8 what he said.
9 Q. If you know.
10 A. I think I can give you an example that
11 I've observed. Previously, Abbie could -- we
12 didn't try to take Abbie to the movies early on,
13 because it was not a possibility. It was not a
14 realistic possibility. Now Abbie loves to go to
15 the movies, especially 3-D.
16 MR. DAN SLOTCHIVER: Your Honor, I
17 object to the reference that --
18 THE WITNESS: Okay. We enjoy it.
19 She's quiet.
20 MR. DAN SLOTCHIVER: I don't believe
21 that she can tell us what Abbie loves or how Abbie
22 feels. She can tell what she observes, but there
23 is a distinction.
24 THE COURT: Yes, ma'am. Just tell me
25 what you observe.

1 BY MS. HEDGEPATH:
2 Q. Let me ask you this: When Abbie is at
3 the movies now, is she kicking and screaming and
4 crying?
5 A. No, she's not.
6 Q. Is she whining?
7 A. No, she's not.
8 Q. Is she paying -- from your looking at
9 her physically, is she looking at the screen?
10 A. Totally, yes.
11 Q. Is she paying attention to things?
12 From looking at her eyes, is she wandering around
13 the room, or is she looking at that screen?
14 A. She's looking at the screen.
15 MR. DAN SLOTCHIVER: Your Honor, she
16 is not in a position to tell us what Abbie is
17 sensing or feeling, and that's the question she's
18 been asked.
19 MS. HEDGEPATH: I didn't ask her that.
20 THE COURT: I'll allow that. She
21 didn't ask that.
22 BY MS. HEDGEPATH:
23 Q. Does Abbie have any serious physical
24 conditions?
25 A. In terms of anything --

1 Q. Other than the brain.
2 A. She appears to be in excellent
3 physical health.
4 Q. Now, I want to talk about Medicaid --
5 A. Yes.
6 Q. -- and the trust.
7 A. Yes.
8 Q. How Medicaid and the trust interacts.
9 A. And what? I'm sorry.
10 Q. How Medicaid and the trust interacts.
11 It is my understanding, and please correct me if
12 I'm wrong, that the special needs trust was
13 established so that Abbie could get Medicaid to
14 assist with the medical treatments and
15 hospitalizations and things like that. Am I
16 correct?
17 A. That's correct.
18 Q. Without Medicaid, would her award of
19 damages be enough to cover all of her costs? I
20 know you mentioned earlier your fear of not having
21 insurance and not being able to pay for anything,
22 so in a nutshell, I'm asking you does Abbie need
23 Medicaid?
24 A. Well, she needs it if there was ever a
25 medical issue. Her general additional -- their

1 contribution is about $5,000 a month in terms of
2 services.
3 Q. And is my understanding that Abbie
4 gets Medicaid?
5 A. That's correct.
6 Q. Those medical items that Medicaid
7 approves and will pay for, Medicaid steps in first
8 and pays those?
9 A. Yes, at a much reduced fee, yes.
10 Q. And then you are limited by the code
11 as to what the special needs trust will pay for?
12 A. Right.
13 Q. You're restricted, shall I say, in
14 what that money can be used for?
15 A. Yes.
16 Q. And it has to be used for Abbie's
17 benefit?
18 A. Yes.
19 Q. And then, of course, you and Dr. Cohen
20 have taken care of some things you mentioned
21 earlier?
22 A. That's correct.
23 Q. Am I also correct that at Abbie's
24 death, the annuity stops?
25 A. That's correct.

1 Q. And am I also correct that at Abbie's
2 death, any amounts that have been paid by
3 Medicaid, they come in, and they take the amount
4 that they have advanced out of the trust?
5 A. That's correct.
6 Q. In other words, they get repaid before
7 anybody else gets any funds?
8 A. That's correct.
9 Q. And if, after Medicaid comes in, there
10 are any funds in the trust, that goes to Abbie's
11 children. Is that correct?
12 A. That's correct.
13 Q. So is it possible, if Abbie were to
14 have a series of serious illnesses, that at
15 Abbie's death, all the funds could go to Medicaid,
16 even though they have children?
17 MR. DAN SLOTCHIVER: I object. This
18 is just pure speculation at this point.
19 THE WITNESS: That's correct.
20 THE COURT: Excuse me.
21 MR. DAN SLOTCHIVER: This is pure
22 speculation, is it possible that she could need to
23 use all her funds. It's pure speculation.
24 There's no basis to give this opinion. Anything's
25 possible, but I don't think it's a proper

1 question.
2 MS. HEDGEPATH: I'll withdraw it, Your
3 Honor.
4 THE COURT: Thank you.
5 BY MS. HEDGEPATH:
6 Q. And I will leave you with this:
7 Medicaid is going to be paid first, even if it
8 depletes the trust, if Medicaid is owed that
9 amount?
10 A. That's correct.
11 Q. Thank you.
12 MS. HEDGEPATH: That's all I have,
13 Your Honor.
14 THE COURT: Thank you.
15 Ms. Moore?
16 MS. MOORE: Yes, Your Honor.
17 THE COURT: Can we take five?
18 MS. MOORE: Sure.
19 THE COURT: Do y'all mind, real quick?
20 MR. DAN SLOTCHIVER: Are we having
21 questions also by Ms. Moore on this?
22 THE COURT: Yes, sir. We're going off
23 the record. We'll come right back if you have an
24 objection. I'm not sure. We'll take about five
25 minutes real quick. Thank you.

1 (A recess transpired from 3:12 PM to
2 3:21 PM.)
3 THE COURT: We're back on the record
4 in the Abbie Dorn matter, and Ms. Moore, I believe
5 were you going to examine Mrs. Cohen?
6 MS. MOORE: Yes, ma'am.
7 MR. DAN SLOTCHIVER: Your Honor, may I
8 be heard for clarity?
9 THE COURT: Yes, sir.
10 MR. DAN SLOTCHIVER: And I know we
11 took this up briefly in chambers the other day,
12 but I just wanted to make sure I understood.
13 My understanding was that from the
14 inception, this court appointed Mr. Kachmarsky as
15 guardian and attorney for the guardian ad litem,
16 and I had understood, up until the trial, that Lee
17 Moore was appointed as the guardian and that
18 Lynette Hedgepath was the attorney, and my
19 understanding was that everybody's responsible to
20 somebody, and that the guardian for Abbie was
21 connected to the attorney --
22 THE COURT: Guardian ad litem.
23 MR. DAN SLOTCHIVER: The guardian ad
24 litem was connected to the attorney. Otherwise,
25 we've got two people that each get to do an

1 opening statement, a closing statement,
2 examination, cross-examination, when in reality,
3 Lee Moore's role is not that as an attorney, but
4 as a court-appointed guardian ad litem, as opposed
5 to an attorney and -- in that position.
6 THE COURT: That's right.
7 MR. DAN SLOTCHIVER: But your ruling,
8 however, as I understand it, though, is they both
9 get the opportunity to examine, cross-examine,
10 open, close.
11 THE COURT: Because I think they're
12 two different roles, and that's why I appointed --
13 initially, when this action was filed, I was
14 concerned that there could be a conflict of
15 interest. I was trying to head off us getting six
16 months, a year, or two -- I didn't know how
17 long -- down the road in this case, and me having
18 appointed just one person to serve as both
19 attorney and guardian ad litem for Abbie. I was
20 concerned that if I appointed one person for both
21 of those roles, that that person may come up and
22 say: I have a conflict in doing both, because
23 they're two distinct roles. And so from the very
24 beginning, I felt like it was important to appoint
25 separate attorneys, one as attorney, legal counsel

1 for Abbie, and one as a guardian ad litem for
2 Abbie.
3 And Ms. Hedgepath does not represent
4 Ms. Moore as guardian ad litem. She represents,
5 as attorney, Abbie Dorn. Ms. Moore is a
6 court-appointed guardian ad litem, serves a
7 totally distinct role in this case, and I think
8 she has an opportunity to call witnesses and
9 examine witnesses.
10 MR. DAN SLOTCHIVER: Well, the opening
11 statements that we did, Ms. Moore did not do an
12 opening statement, so I had not understood that,
13 and when --
14 THE COURT: Because she chose not to.
15 MR. DAN SLOTCHIVER: Right. I
16 understand that.
17 And when Ms. Hedgepath did her
18 examination, she spoke on behalf of Abbie. She
19 said: I represent Abbie and speaking on behalf of
20 Abbie. I would argue that I think the guardian ad
21 litem, likewise, serves in a position of speaking
22 on behalf of Abbie, so we really have two
23 different people, two different lawyers, serving
24 the exact same role.
25 THE COURT: Well, one is legal

1 counsel, one is guardian ad litem. And again,
2 their roles may not be very different, but my
3 concern was that they could be, that there could
4 be a difference between legal representation of
5 Abbie and her legal rights versus what is in
6 Abbie's best interest.
7 MR. DAN SLOTCHIVER: I never
8 understood the distinction between it, but I'm
9 understanding it now. Thank you, Your Honor.
10 THE COURT: Thank you.
11 Ms. Moore?
12 MS. MOORE: Thank you.
13 THE COURT: So at this point, you have
14 no objection to Ms. Moore?
15 MR. DAN SLOTCHIVER: Not based on the
16 court's ruling.
17 THE COURT: Thank you.
18 CROSS-EXAMINATION
19 BY MS. MOORE:
20 Q. Mrs. Cohen, bear with me today. I
21 brought my distance glasses, which makes it quite
22 challenging to see paper and to see the computer.
23 What I do want to do, though, is -- I've got
24 distances. I've just got to take them off to be
25 able to read.

1 I do want to go over with you some of
2 the treatment that Abbie is being provided, and
3 what I would ask you to do is simply start with a
4 list. Rather than me give you names, could you
5 just give us a list of individuals, medical
6 professionals or otherwise, who are providing
7 services for Abbie at this point?
8 A. Would you like me to start with
9 physicians?
10 Q. Sure.
11 A. Her neurologist is Dr. Frank Benz.
12 And do you want me to explain what the neurologist
13 does?
14 Q. No, ma'am, just need to know who --
15 A. Who they are?
16 Q. Uh-huh. And let me ask you this: How
17 often does she see Dr. Benz?
18 A. She sees Dr. Benz between every three
19 and every four months.
20 Q. How long has he been treating her?
21 And I'm not looking for an exact amount. Are we
22 talking about --
23 A. 2009, maybe, 2010, when he -- I
24 believe that's when he came to town or when he --
25 something around then.

1 Q. And so other than going for
2 intermittent checkups, there's no other thing that
3 Abbie is seeking treatment with Dr. Benz?
4 A. He will recommend certain things to me
5 that I try, and both in terms of medications and
6 in terms of treatment.
7 Q. Well, what I'm getting at is your
8 visits with Dr. Benz, that's just simply on a
9 routine, intermittent basis?
10 A. Yes.
11 Q. You're not having a crisis or anything
12 of that nature that has caused you to go back to
13 Dr. Benz?
14 A. No.
15 Q. What would be her other medical
16 doctors?
17 A. Well, my husband, of course, provides
18 care, and then within Little River Medical Center,
19 Dr. -- I'm blanking on his name. Bill -- I know
20 him by his first name, Bill --
21 Q. Would that be who you consider to be
22 her primary care physician?
23 A. Well, he's one of her physicians which
24 she does see on occasion. She sees him at most
25 once a year, and I think now it's been a little

1 longer than that.
2 But she sees very frequently, probably
3 once a month, and every day I write to her, she
4 has an MD who is also a homeopath, and that's
5 Dr. Corrine Merrill. And Dr. Merrill, we are in
6 constant contact. We write -- I write to her once
7 or twice a day by email. It's just a brief
8 communication. And when there's any change, she
9 and Paul will discuss it, and she usually
10 controls -- the two of them control all of her
11 medical care.
12 Q. And what about as far as writing
13 prescriptions, who controls that aspect of her
14 care?
15 A. Well, Dr. Bill O'Conner will write
16 some of them, and then the neurologist will.
17 There are very few changes, but the last two
18 changes have been written by Dr. Benz.
19 Q. Now, how about as far as other
20 support-type medical care, such as a chiropractor
21 or an acupuncture or things of that nature?
22 A. Right. She also has a chiropractor,
23 Elisa McCann. Elisa Falcone is her married name.
24 Q. How long has she been seeing
25 Dr. Falcone?

1 A. She has been seeing her I believe
2 since 2009 also. As I said, she used to come to
3 our house. Now we go there.
4 We also see, of course, Dr. McCarthy.
5 We see him five hours a week. That's Robert
6 McCarthy, and he has a PhD in neuropsychology.
7 Q. And what type of treatment does
8 Dr. McCarthy provide?
9 A. He provides her neural feedback, and
10 also, he used to come to our house every day. Now
11 we're capable of -- or Abbie's capable of being
12 taken to his office and being treated there every
13 day.
14 Q. How long have you been treating with
15 Dr. McCarthy?
16 A. I believe we started in mid-2008,
17 so -- it may have been 2009. I'm not exactly
18 sure, but quite some time.
19 And then we also go to Dr. Mark Dean,
20 and Dr. Mark Dean is an optometrist.
21 Q. Let me stop you there. Who referred
22 you to Dr. Dean?
23 A. Dr. Dean was actually referred to me
24 by the doctor who she was seeing in California,
25 who was her teacher, the teacher that the doctor

1 at the Centre for Neuro Skills took her to, and
2 she said that he was her instructor, so he was the
3 person who had really been one of the first people
4 to develop the behavioral modification for vision
5 that she used and that they use at the Centre for
6 Neuro Skills.
7 Q. And what type of treatment does
8 Dr. Dean provide for Abbie at this point?
9 A. Dr. Dean did the evoked potentials on
10 her. He also did a reexamination on her most
11 recently with evoked potentials, so he was able to
12 determine when she has --
13 MR. DAN SLOTCHIVER: Your Honor --
14 BY MS. MOORE:
15 Q. Without going into what the doctor
16 told you, I just want to know the type of
17 treatment that he's provided.
18 A. And he sets up her behavioral visual
19 therapy program, and then that's carried out under
20 his supervision by Robin Vreeland.
21 Q. By Robin who?
22 A. Vreeland.
23 Q. And how often does Robin come and
24 provide treatment to Abbie?
25 A. We also are able to take Abbie there,

1 so we take Abbie there every other week.
2 And on the opposite weeks, we go to
3 Murrells Inlet, and we go down there for therapy.
4 She's Sarah Gerace, but now she's Sarah Gaddy, and
5 she is her speech therapist.
6 Q. What was that name again?
7 A. It was Sarah Gerace, G-E-R-A-C-E, and
8 now it's Sarah Gaddy.
9 Q. Gotti, G-O-T-T-I?
10 A. G-O-T-T-I (sic). She is her speech
11 therapist, and also, we take Abbie there.
12 And then she also goes for massages,
13 which help relax her muscles, and we do that
14 probably three or four times a week.
15 Q. Likewise, is that now also done
16 outside of the house, as opposed --
17 A. Generally, it is, although she is in
18 the neighborhood, so if she -- if her spa is
19 closed, then she comes to us. If it's her day
20 off, she'll come to our house, but she doesn't
21 charge me any more to do that.
22 Q. And let me back up for a second. Who
23 referred you to Dr. McCarthy?
24 A. Dr. McCarthy, I believe we first heard
25 about him through Medicaid. My Medicaid worker

1 came and told me about --
2 Q. Without getting into what the Medicaid
3 worker told you.
4 A. Yes.
5 Q. So as a result of conversation with
6 her, you decided to have Abbie seen by
7 Dr. McCarthy?
8 A. That's correct.
9 Q. And then, I'm sorry, as far as the
10 chiropractor was concerned, how did you get a
11 referral to the chiropractor?
12 A. She was from -- that was from the
13 massage therapist.
14 Q. Now, what other medical providers as
15 far as any type of treatment that is provided?
16 A. She also does craniosacral, and she
17 does that every other week.
18 Q. Now, who is she?
19 A. And it's a he.
20 Q. Oh, excuse me. Who is he?
21 A. And his name is Dave Paxson. He is
22 somebody who worked in the -- for many years he
23 was in the Army, and he now is president of the --
24 in the United States for the Craniosacral
25 Organization, and they have established the

1 treatment that they do on Abbie for wounded
2 soldiers, and that's the protocol.
3 Q. Now, how long have you been receiving
4 care through Mr. Paxson?
5 A. He sees her also about every three to
6 four weeks, because he travels around the country,
7 and we've probably been receiving care from him
8 for two-and-a-half or three years.
9 Q. Now, how did you come by a referral
10 for Mr. Paxson?
11 A. That came from Heidi McGovern, who's
12 our Felderchrist therapist. And Felderchrist --
13 Heidi is a physical therapist. Felderchrist is a
14 type of physical therapy that is much slower in
15 motion, to allow the brain to absorb the memory,
16 so that one can learn to absorb in the brain how a
17 movement is made from a very early source. In
18 other words, we learn to first creep, and then we
19 learn to crawl, so it connects the various sources
20 of the brain, starting at a primal level, with
21 much smaller movements.
22 Q. Now, Mrs. Cohen, let's back up a
23 little bit. When you first brought Abbie home,
24 what were you able to see as far as her condition
25 was concerned?

1 A. What I could observe was that Abbie
2 was in a great, great deal of pain.
3 Q. Without describing what she may feel,
4 what did you see or hear?
5 A. What did I see. I saw that her body
6 would contract into terrible spasms and that she
7 was not able to sleep through the night. She was
8 unable to be in a position comfortably for more
9 than a very, very short period of time, but
10 required a lot of movement on everyone's part who
11 cared for her in terms of picking up her legs and
12 moving her body and just changing her position
13 constantly.
14 Q. Was she able to sit at that time?
15 MR. DAN SLOTCHIVER: I'm sorry. May I
16 be heard one moment, Your Honor?
17 THE COURT: Yes, sir.
18 MR. DAN SLOTCHIVER: Judge, I'm trying
19 to give latitude. I know this is background to
20 some extent, but I'm not really sure of the
21 relevancy of this line of questioning as its goes
22 to her medical condition and her medical
23 treatments.
24 You know what, I'm going to withdraw.
25 I'll withdraw.

1 THE COURT: Thank you.
2 BY MS. MOORE:
3 Q. So I'm sorry. Did you answer my
4 question about whether she was able to sit up?
5 A. No, she was not able to sit up.
6 Q. And at that point, was she receiving
7 any type of medication to address any potential
8 pain?
9 A. Yes. She was on -- she was taking
10 pain killers, six full pain killers a day, and now
11 she hasn't had one in months.
12 THE COURT: Ma'am, could you -- I'm
13 sorry.
14 THE WITNESS: I'm sorry. She was at a
15 point where she was taking six full pain killers a
16 day, which was the maximum allowed. Now she
17 doesn't -- she hasn't had a pain killer in months,
18 none at all.
19 BY MS. MOORE:
20 Q. And does she receive any type of pain
21 medication in any other fashion, through a pump or
22 IV?
23 A. The pump is not a pain medication,
24 it's a spasm medication. So no, she receives no
25 pain medication at all right now.

1 Q. When did you have the pump installed?
2 When was that installed?
3 A. 2009. It was installed in 2009.
4 Q. And at which doctor's recommendation?
5 A. I was sent to Dr. Tavel in Charleston,
6 and I believe the first person -- there was a
7 couple recommendations. I think the first person
8 was Dr. Benz.
9 Q. And has she had the pump continuously
10 since it was first installed?
11 A. Yes.
12 Q. And has that appeared to have
13 addressed issues with regard to muscle spasms?
14 A. Yes, it has.
15 Q. And is that something she will have to
16 continuously have from this point forward?
17 A. Most probably.
18 Q. Going back to when she first came to
19 your house once again, any other problems that you
20 saw that existed at that point that perhaps have
21 resolved themselves and no longer exist today?
22 A. Appearance-wise, you could see huge
23 bulges in her arms because of going like this
24 because of the severe contractions that she would
25 have and the shaking, so her arms were very, very

1 large, while her legs were very, very thin and
2 wasted-looking.
3 All that now, the appearance is
4 totally different. Her arms are normal. Her legs
5 are well developed and muscular, but in a healthy,
6 muscular way, from the Felderchrist therapy,
7 because it is movement from the massage, so she is
8 looking healthy and well-nourished and with a
9 normal body weight and normal body appearance.
10 Q. And Mrs. Cohen, early on, I believe
11 you mentioned the fact that the porch was
12 enclosed, but I don't think you mentioned the fact
13 that there's a pool inside the porch?
14 A. No. I didn't even get to that. The
15 porch -- in fact, it's the second porch. The
16 first porch is the one outside of her room, and
17 then you travel into the -- our main living room,
18 in our kitchen, also, but kitchen and the living
19 room, and then you go out to the pool room. There
20 is an enclosed pool in there. Now, I had put that
21 in initially for myself, but we have to heat it
22 now to between 94 and 98 degrees. I can no longer
23 use it, because it makes me dizzy, but Abbie loves
24 that pool.
25 MR. DAN SLOTCHIVER: Your Honor, I

1 object.
2 THE WITNESS: I'm sorry. Abbie goes
3 into the pool. Abbie goes into the pool five
4 days -- at least five days a week, and my
5 observation is that her entire body relaxes, and
6 she can float on her own.
7 BY MS. MOORE:
8 Q. And is that one of the therapies that
9 she participates in on a daily basis?
10 A. About five times a week. Initially,
11 we did have a therapist come in to do something
12 called Wadsu therapy, and Wadsu is a type of
13 therapy that moves the body in the water, so it's
14 physical therapy in the water. After I would say
15 six months, the Wadsu therapist was able to
16 thoroughly train my -- or Abbie's current
17 caretaker so that they now administer Wadsu
18 therapy in the pool.
19 Q. Now, Mrs. Cohen, you and I have
20 discussed, essentially, the types of therapies
21 that she's received over the years, have we not?
22 A. Right. I think I did mention the
23 Felderchrist.
24 Q. Has there ever been a therapy that
25 you've had Abbie participate in that you did not

1 feel was beneficial for her?
2 A. Yes, definitely, and that was one of
3 the ones that was recommended by her neurologist.
4 He had told me about something that was --
5 Q. Without getting into what he told you,
6 what type of therapy?
7 A. He recommended a type of therapy that
8 he was hoping would -- I'm not allowed to use the
9 word pain?
10 Q. Just tell me what type of therapy was
11 it? Was it physical therapy?
12 A. It was a type of laser, a very huge --
13 it was almost like an MRI machine that he had
14 recommended that had helped a number of his
15 patients, and he was hoping it would help Abbie.
16 Q. Did you attempt that type of therapy?
17 A. Yes. She attended the full course of
18 treatment as recommended by their physicians.
19 Q. And what did you observe of Abbie to
20 make you believe that you should not continue that
21 therapy further?
22 A. I observed no change.
23 Q. Now, as far as these other therapies
24 that she's currently participating in, do you
25 believe that they are of a benefit for Abbie?

1 A. Absolutely. That's why I continued.
2 And there was one other therapy she did.
3 Q. I'm sorry. I missed that one. What
4 was the other therapy?
5 A. She also did reflexology, and I did
6 not see a benefit to that. In fact, I saw a
7 negative reaction to that.
8 Q. And so you discontinued that therapy?
9 A. I discontinued that.
10 Q. Now, as far as these various types of
11 therapies are concerned, what type of research
12 would you have conducted to determine the
13 benefit/detriment of any of these therapies?
14 A. I belong to a number of organizations
15 for brain-injured people, and I do a lot of
16 research on the Internet. Also, that's one of the
17 things that -- Jeffrey Cohen does a lot of the
18 research for me on the various therapies.
19 MR. DAN SLOTCHIVER: Your Honor, I
20 object to the reference as to what Jeffrey Cohen
21 does without any foundation to support it.
22 THE WITNESS: I'm sorry.
23 THE COURT: Thank you. So we'll
24 withdraw that.
25 THE WITNESS: Okay. I'll withdraw it.

1 THE COURT: We'll strike that. I'm
2 sorry.
3 BY MS. MOORE:
4 Q. So as far as investigation that you
5 have conducted.
6 A. That I have conducted. So I do a
7 great deal of reading. I will call experts in the
8 field and discuss it with them. I'll also call
9 other parents who have used those -- that
10 research, or in the case of adults, the people who
11 are caring for them. And sometimes it's the
12 actual patient is able to tell me: I improved
13 from here to here by -- and I feel that this type
14 of therapy was something that was very, very
15 beneficial in my moving forward.
16 Q. Now, Mrs. Cohen, do you believe it
17 would be less expensive if Abbie were to go into
18 some type of nursing home facility?
19 A. Absolutely.
20 Q. Have you actually investigated into
21 the availability and the cost of such a facility?
22 A. I haven't investigated the
23 availability, but I am aware of the cost.
24 Q. Why did you decide not to take that
25 option?

1 A. Well, I've also been very well aware
2 of the fact that most people like Abbie who go
3 into nursing homes will die.
4 MR. DAN SLOTCHIVER: Your Honor, I
5 object to that statement without any foundation to
6 support it. I don't believe that she can just
7 tell us that most people like Abbie would die.
8 THE COURT: I'll strike that.
9 THE WITNESS: I'm sorry. I don't have
10 to withdraw once you strike, right?
11 THE COURT: Yes, ma'am.
12 BY MS. MOORE:
13 Q. Mrs. Cohen, where did you believe that
14 Abbie would get better care?
15 A. In my home, with us, with Paul and I,
16 with the people who love her.
17 Q. And as far as the types of care that
18 you have chosen in terms of therapies, have you
19 discussed that with Mr. Cohen?
20 A. Yes, I have.
21 Q. And so as far as the decision-making
22 was concerned, was that a joint decision?
23 A. Most of the time, it has been a joint
24 decision.
25 Q. And I know that in your direct

1 testimony, you had indicated that oftentimes, he
2 would just follow your lead. Is that correct?
3 A. That is correct.
4 Q. Have you and Dr. Cohen ever disagreed
5 as to the type of therapy that Abbie should
6 receive?
7 A. We have, and I think I would say
8 probably 90 to 95 percent, when he makes a
9 decision medically, I will agree with him, because
10 he is more knowledgeable, so I will just continue
11 whatever it is he recommends.
12 Q. Now, going back to the litigation in
13 California, the court appointed Dr. Hays. Is that
14 correct?
15 A. That's correct.
16 Q. And did Dr. Hays make a recommendation
17 to have Abbie complete some tests, further
18 testing?
19 A. She told me that there was some other
20 things we could do.
21 Q. And did you ever take her advice and
22 secure other testing?
23 A. Yes.
24 Q. And which doctor or other medical
25 provider would have conducted the testing?

1 A. Mark Dean did the testing on the
2 visual. What he had talked about was evoked
3 potentials, to show that she did not have --
4 MR. DAN SLOTCHIVER: Your Honor, I
5 object. I'm not familiar with the fact that we've
6 been provided the results of this new testing
7 that's been taking place. If we haven't, I would
8 object to the hearsay statement of what a doctor
9 did and what a doctor concluded without the
10 evidence having been provided to us. And if it
11 should have been provided to us, which I believe
12 it should have been, then I believe it should have
13 been provided to us by the Cohens' counsel as part
14 of their defense. Certainly, it would not have
15 been attorney-client privileged.
16 THE COURT: Ms. Moore?
17 MS. MOORE: Likewise, Judge Edmonds, I
18 was not served with any interrogatories or
19 requests to produce, so I have no obligation to
20 provide.
21 MR. DAN SLOTCHIVER: I agree, but the
22 Cohens have been, and any -- unless she received
23 the documents separate and distinct, the Cohens
24 have an absolute duty to provide any discoverable
25 documents, any defensive documents, to their

1 counsel, and to rely on testimony elicited from
2 the Cohens, who did not provide these documents to
3 their counsel pursuant to discovery, would be
4 inappropriate.
5 And I understand Ms. Moore is
6 concerned with her comments, but I believe the
7 duty ultimately lies in the Cohens and their
8 counsel to provide to us discoverable information.
9 So while I concur that we have not
10 provided discovery requests to Ms. Hedgepath or
11 Ms. Moore, the ultimate duty falls on the Cohens
12 to provide discoverable information, and we should
13 not be subject to their testifying to information
14 which they should have otherwise provided to us.
15 THE COURT: Ms. Moore?
16 MS. MOORE: Your Honor, I'm here just
17 looking out for the best interest of Abbie. I
18 don't think I should be restricted by whatever
19 discovery problems may have existed between
20 Mr. Slotchiver and Mr. Boyd and Mr. Davis.
21 Quite frankly, I don't have the test
22 results. I don't think that prevents her from
23 testifying as to the fact that she followed the
24 recommendation of Dr. Hays. That document has
25 been admitted into evidence as R-6, and that based

1 on the recommendations, she followed through. I
2 think that goes to her reasonableness, her
3 responsibility as a fiduciary to seek advice, to
4 follow advice. That's my purpose of my
5 questioning of this witness. I don't have the
6 results.
7 MR. DAN SLOTCHIVER: And I believe
8 that while I, to a large extent, agree with
9 Ms. Moore's argument about her position, the
10 case I'm -- what I'm arguing about is
11 Mrs. Cohen's. She shouldn't be allowed to testify
12 under examination from another person to
13 information that she should have provided through
14 discovery, if it exists.
15 And to some extent it may seem to be
16 an unfair position to Ms. Moore, and I understand
17 what her concerns are, but ultimately, it all
18 falls in the lap of Mrs. Cohen to decide is she
19 going to give this information to counsel so they
20 can provide it to us, if it's part of their
21 defense, and if she is, then we should have the
22 opportunity to look at it. If she's not, then it
23 would be prejudicial to us to have her testify
24 now, because it's out of her mouth, to testify now
25 as to something that we never had the opportunity

1 to see in advance or to be aware of.
2 THE COURT: Mr. Boyd?
3 MR. DAVIS: Your Honor, it is
4 impossible to overstate the burden that we were
5 placed under with respect to the discovery
6 requests imposed upon us in this case. Again, I
7 hate to keep going back to it, but we produced
8 thousands of pages of documentation.
9 When I had conversations and
10 conferences with Mr. Slotchiver in an effort to
11 resolve the discovery issues that arose in this
12 case, and there were several, the consistent
13 position that Mr. Slotchiver had maintained from
14 his perspective, and I understand they're
15 competing positions, but from his perspective, he
16 said: For me this case is not --
17 MR. DAN SLOTCHIVER: And I object to
18 being quoted. And Your Honor, this is not before
19 the court. And I don't know what he's going to
20 say, but this matter before the court is the
21 documents that have been presented, the filings
22 that have been made, the discovery requests that
23 have been done, and now new testimony being
24 elicited.
25 THE COURT: Mr. Boyd, if you could

1 address the objection before the court
2 specifically.
3 MR. BOYD: Your Honor, again, I'm not
4 aware of any requirement that would prevent the
5 witness from testifying to information that she's
6 aware of based on her firsthand knowledge, her
7 firsthand experience dealing with the medical
8 providers that Abbie is being treated by. We've
9 disclosed all of these medical providers that are,
10 as she's -- as the witness has mentioned and as
11 providers providing medical care to Abbie.
12 Mr. Slotchiver was able to subpoena
13 anybody that we've listed in our discovery
14 requests -- excuse me, in our discovery
15 responses -- so I'm not sure exactly where -- I
16 mean, the universe of information that we're
17 talking about here is phenomenally large. Again,
18 we've already produced thousands of pages of
19 documentation in this case. I think
20 Mr. Slotchiver is imposing an unrealistic
21 interpretation of the rules on all the parties
22 involved in these proceedings.
23 MR. DAN SLOTCHIVER: Your Honor,
24 before I -- when I was in law school, I worked for
25 a class action law firm, and the class action law

1 firm would deal with millions of documents. The
2 number of documents doesn't excuse you from having
3 to comply with the discovery.
4 Now, there are several things that
5 could have been asked of me, perhaps, that would
6 have further delineated what we were looking at or
7 what our issues were, but they weren't, and now
8 there's testimony coming in through the witness,
9 in an effort to support her position, about
10 communications with doctors who weren't listed as
11 experts, for which documentation wasn't supplied
12 to us, in an effort to assist her case.
13 And I understand, once again, the
14 frustration with Ms. Moore, because she wasn't
15 served with discovery, but this is a self-serving
16 position by Mrs. Cohen to be able to respond to an
17 answer for documents which she failed to supply,
18 which she now is alleging would be in some way
19 related to her defense. If it's related to her
20 defense, she should have provided that to us in
21 advance. If it's not related to her defense, and
22 she hasn't given it to us, then it would be
23 irrelevant, but either way, we haven't had it.
24 And once again, it's a unique
25 situation that we have a witness testifying who's

1 got the examination of counsel and examination of
2 the guardian and a lawyer for the guardian, who
3 are asking questions about documents which she's
4 relied on, but haven't been provided to counsel.
5 It all goes back to the basic discovery rule. If
6 these were -- if this was part of her defense,
7 then disclose it to us. It's an easy answer.
8 THE COURT: And was this document not
9 disclosed?
10 MR. DAN SLOTCHIVER: I have no
11 knowledge about these testings. I have no
12 knowledge about the testings or the results of the
13 testings or anything along those lines.
14 THE COURT: Is there a letter there?
15 Isn't there something?
16 MS. MOORE: Your Honor, at this point,
17 I don't even know if she's seen the document. I
18 just know that Abbie was sent for testing, so I
19 don't know right at this point whether she's
20 testifying from what the doctor told her or if she
21 actually has seen the document itself. So I don't
22 know if there actually is a document in existence
23 that's in the possession of anybody, including the
24 Cohens.
25 MR. DAN SLOTCHIVER: There was a

1 letter I believe she testified to from Dr. Hays
2 giving an opinion, and we spoke about it earlier,
3 and the follow-up question to her was: Based on
4 that letter, did you do any testing? And she
5 goes -- and then she went on to respond to what
6 she did and what the results were, and I would
7 argue that whatever she did or whatever the
8 results were would be inadmissible if we haven't
9 been provided that information in advance, and we
10 haven't.
11 THE COURT: Do we know, Mr. Boyd, if
12 you and your client have the test results?
13 MR. DAVIS: Your Honor, these test
14 results that are being referred to is not a
15 document that I have seen.
16 But I would point out, Your Honor, in
17 our discovery responses: In further answering the
18 interrogatory, respondents would also incorporate
19 any and all medical professionals who may be
20 referenced in the various medical and other
21 records which have previously been produced to the
22 petitioner in this case or which are herewith
23 produced or may hereafter be produced.
24 Again, the witness is merely
25 testifying to her personal knowledge related to a

1 medical provider for her daughter, Your Honor.
2 Again, all of this goes to merely establish the
3 decision-making that the trustee has undertaken
4 for the benefit of her daughter.
5 THE COURT: Ms. Moore, do you have the
6 medical reports?
7 MS. MOORE: No. That's just it.
8 THE COURT: You just have a letter?
9 MS. MOORE: The only thing I have is
10 the letter from Dr. Hays that was admitted. I
11 know, from having met with Mrs. Cohen, that Abbie
12 was, in fact, sent for that testing, and that I
13 knew, from having spoken to Mrs. Cohen, as to the
14 conversation she had with the individual who did
15 the testing, which I've not seen.
16 MR. DAN SLOTCHIVER: Which I would
17 argue Mrs. Cohen certainly had the ability to tell
18 her counsel this is an issue, let's make sure we
19 put this in evidence, if it was something that
20 they were going to rely on, and they haven't done
21 it.
22 THE COURT: But I don't think
23 Mrs. Cohen is relying on this; I think the
24 guardian ad litem of Abbie is relying on it.
25 MR. DAN SLOTCHIVER: Actually, the

1 guardian ad litem has asked her did she do the
2 follow-up tests elicited in the letter from
3 Dr. Hays, which is already in evidence.
4 And the concern, Your Honor, is now
5 Mrs. Cohen wants to talk about what she did, but
6 she hasn't provided that to her counsel, and she's
7 circumventing the discovery which requires them to
8 give us documents. And she is the witness -- she
9 is absolutely the witness that should have
10 provided this document to her counsel, and she's
11 hiding behind a different person asking her that
12 question.
13 It's inappropriate to let it come in
14 through somebody else if -- we believe it -- in
15 other words, let me say it differently. If we
16 believe -- she believes that it's relevant, and it
17 helps to assert her position, then we were
18 entitled to that document, which we haven't been
19 given. It's a very --
20 THE COURT: Neither Mrs. Cohen,
21 through her counsel, or her counsel has sought to
22 introduce whatever these exams/reports are from
23 the therapy.
24 MR. DAN SLOTCHIVER: She was starting
25 to testify about: This is what I did and --

1 THE COURT: Based on the questioning
2 by the guardian ad litem.
3 MR. DAN SLOTCHIVER: Correct.
4 THE COURT: So she didn't necessarily
5 try to admit this herself through her attorney.
6 The guardian ad litem is seeking to introduce this
7 testimony.
8 MR. DAN SLOTCHIVER: I understand
9 that. My understanding of the discovery rules, it
10 doesn't apply to what your lawyer says you have to
11 give. You have a personal duty to comply with the
12 discovery. She has a personal duty, when she gets
13 served with it -- she may have a lawyer that's her
14 mouthpiece, but she has a duty to comply with the
15 discovery rules to present information which you
16 plan to utilize as your defense.
17 If she plans to utilize this in some
18 capacity as her defense, she should have given it
19 to us, whether or not her lawyer knew about it,
20 whether or not he had a copy of it, but to cloak
21 her with the protection, oh, I can talk about it
22 now because somebody else asked me, even though I
23 didn't give it to you before, would be
24 inappropriate.
25 And if Your Honor believes that -- or

1 if the assertion is that this in some way does
2 relate to a defense, then I believe that her
3 failure to have provided this to us through the
4 discovery process would be sanctionable.
5 MR. BOYD: Your Honor, let me just
6 briefly respond. And I really admire counsel's
7 tenacity.
8 In the same way that he wants to limit
9 us to the four corners of our discovery, I believe
10 Mr. Slotchiver, in the same fashion, is limited to
11 the four corners of his pleadings. If Your
12 Honor -- and we can sit -- and we can sit down and
13 read the document word for word. There is no
14 reference, Your Honor, in any provision of
15 Mr. Slotchiver's pleadings to any allegation that
16 there's an abuse of discretion by the trustee with
17 regards to the medical care or the specific
18 therapies being selected, and so to say when
19 Mr. Slotchiver sends me discovery, and I'm
20 supposed to send him any possible document within
21 the universe of documents that might be relevant
22 at some point in these proceedings, when there's
23 no claim in his -- on the four corners of his
24 petition that even remotely inferences medical
25 care.

1 It's a very straightforward petition,
2 Your Honor, and I encourage the court to go back
3 and read it. In fact, we should probably take a
4 break if we need to. But the fact of the matter
5 is there is nothing about medical treatments,
6 medical providers, anything in these documents,
7 Mr. Slotchiver's documents. It's Mr. Slotchiver
8 who sent me the discovery.
9 MR. DAN SLOTCHIVER: I would agree to
10 a large extent with what he's saying. The
11 distinction, however, Your Honor, is if they're
12 relying on this as a document to show that they
13 provided medical care, that's different, but
14 they're relying on this document, as I see it, to
15 show a -- to argue why it is they're justifying
16 them doing what they did, and that falls under the
17 category of what we alleged in our complaint.
18 And if you want -- and that's clearly
19 what we alleged, the breach of fiduciary duty, the
20 authority, the reasonableness of the care, and if
21 their position is the medicals -- I've argued to
22 some extent the relevancy of medical care
23 throughout the proceeding, but if their position
24 is the medical care seems to relate back to the
25 reasonableness of what we did with reference to

1 expenditures, I haven't quite gotten a handle on
2 how that all puts together, but if they want to
3 argue that, then I should have been given a copy
4 of that in advance.
5 THE COURT: Ms. Moore?
6 MS. MOORE: What they're arguing has
7 nothing to do with what I'm asking. The reason
8 I'm asking is in response to Mr. Kachmarsky's
9 answer and counterclaim, specifically
10 Paragraph 31: In addition, the petitioners, on a
11 monthly basis, have and continue to spend more
12 than the monthly annuity received. In response,
13 we demand further proof as to the need and
14 appropriateness of these expenditures before they
15 are approved by the court.
16 I read that to give the impression
17 that Mr. Kachmarsky, and also take into
18 consideration his opening statement, was
19 questioning the reasonableness and the benefit and
20 the necessity of the various medical treatments
21 that have been provided to Abbie.
22 So it had nothing really to do with
23 Mr. Slotchiver's petition. My purpose of going
24 through these questions actually had to do with
25 Mr. Kachmarsky's answer and counterclaim.

1 THE COURT: I'm going to overrule the
2 objection and allow Ms. Moore to question her
3 based on her statement that she's addressing a
4 counterclaim filed by Mr. Kachmarsky.
5 MS. MOORE: And if I have misconstrued
6 it, then I certainly would be happy to move on.
7 I've construed his counterclaim as questioning the
8 medical care. If I'm incorrect, and it sounds
9 like Mr. Slotchiver seems to believe that that's
10 not the position that they're taking, then --
11 MR. DAN SLOTCHIVER: Well, if the
12 purpose of the question is to address medical care
13 that's been provided and the appropriateness of
14 the expenditures, and it's not for the purpose of
15 asserting that this is why you should be defended
16 from the -- or exonerated from the claim for
17 breach of fiduciary duty, if that's the purpose of
18 it, then I have no objection to it for that
19 limited purpose. My understanding so far is all
20 the medical care that we've talked about in the
21 examination of Mrs. Cohen so far has been put up
22 for the purpose of showing why what I've done was
23 reasonable, but if it's limited to that particular
24 purpose, I have no objection whatsoever.
25 MS. MOORE: I'm utilizing it for both

1 purposes. One is to show the appropriateness of
2 the expenditures and as to the fact that the care
3 that she provided to Abbie was reasonable and
4 supported her position as trustee to have taken
5 certain steps, part of those steps being to
6 contest and defend herself in the action in
7 California. So I'm not going to say that it's
8 only for the purpose of the appropriateness of the
9 expenditures.
10 THE COURT: I understand. I'm going
11 to overrule the objection and allow her to go
12 forward with this questioning.
13 BY MS. MOORE:
14 Q. So, Mrs. Cohen, getting back to the
15 testing that was performed as a result of the
16 recommendation that was made by Dr. Hays in the
17 letter that's marked as R-6, that testing was
18 performed by which doctor?
19 A. The testing -- well, the vision evoked
20 potentials -- I'm sorry. The vision evoked
21 potentials was performed by Dr. Mark Dean, and the
22 other evoked potentials were performed by
23 Dr. Benjamin's office. There's a technician who
24 actually performs it. Dr. Dean actually performed
25 the evoked potential on the vision himself.

1 Q. Do you know approximately when that
2 testing would have been performed?
3 A. It was after Dr. Hays.
4 Q. And I'll tell you that Dr. Hays's
5 report is dated July 13, 2010.
6 A. So it would have been sometime after
7 that we had the evoked potentials done by
8 Dr. Benjamin's office, and then we also asked --
9 we mentioned it to Dr. Dean, and he said that he
10 would like to do the evoked potentials for her
11 vision, and then he did a follow-up of Abbie later
12 for the second one.
13 Q. Now, as far as those test results are
14 concerned, have you actually seen the test
15 results? Do you have those in your possession?
16 A. Well, my husband has read them
17 thoroughly.
18 Q. What I'm asking is do you have the
19 actual physical report in your possession?
20 A. Yes, I do.
21 Q. And did you discuss these reports, the
22 results, with the various doctors?
23 A. Yes.
24 Q. As a result of the discussion with the
25 various doctors, did you make any change with

1 regard to her therapies?
2 A. Well, certainly, we made some changes
3 in regards to her vision and also her speech.
4 Q. What I'm specifically asking you is
5 what change would you have made to the type of
6 therapy she was receiving as a result of the test
7 that was performed by Dr. Dean and -- I'm sorry.
8 I forgot the other doctor's name.
9 A. The other doctor was Dr. Benjamin's
10 office. He just read the results. The technician
11 performed it. Well, we were already on that page
12 of doing cardiotherapy to confirm we were on the
13 right track.
14 MR. DAN SLOTCHIVER: Your Honor, I
15 would object to the conversation that the
16 documents confirmed anything whatsoever. Those
17 documents have not been presented. I understand
18 the purpose of the documents was to be able to
19 show that she did, in fact, follow advice in
20 getting therapy and seeking certain medical
21 treatments, but not to testify as to the results
22 of them. We have not seen a copy of these
23 documents to understand that whatsoever. I would
24 object to that portion of it.
25 THE COURT: Ms. Moore?

1 MS. MOORE: Your Honor, my purpose was
2 simply to determine whether or not she made a
3 change as to any type of therapy as a result of
4 obtaining the information.
5 MR. DAN SLOTCHIVER: And I don't
6 object to that question.
7 THE COURT: Then we'll allow it to
8 that extent. Thank you.
9 BY MS. MOORE:
10 Q. So Abbie was undergoing what type of
11 therapy before these tests were performed?
12 A. She was undergoing all these therapies
13 before the tests were performed. I believe it
14 confirmed that we were on the right track.
15 MR. DAN SLOTCHIVER: And if we can
16 strike that question, Your Honor.
17 THE COURT: Yes. Thank you.
18 BY MS. MOORE:
19 Q. Did you make any changes to the
20 therapy as a result of receiving the test results?
21 A. There were additional tracks followed
22 in neurofeedback.
23 Q. Were there any other changes made to
24 the therapies as a result of receiving the results
25 of the testing?

1 A. There were additional interventions in
2 both speech and vision therapy.
3 Q. Now, as far as Abbie is concerned,
4 you've made mention that you could now take her
5 out to therapies. How long has that been a fact?
6 A. I believe about the past year,
7 year-and-a-half we've been able to take her out to
8 various therapies and have her be comfortable, oh,
9 including acupuncture. We now go out for that.
10 Q. Are there any therapies that continue
11 to take place in the house?
12 A. Well, the Felderchrist, because she
13 doesn't actually have a work area, and she also
14 lives in the neighborhood.
15 Q. Has that resulted in a decrease of
16 cost to the trust?
17 A. Yes.
18 Q. Are there any therapies at this point
19 that you would like to engage in or have Abbie
20 engage in that you're unable to do so because of a
21 lack of funds?
22 A. No.
23 Q. Now, I just want to make sure I'm
24 clear on this. At various points during the time
25 that you have been serving as trustee, you have

1 had to seek advice from attorneys. Is that
2 correct?
3 A. Yes.
4 Q. Now, before the special needs trust
5 was approved, you had two attorneys out in
6 California. Is that correct?
7 A. Before it was approved?
8 Q. Yes, ma'am.
9 A. Russ Kussman wasn't my attorney. Is
10 that who you're referring to, or are you referring
11 to Michelson?
12 Q. Correct.
13 A. Okay. Yes.
14 Q. And then was there not another
15 attorney who dealt with the question of the
16 Medicaid questions?
17 A. Well, that was -- that was Michelson.
18 Q. And then --
19 A. With Robin Morris.
20 Q. Robin Morris was the only attorney
21 here?
22 A. She was the only attorney once we
23 moved here.
24 Q. Once the special needs trust was
25 approved and it was funded, did you still continue

1 to retain Robin Morris as your attorney?
2 A. I did speak with her, and yes, I
3 retained her, but she had written me a letter that
4 she was retiring and suggested that I contact Bret
5 Davis, which I did.
6 Q. So once Robin Morris retired from the
7 practice of law, that's how you were referred to
8 Bret Davis?
9 A. Exactly.
10 Q. Now, as far as the family court action
11 that was in California, you had sought the advice
12 of an attorney in California for that proceeding.
13 Is that correct?
14 A. Yes.
15 Q. Now, after the special needs trust was
16 approved and those final orders were issued, after
17 that point, you changed attorneys in California.
18 Is that correct?
19 A. After the point when --
20 Q. After the special needs trust was
21 approved and the final order was issued here in
22 probate court.
23 A. Yes, yes. It was about two years
24 later.
25 Q. Now, have there been any other

1 attorneys that you would have sought advice from
2 relative to the care of Abbie, the maintenance of
3 the trust, the maintenance of the California
4 action?
5 A. Well, Gary Zimmerman was the person
6 who was referred to as the specialist in -- how
7 would you call it? The trust -- keeping trusts
8 from being broken, and, of course, I consulted Bob
9 Rosenfeld as well about Marina Korol and asking
10 for second --
11 MR. DAN SLOTCHIVER: Your Honor, I
12 object to the testimony as far as -- I understand
13 she employed lawyers, and I believe she can
14 testify as to who she employed, but when she talks
15 about what they were employed for and what purpose
16 they had, I believe that does go back to the issue
17 of not only the attorney-client privilege, but
18 also the affirmative defense issue that we
19 discussed earlier, and I believe from that
20 perspective, it would be irrelevant.
21 MR. BOYD: Your Honor, she's being
22 asked some very baseline, almost generic
23 questions. There's nothing that she's conveying
24 that would be subject to the attorney-client
25 privilege anyway.

1 MR. DAN SLOTCHIVER: Well, what she's
2 asking and her responses are oftentimes very
3 different, and that's what I'm noticing here, that
4 the question comes out as -- I don't have an
5 objection to the question for the most part, but
6 the responses that I'm getting, that I'm hearing,
7 those, in particular, are what I'm objecting to.
8 MR. BOYD: She's merely asked who was
9 retained and why they were retained, Your Honor.
10 THE COURT: Ms. Moore?
11 MS. MOORE: That's as far as I've
12 gotten so far. I mean, I won't say that I'm
13 stopping there.
14 THE COURT: I'm going to overrule the
15 objection. I think she's just answering the
16 question about who she's retained and what for.
17 MR. DAN SLOTCHIVER: Well, for
18 example, she talked about Mr. Michelson being the
19 expert to go to in order to protect you from
20 having trusts broken. That goes beyond the issue
21 of --
22 THE COURT: I think that was
23 Mr. Zimmerman.
24 MR. DAN SLOTCHIVER: Mr. Zimmerman,
25 excuse me. That goes beyond the issue of who she

1 retained.
2 THE COURT: Did Ms. Moore not ask her
3 why she went to these?
4 MR. DAN SLOTCHIVER: Well, obviously,
5 she can ask her anything she wants to ask. My
6 concern with it, though, is the relevancy of it,
7 because if the relevancy of it is that it's to
8 create an affirmative defense, that wasn't pled,
9 and that's why I believe that without it having
10 been pled, it would not be relevant for the court
11 to hear that.
12 I understand she spent money, and the
13 amount of attorneys fees that she spent, she's
14 going to testify to she did it as part of her
15 action as a trustee, but I think that her talking
16 about what they did goes beyond the defense of the
17 attorney-client privilege and --
18 THE COURT: Were there expenditures on
19 the trust accounting for these attorneys?
20 MR. DAN SLOTCHIVER: There's no
21 objection to the trust expenditures that were
22 approved by the court, and the court clearly would
23 have transferred the jurisdiction from California
24 to South Carolina. It set forth a list of those
25 expenses which were approved from that point

1 backwards, so the issue is more what happened
2 after, not what happened before.
3 THE COURT: Ms. Moore?
4 MR. BOYD: Your Honor, just briefly.
5 THE COURT: Mr. Boyd?
6 MR. BOYD: I'm sorry. I mean, my
7 point is that Mr. Slotchiver is imposing a
8 requirement, a pleading standard, that I don't see
9 in the rules, first of all, reliance on counsel.
10 As a term of art, the fact is we pled the
11 reasonableness of the trustees' actions under the
12 circumstances, and they acted in accordance with
13 the authority granted them under the trust
14 documents. The reliance on counsel would merely
15 be one of many possible factors that would go into
16 the consideration of the court in determining
17 whether, in fact, the trustees did that. I mean,
18 it's as if that Mr. Slotchiver wanted every
19 possible reason that we could come up with to
20 establish the reasonableness of the trustees'
21 conduct in advance in our answer.
22 MR. DAN SLOTCHIVER: There are a
23 tremendous amount of cases throughout the state of
24 South Carolina over and over again, going back to
25 the 40s, I believe, specifically stating that

1 affirmative defenses have got to be raised in the
2 pleadings. They haven't been. And to incorporate
3 that by saying: We said you acted in good faith,
4 and therefore it's there, that goes against every
5 case that's out there.
6 MR. DAVIS: Okay. Where's it showing
7 that what we've pled and what we're arguing is an
8 affirmative defense? Where is that?
9 MR. DAN SLOTCHIVER: Would you like me
10 to respond?
11 THE COURT: I would like you to,
12 please.
13 MR. DAN SLOTCHIVER: The defense is
14 what's being asserted and testified to by
15 Mrs. Cohen: I relied on counsel. The only basis
16 which I understand that to be set forth would be
17 based on an affirmative defense of: I relied on
18 counsel, and therefore, whatever I did would be
19 appropriate because counsel told me to do it.
20 That is the essence of an affirmative defense.
21 Or what should have been pled as an
22 affirmative defense, if it, in fact, happened, she
23 should have said: I relied on my lawyer Robin
24 Morris. I relied on my lawyer Zimmerman. I
25 relied on my lawyer Lisa Meyer. Whoever it would

1 be that she's relying on should have been set
2 forth as an affirmative defense.
3 And in the pleadings, at the end of
4 all the stuff, at the end of all their arguments,
5 you set forth affirmative defenses, and you
6 specifically state: These are my affirmative
7 defenses. She hasn't done that.
8 And if she's -- if there are no
9 affirmative defenses, you can't get it in by
10 saying, well, I think it fits into the global area
11 of I acted within the best interests or I acted in
12 good faith, because it is specifically not an
13 affirmative defense, and case after case after
14 case has addressed this issue particularly.
15 I'll be happy to present Your Honor
16 with a listing of the cases at whatever point you
17 wish, or if you want me to write a memorandum, I'm
18 happy to do it, but these are specifically --
19 these arguments are affirmative defenses. That's
20 what they're raising.
21 MR. BOYD: Your Honor, again, we did
22 specifically raise good faith and conservator's
23 authority under the documents. We raised estoppel
24 and unclean hands. We raised judicial estoppel.
25 We also raised reservation and nonwaiver, which,

1 if the court would entertain it, I'd love to make
2 a motion to amend pursuant to that clause.
3 But the point is I believe what we've
4 already pled more than adequately supports our --
5 the adequacy of our responsive pleading,
6 particularly when it's looked at in light of the
7 four corners of Mr. Slotchiver's document.
8 THE COURT: Anything from you,
9 Ms. Moore?
10 MS. MOORE: Not as to the issue they
11 kind of got off on a tangent on, Judge.
12 THE COURT: Ms. Hedgepath?
13 MS. HEDGEPATH: I think it might be
14 proper, since Mr. Slotchiver has waited so late in
15 the day to raise that, when we started early this
16 morning questioning the reasonableness and why the
17 various matters were done in the way they were
18 done, to make a motion to amend the pleadings to
19 conform to the evidence already presented, because
20 he has waited too late in the day to now argue it.
21 His time to have raised it, to have prevented it,
22 if it even exists, as he claims it does, and I
23 certainly don't concede that it does, then he
24 should have raised it when the issue first arose.
25 MR. BOYD: And let me also state --

1 MR. DAN SLOTCHIVER: Your Honor, it's
2 a little frustrating. If money is received by
3 Abbie, the money is benefited by Abbie, so it's
4 far for me to understand how it is that the
5 guardian attorney for Abbie would not recognize
6 there's a value to the claim to come back in.
7 Now, the affirmative -- it's not
8 waiting late in the day. I had no duty to do it
9 earlier. I mean, I've been faced by this entire
10 case with coming up here for motions and on
11 discovery repeatedly, and the court listening to
12 the motions, and on two times entertaining and
13 granting sanctions on the motions for discovery.
14 And we have attempted to present the
15 evidence in accordance with what we've been given,
16 and what I hear is there's a lot of documents, and
17 therefore, we shouldn't have to do it, or we
18 didn't answer. It's a lot of issues to answer to.
19 It's clear that there is no affirmative defense
20 that's been raised, and I'm raising it now in
21 light -- it's the law. I'm not creating an
22 argument. This is what the law is. The cases
23 support this. You actually have to raise the
24 affirmative defense.
25 And I don't know what I could say that

1 makes it any clearer than that. And it's never
2 been raised. Until I argued that they didn't
3 raise the affirmative defense, nobody ever claimed
4 that they had the right to.
5 MS. HEDGEPATH: I'd be happy to
6 respond to his argument as to why the attorney for
7 Abbie does not think it's in Abbie's best interest
8 to bring the money back into the trust, if he
9 wants to hear it or if Your Honor wants to hear
10 it.
11 THE COURT: I'm going to allow this
12 questioning at this point.
13 Mr. Slotchiver, if you would like to
14 present your brief or cases as to why you believe
15 the responses by the Cohens in their answer are
16 not affirmative defenses that they can rely on
17 this testimony, based on the defenses they set
18 forth in their petition, I'll be happy to consider
19 those cases and, if necessary, strike this
20 testimony and not give it any weight in my
21 consideration of the matter.
22 MR. DAN SLOTCHIVER: If I want to
23 present the cases as to why these are affirmative
24 defenses that they're raising. I believe you said
25 are not affirmative defenses.

1 THE COURT: Yes, sir. Well, in light
2 of what they pled in their pleading to the court.
3 MR. DAN SLOTCHIVER: I'll be happy to
4 proffer the cases to the court.
5 THE COURT: So these are not
6 affirmative defenses in their answer, in support
7 of the evidence they're trying to submit today.
8 MR. DAN SLOTCHIVER: I'll be happy to
9 present -- I'll be happy to proffer several of the
10 cases to the court at this moment or whenever the
11 court is so inclined.
12 THE COURT: I'll be happy to take
13 those now, and I'll give them consideration, but
14 I'm going to go ahead and allow this testimony to
15 be introduced at this time, and if I see that the
16 court should strike these, that they did not
17 properly plead affirmative defenses, then I'll
18 strike this testimony.
19 MR. DAN SLOTCHIVER: And I take it
20 that would be a decision that would be made after
21 the case concludes.
22 THE COURT: Probably. I mean, I may
23 have an opportunity -- well, I don't know if I'll
24 have a chance to look at these before we conclude.
25 I'm not going to take the time now. I'm going to

1 go forward.
2 MR. DAN SLOTCHIVER: Okay. If I can
3 present this to the court in the morning.
4 THE COURT: That would be fine.
5 MR. DAN SLOTCHIVER: Thank you.
6 THE COURT: All right.
7 MS. HEDGEPATH: And Your Honor, you
8 will also consider my motion to amend to conform
9 to the evidence presented?
10 THE COURT: Do you want to be heard on
11 that now, Ms. Hedgepath? You're making that
12 motion now?
13 MS. HEDGEPATH: Yes, ma'am.
14 THE COURT: All right.
15 MS. HEDGEPATH: And, I mean, if you're
16 going to -- I'll be happy to submit a memo, cases,
17 whatever, but if you're going to consider his
18 motion as to the affirmative defenses, I'd like
19 for you to also consider our motion to amend the
20 pleadings to conform to the evidence presented.
21 THE COURT: Would you like to be heard
22 on that, Mr. Slotchiver?
23 MR. BOYD: Your Honor -- go ahead.
24 MR. DAN SLOTCHIVER: If they want to
25 make a motion, I'll be happy to respond.

1 THE COURT: I think she's made it.
2 She indicated that was her motion.
3 MR. DAN SLOTCHIVER: I object. I
4 disagree with that completely.
5 THE COURT: I'm happy to hear from
6 you.
7 MR. DAN SLOTCHIVER: I don't know what
8 else I can say. This is not -- this is new
9 testimony. They're coming into court today, and
10 they're repeatedly stating now in court they're
11 relying on these defenses. The only time we'd
12 ever heard of this issue before, Your Honor, is
13 when we referenced Robin Morris, when the whole
14 Robin Morris issue came up before this court. And
15 when the Robin Morris issue came up before the
16 court, at that time they claimed attorney-client
17 privilege. So there was no motion to conform.
18 There was no issue to conform. It was an
19 attorney-client privilege.
20 We've petitioned the court to receive
21 the bills and the statements and the information
22 from the California case, and if you recall, we
23 petitioned the court to do that at the time that
24 the California case was concluded, the argument
25 being that since it's concluded, we should have a

1 right to look at everything they've done in their
2 trustee capacity, to see if they did it
3 appropriately. They objected to that, and they
4 said this is also barred. This is attorney-client
5 privilege. You can't have a copy of this. It's
6 inappropriate. And everybody objected to that
7 one.
8 So now we come into court some many
9 months later, and they want to stand behind the
10 argument that we are asserting conform the
11 pleadings to the facts so that we can assert we
12 relied on counsel, despite the fact that they
13 never allowed us to have the information from
14 counsel. They never -- they absolutely refused to
15 allow us and blocked us from doing it and came to
16 court and argued that we should not be able to
17 have that information.
18 There's a difference. Arguing for a
19 motion to conform the pleadings to the evidence
20 takes place when everybody knows that it's there,
21 it just hasn't been appropriately pled, but it
22 doesn't take place, to my knowledge, Your Honor,
23 in a scenario where they deny that we're entitled
24 to this information.
25 They come to court. They argue we're

1 not entitled to it. They state in the records
2 we're not entitled to it. They write us and say:
3 You're not entitled to it. And then they come to
4 court and say: We should to be able to rely on
5 it.
6 And coupled with that, Your Honor, is
7 if you look at the law, there are several cases on
8 this. One of them is the Samples case, which
9 states: The entire thrust of the discovery rules
10 involves full and fair disclosure to prevent a
11 trial from becoming a guessing game or one of
12 surprise for either party. This is a 1997 South
13 Carolina case. This is Samples versus Mitchell.
14 Well, if Your Honor were inclined to
15 allow them to amend the pleadings to assert this
16 defense, then we, despite our -- what I would
17 consider to be our diligent efforts to get
18 discovery, to know who the witnesses are, to see
19 what the experts are, so we can understand the
20 case before we come to court, and we've been doing
21 this for two-and-a-half years or so, we would have
22 been deprived of the right to investigate that
23 issue, which is exactly what the Samples case and
24 other cases protects us from.
25 So while the argument does apply in

1 many scenarios, I don't believe it would apply
2 here, because until now, until this case started,
3 we've never understood that they were even going
4 to rely on counsel. That's my argument.
5 MR. BOYD: Your Honor, if I may, the
6 issue of the attorney-client privilege is one --
7 again, it's one thing to say -- I mean, clearly we
8 have provided significant amounts of information
9 with respect to the materials from the California
10 representation while still attempting to maintain
11 that degree of privilege which was appropriate.
12 And again, those documents were produced according
13 to an order of this court.
14 There was -- again, much in the same
15 way we talked about with regard to Robin Morris,
16 there was a request for documentation to be
17 produced from the California proceeding on the
18 novel theory that because the case -- because the
19 client had settled, that the attorney-client
20 privilege had gone away.
21 Well, we briefed that issue, that
22 question, and the court decided again, ruled in
23 our favor, that that was not consistent with South
24 Carolina law, that's not what the law is, but
25 notwithstanding the fact, Your Honor, we did, in

1 fact, produce -- and I hate to keep using the
2 word thousands -- thousands of pages of
3 documentation from the California law firm
4 specifically related to those activities
5 undertaken by the lawyers.
6 You've heard Mr. Slotchiver question
7 the witness very specifically at length on exactly
8 what was done by the lawyers and when. They've
9 attributed explicitly various -- what they
10 considered to be the various portions of the fees
11 that are attributable to the different things that
12 were done by the attorneys in California. To say
13 that we've not given them anything is so far from
14 the truth, it's pathetic, Your Honor.
15 It's a situation where we objected to
16 the wholesale turnover of information. We argued
17 it. The court ordered it. We complied with the
18 court order. We provided those documentations.
19 But the bottom line is Mrs. Cohen has testified at
20 length with regard to those records, and so what
21 we attempted to do in that instance where
22 information was sought was find a middle ground,
23 and we produced documents according to the court's
24 order.
25 And again, I hate to keep beating this

1 horse, but I believe our pleadings are sufficient
2 to justify everything that the witness is being
3 questioned on, and I'll be glad also to submit a
4 memorandum in support of that position. I don't
5 really -- I'm not fully prepared to argue it at
6 this moment, but I'd be pleased to submit a
7 memorandum in support of that question in due
8 course, whenever the court would like to see it.
9 But I would also remind the court when
10 the issue with Robin Morris came up -- and again,
11 the same scenario, Your Honor -- they sent a
12 subpoena, we want the entirety of the file, we
13 objected on that basis, but we attempted to
14 provide an option for discovery, and petitioners
15 did not follow up on that. But that's not to say
16 that we asserted a blanket privilege. We objected
17 to the wholesale fishing expedition through
18 Ms. Morris's file.
19 MR. DAN SLOTCHIVER: That's just not
20 what the transcript says. There was a blanket
21 objection, Your Honor.
22 You know, throughout the process, I've
23 heard the references to ludicrous, pathetic, and
24 trickery accused of us, on our side of the case,
25 particularly probably aimed more towards me than

1 anybody else.
2 Your Honor, they've asserted a
3 privilege. They came to court. They argued they
4 don't have to give these documents to us. They
5 never gave the documents to us. If the privilege
6 did not exist, they should have given it to us
7 willfully on their own.
8 THE COURT: Okay. I'm having a little
9 bit of difficulty with determining how the
10 argument that you're making, Mr. Slotchiver, and
11 Mr. Boyd in response to that, relates to the
12 motion to amend the pleadings based on the
13 evidence that's already been submitted.
14 MR. DAN SLOTCHIVER: Because the
15 motion to amend the pleadings deals with the issue
16 of allowing them to assert an affirmative defense.
17 That's the purpose of the motion. If they assert
18 an affirmative defense, then the affirmative
19 defense is we relied on counsel. And if they say
20 we relied on counsel, if they had told us that in
21 advance, if they had represented to us that's
22 going to be our defense, then we would have had
23 the right to have taken the deposition. For
24 example, if they say we relied on what Robin
25 Morris told us, we certainly would be able to take

1 the deposition.
2 MR. BOYD: Your Honor, I offered --
3 THE COURT: Based on the evidence that
4 has been submitted already, the testimony that has
5 been submitted, which, as I understand, is the
6 motion Ms. Hedgepath has made -- am I correct,
7 Ms. Hedgepath? -- that based on the testimony that
8 has been submitted thus far, she's requesting that
9 the pleadings be amended to conform to the
10 evidence that has been submitted.
11 MR. DAN SLOTCHIVER: I understand, and
12 that's exactly what the Samples case talks about
13 is the right to do discovery and the right to have
14 information in advance. I would argue to the
15 court that the motion to amend the pleadings to
16 the evidence applies when you allege that somebody
17 was hurt, but you forgot to say there was
18 negligence, when everybody knows the arguments,
19 and everybody can do the discovery, and there's no
20 surprises, but here, there's clearly surprise,
21 because if --
22 And we argued this, Your Honor, at the
23 transcript, and I could pull it up, but we argued
24 the same thing. If they're going to come into
25 court and argue, we have the right to know what

1 they're going to say with reference to Robin
2 Morris. And they asserted the attorney-client
3 privilege, and they did not list her as a witness,
4 and therefore, we had no affirmative duty to go
5 seek out people, and we could not take the
6 deposition of her if we wanted to.
7 It directly relates to Ms. Hedgepath's
8 motion, because intrinsic in conforming the
9 pleadings is that we would have the right then to
10 do discovery on this exact issue, and we haven't
11 been provided that in discovery, and we don't have
12 the names with which we could do discovery on. We
13 couldn't take the subpoenas. We couldn't do those
14 things. That's why we object to it.
15 MR. BOYD: Your Honor, as we briefly
16 covered on the record previously, we wrote
17 Mr. Slotchiver, invited him to take the deposition
18 of Robin Morris.
19 MR. DAN SLOTCHIVER: It's actually --
20 Your Honor, in the same sense that Mrs. Cohen
21 offered Dan Dorn an opportunity to settle on her
22 terms, they offered me the opportunity to accept
23 their limited basis for taking the deposition.
24 Because they had not listed her as a witness,
25 because they hadn't listed her as an expert, and

1 because they did not -- and because they came into
2 court and asserted it was privileged, at that
3 point, they put a blanket around her. There was
4 no reason for us to do anything more.
5 I want to go back to the issue we've
6 discussed over and over again, which is if you
7 have a right to comply with discovery, you're
8 saying we'll give it to you if you do XYZ, does
9 not preclude you from having the right or the
10 requirement to do it, and they haven't provided
11 it. They don't have -- they're not the court.
12 They don't have the right to tell us: We'll give
13 it to you only if you agree to these particular
14 conditions, and if you don't agree to these
15 conditions, we won't give it to you. We assert
16 the privilege, but we'll still come into court and
17 try to use it against you, and that's exactly what
18 they're trying to do on this case.
19 And if we conform the pleadings, we've
20 created exactly that scenario, when we have not
21 had the opportunity to do the necessary due
22 diligence that we would otherwise do with these
23 witnesses or based on the testimony, because they
24 blocked us from it.
25 It was their decision. They had the

1 right -- whenever they wanted to, they could have
2 said to us, you know what, we're going to list
3 these people as witnesses, and they could have
4 told us that nine months ago, a year ago, but they
5 didn't. Not even today. They still haven't done
6 it. But they want to call -- they want to be able
7 to rely on them without any balances, without any
8 check system.
9 MS. HEDGEPATH: Your Honor, I want him
10 to clarify who he is referring to as they. I
11 can't respond to discovery if I get none.
12 MR. DAN SLOTCHIVER: I'm referring to
13 the Cohens and their counsel.
14 THE COURT: Anything else from you,
15 Ms. Hedgepath, on your motion?
16 MS. HEDGEPATH: No, ma'am.
17 THE COURT: Mr. Boyd?
18 MR. BOYD: Your Honor, for the record,
19 I would just state the following: This case has
20 been something of a moving target. We've been
21 discussing quite a few things since we began
22 taking testimony in this matter that go beyond the
23 four corners of Mr. Slotchiver's pleadings. The
24 way the case evolved I would say is unusual.
25 With regard to Ms. Morris, again, the

1 intent of the rule is to provide notice to the
2 other party. With respect to those things, we had
3 many, many written communications at length. We
4 had a motion, in fact, regarding Ms. Morris. With
5 respect to our failure to technically name her as
6 a witness in that particular interrogatory, Your
7 Honor, I would say that is form over substance.
8 We clearly -- Mrs. Cohen relied on the
9 testimony -- or excuse me, the prior actions of
10 Ms. Morris in her deposition. We subsequently had
11 the voluminous exchange of information related to
12 Ms. Morris that the court's well acquainted with,
13 and so I think --
14 Again, I can understand the desire to
15 win this on a technicality, but if you look at the
16 spirit of the discovery rules, Your Honor, and the
17 purpose that the discovery rules have for their
18 construct, we have had more than ample disclosure
19 related to Ms. Morris.
20 And just for the record, Your Honor,
21 given the nature of how the case has evolved, I,
22 too, would like to join, just for the record, in
23 the motion that I think what the appropriate thing
24 to do is for the court to allow the pleadings to
25 be amended to conform to what's actually been

1 pled.
2 THE COURT: I'll be happy, if
3 Ms. Hedgepath would like to submit something in
4 writing on her motion, to reserve my ruling on
5 that. And, of course, there can be rebuttals.
6 MR. BOYD: Would you also extend the
7 same right to the Cohens, Your Honor?
8 THE COURT: Yes, sir.
9 MR. DAN SLOTCHIVER: Your Honor, is
10 this is a matter that I take you will rule upon
11 after the trial is over or after this week is
12 over, depending on which one takes place, but not
13 before the week is over?
14 THE COURT: I don't -- I would not
15 think I'd be able to rule on it before the week is
16 over.
17 MR. DAN SLOTCHIVER: Fair enough. I
18 ask because I don't have the liberty of going back
19 to my office when I leave here today to do it, but
20 I have some cases.
21 THE COURT: Well, then I'm not going
22 to tell you it's due tomorrow.
23 MR. BOYD: Thank you, Your Honor.
24 THE COURT: Were we with you,
25 Ms. Moore?

1 MS. MOORE: Yes, ma'am.
2 BY MS. MOORE:
3 Q. Mrs. Cohen, going back to the attorney
4 that you had hired in California, initially, you
5 had one attorney. Is that correct?
6 A. Yes.
7 Q. And what was her name?
8 A. Marina Korol.
9 Q. And then after we once again secured
10 the order here in South Carolina, sometime later,
11 you secured the services of another attorney. Is
12 that correct?
13 A. That's correct.
14 Q. And her name is?
15 A. Her name is -- well, it's a firm,
16 Meyer, Olson, Myers and --
17 Q. That's okay. Who was the lead
18 attorney that you worked with?
19 A. Lisa Meyer was the lead attorney.
20 Q. Now, as far as the action in
21 California is concerned, there were various issues
22 to be addressed. Would you agree with that?
23 A. Many, many issues, yes.
24 Q. And would you agree that the issue of
25 child support and visitation, that those two

1 issues were not resolved until fairly recently?
2 A. That's correct.
3 Q. Was there ever a point which Dan Dorn,
4 via his attorney, filed a formal pleading
5 withdrawing the request for child support?
6 A. Never.
7 Q. So was there ever a dismissal or a
8 withdrawal of the request for child support until
9 the final resolution was reached?
10 A. Not until even beyond the final
11 resolution. After it was supposedly agreed upon,
12 it took many, many letters before she wrote it in
13 a form that would be acceptable for the courts in
14 South Carolina to have them dropped, child
15 support.
16 Q. Now, unfortunately, I wasn't here
17 during your direct, so I've read your testimony,
18 but it's my understanding that various inquiries
19 were made by you to try to stop the California
20 case. Is that correct?
21 A. Yes.
22 Q. And in what fashion did you try to
23 pursue stopping the California case? How did you
24 try to stop it?
25 A. Well, I made several offers of

1 settlement. I spoke -- what am I allowed to --
2 Q. Without getting into what anyone told
3 you. I just want to know what you did.
4 A. I personally contacted Dan on a number
5 of occasions. I went to his home. I went to the
6 synagogue, in hopes to talk to him. I went
7 through every route that I could think of, both in
8 terms of trying to reach him from a point of view
9 of human kindness and from a point of view of his
10 claim to be religious, to try to get him to see
11 that what he was doing was harming Abbie
12 tremendously and --
13 MR. DAN SLOTCHIVER: Your Honor, I
14 object to the reference that it was harming her.
15 I don't believe there's a foundation to that.
16 THE COURT: I'll strike that.
17 BY MS. MOORE:
18 Q. Mrs. Cohen, did you have a concern
19 over the amount of money that was being expended
20 from the trust for the California litigation?
21 A. Definitely. That's why I kept trying
22 to deal with it in any way I could imagine to deal
23 with it.
24 Q. And did you try to work with your
25 attorney in California to secure a settlement?

A. Yes, I did.
Q. Do you feel like there was anything you could have done differently? Knowing everything that you know today, is there anything that you could have done differently?
A. No. I don't know of anything.
Q. Now, as far as the California action was concerned, once the case here in South Carolina, talking about the probate order, once that order was issued, did you seek further advice from Attorney Morris?
A. Once the initial order --
Q. Yes, ma'am, once that initial order was issued.
A. Yes, I did.
Q. And was that relative to the fact that you had an ongoing action in California?
MR. DAN SLOTCHIVER: Your Honor, I would object. This goes back to the same line of argument. If the advice goes towards an affirmative defense, it would be, I believe, inappropriate. If it goes -- otherwise, it would be irrelevant.
We certainly don't dispute -- if she wants to testify that she sought advice and paid

money to her, without talking about what that was for, we don't have an opposition to that, but other than that, I do not believe it would be prudent or appropriate at this juncture to testify as to what she sought advice for, because the only purpose of it is either irrelevant, or it goes towards an affirmative defense.
MS. MOORE: Your Honor, I think it goes to her very duty as a trustee to seek out advice to make a determination as to whether or not the action she's taking is an appropriate action, as well as whether or not the amount of money that she's been spending is reasonable under the circumstances.
MR. DAN SLOTCHIVER: And the seeking out -- the mere comment by Ms. Moore about why she would go to counsel supports an affirmative defense. If you go to counsel to seek out is it appropriate, should you do something different, should you spend money, that is all -- this whole line of questioning goes towards the affirmative defense, which is what we've argued to the court would not be appropriate to come in. We were not able to talk to Ms. Morris. We wanted to take her deposition. We haven't seen discovery from her.

We would object to it.
THE COURT: And have I not reserved ruling on that objection a little bit earlier and said that you could submit cases for me to consider?
MR. DAN SLOTCHIVER: Yes, but I'm concerned about the evidence coming in now and testimony coming in.
THE COURT: I understand.
MR. DAN SLOTCHIVER: We haven't had the opportunity to take the discovery of these witnesses.
THE COURT: Mr. Boyd?
MR. BOYD: Your Honor, that was my point. I thought the court had decided to reserve judgment on this issue until such time as the parties could brief the issue.
MR. DAN SLOTCHIVER: And Your Honor, my concern is that testimony -- if we go down this line of questioning, we're going to continue to hear more and more testimony about what she did and who she relied on and what she relied on and why and who the parties were, so at this point, we're putting in evidence which should not be in front of the court. And I understand the court's

ruling that -- or its withholding its ruling.
The problem is that, Your Honor, you are hearing the case as the judge and jury, and I don't know what is going to come out of the witness's mouth at this point. I haven't had the opportunity to look at it or examine it. I can't even effectively cross-examine her on this issue, because I don't know what she's going to say, and I haven't been afforded that opportunity.
Your Honor, all of this goes back to the issue of surprise and not allowing me to have the evidence that I need in order to appropriately respond or be able to be in a position to respond.
And understanding the court's desire to withhold, I don't know how to address that, other than perhaps to have the witness proffer the testimony in some capacity without the court's -- I don't know how we do it without the court's consideration, but I don't -- I'm asking the court, because I don't know. I'm worried that once we do this on this issue, it's going to come in again over and over and over on other issues.
This trial, as I see it, since it's Monday and 20 to 5:00, and we're still on Mrs. Cohen, we're not going to be done this week

1 with it, and I would ask -- I don't believe, and
2 hopefully we will, but I would ask that the court
3 instruct us as to how you want us to proceed,
4 because otherwise, as soon as this is done, I'm
5 going to hear about the advice, perhaps, from all
6 kinds of other people, and it's the same objection
7 over and over and over again. And I believe that
8 it is an absolute right we have to object to this.
9 It is absolutely prejudicial to us. The case law
10 is clear, in my opinion, that she cannot testify
11 as to reliance on witnesses without having pled
12 it.
13 And perhaps if the court will consider
14 that over the evening or maybe do some -- look at
15 the law, Your Honor, over the evening, to give
16 yourself comfort, I would ask that you would
17 consider ruling earlier, instead of later, and
18 withhold this testimony from coming in until Your
19 Honor is ready to rule, understanding that
20 Mrs. Cohen can be re-called for the limited
21 purpose of testifying about her affirmative
22 defenses, if, in fact, you believe or you rule
23 that it would be appropriate.
24 THE COURT: Mr. Boyd?
25 MR. BOYD: Your Honor, Ms. Moore's

1 questioning -- we named as witnesses both Lisa
2 Helfend Meyer and Vicki Greene. Ms. Moore
3 received no discovery. And our pleadings, as I've
4 previously stated, I believe, establish the basis
5 for what the witness is discussing.
6 Now, I am not familiar with reliance
7 on counsel as a single affirmative defense that
8 must be pled individually under its own heading.
9 I understand reliance on counsel to be a factor
10 that goes into the consideration of the other
11 factors that can contribute to establish the
12 reasonableness of the trustees' conduct.
13 But I'm happy to brief the issue, but
14 again, Mrs. Cohen raised the issue in her
15 deposition, we've noticed these people as
16 witnesses, and she's simply being questioned in a
17 manner that does not invoke the privilege as to
18 why these people were retained. And Ms. Meyer,
19 Lisa Meyer, has already submitted a factual
20 affidavit in these proceedings. Nobody objected
21 to that.
22 THE COURT: Ms. Moore?
23 MS. MOORE: Your Honor, if I can just
24 be heard on one issue.
25 To be quite frank, I thought it

1 strange that I had not been served with discovery
2 requests, and in fact, I called Ms. Hedgepath to
3 ask if perhaps she had been served with discovery,
4 so I could make sure that we get in some witnesses
5 that I felt were not being provided in the
6 discovery that were being submitted by Attorney
7 Slotchiver and Attorney Boyd. I was concerned
8 that certain witnesses that would be important and
9 necessary witnesses were not listed. And so when
10 I contacted Ms. Hedgepath, she advised me that she
11 had been not been provided with any discovery
12 requests, and therefore, there was no obligation
13 on our part to provide the names of these
14 witnesses.
15 And what was interesting is when
16 some -- and I'm going to call it games. All
17 attorneys do it. You look at what the rules are
18 and what your obligations are and what you have to
19 do and when you have to do it, the timing of it,
20 and as long as you do it within the Rules of Civil
21 Procedure, you are complying with the rules of the
22 court, and one of which is at one point I believe
23 Mr. Slotchiver realized that it would be
24 beneficial to him to know who our witnesses would
25 be.

1 And initially, Ms. Hedgepath thought
2 that was a good idea, and I said: No, I don't
3 want to do that, for various reasons. One, I felt
4 like it was not a benefit to Abbie for
5 Mr. Slotchiver, at this point, to know who our
6 witnesses would be, and two, I wasn't certain as
7 to what witnesses would be produced by
8 Mr. Slotchiver, much less what witnesses would be
9 produced by Mr. Boyd and Mr. Davis.
10 So the bottom line, I was concerned
11 that those certain witnesses were not listed. I
12 did not know why they weren't listed. I felt like
13 they were important and would be necessary
14 witnesses to be called at the time of trial.
15 So if they were not called by Mr. Boyd
16 and Mr. Davis, fully intended -- either whether it
17 be through Ms. Hedgepath or through myself, there
18 were certain witnesses that we did intend to call,
19 if they were not produced by the parties. That's
20 number one.
21 Number two, as far as Robin Morris is
22 concerned, that was an issue at the very
23 beginning, and there was a lot of activity and
24 efforts that were made to coordinate the
25 scheduling of the deposition. I've had numerous

1 conversations with Ms. Morris as far as the
2 scheduling of the deposition. And then at some
3 point, for whatever reason, attempts to take her
4 deposition stopped.
5 I know of no order that prohibited
6 Mr. Slotchiver from taking her deposition. There
7 was no motion to quash the service of a subpoena
8 upon her for the attendance at the deposition. I
9 did not know why he didn't. The only thing I
10 thought, perhaps he wanted to call her himself as
11 a witness. Be that as it may, he certainly had an
12 opportunity to take her deposition.
13 And Your Honor, I want to make it very
14 clear, I do intend to ask whether or not she took
15 certain steps in reliance upon advice of both
16 medical professionals, as well as legal
17 professionals. So I don't want to mislead this
18 court to think that all I'm going to do is ask the
19 appropriateness and whether she expended money and
20 stop there. I don't intend to stop there.
21 But I think it is an argument that is
22 lacking as far as surprise. There's no surprise.
23 Everybody's known that Robin Morris has been here
24 from day one and that she was involved in the
25 preparation of the trust and had provided counsel

1 to the Cohens prior to retiring and then
2 transferring the file to Mr. Davis, so there's no
3 surprise there.
4 So I just want to make sure I was
5 heard on those two issues.
6 MR. DAN SLOTCHIVER: Your Honor,
7 Ms. Moore does not have the right to assert an
8 affirmative defense on behalf of the Cohens. She
9 does not have the standing. The Cohens have been
10 sued in their capacity as trustees, as
11 conservators, and individually. They have the
12 right to assert an affirmative defense. It
13 doesn't belong to the guardian. Her asking
14 questions of them does not alleviate their
15 responsibility to have asserted that defense or
16 not have asserted that defense. That's their
17 choice.
18 Now, when we go back to Robin Morris,
19 just for clarity, we had subpoenaed records. The
20 court ordered that we could notice her deposition
21 if we so desired, and at that point, they could
22 object, and then we could bring it back to the
23 court if that happened. But once again, as
24 discussed, since they did not list her as a
25 witness, they did not list her as an expert, we

1 had -- while we knew of her existence, they made a
2 calculated decision to assert the attorney-client
3 privilege, one that the court withheld, or upheld.
4 No different than the California ones. The court
5 upheld it when it came to the subpoena and said it
6 doesn't matter anyhow because she's already said
7 she has no documents. They asserted on the record
8 that everything she had is attorney-client
9 privileged.
10 So the affirmative defense, more
11 clearly, is that that belong to the Cohens. They
12 were the ones who had to have raised it. And for
13 the guardian to come in and to ask questions
14 eliciting the affirmative defense, which belongs
15 to the Cohens, which they did not raise, would be
16 inappropriate, and it brings us back to the same
17 position.
18 And I know Your Honor wants to look at
19 the matter, but we're going to continue to deal
20 with this as they continue to try to assert other
21 documents and other people that we can't check.
22 The whole purpose of having disclosure is so we
23 have the ability to check, to know what's out
24 there, to have an opportunity to ask. And Your
25 Honor, I believe that the court can take notice

1 that we did ask, a long time ago, and we've come
2 in here over and over again and asked supplement,
3 supplement. You're not giving us what we need.
4 We need to have supplements. And they've said:
5 We've given you everything, we've given you
6 everything. And we've come in here asking for
7 these documents. They have not asserted an
8 affirmative defense. Had they done it, we would
9 have had other rights that we would have.
10 But we've got to look at the totality
11 of what we're dealing with, and from our
12 perspective, we don't have to create an issue
13 where it doesn't exist. If they're not going to
14 list somebody as a witness, we don't have to take
15 their deposition. If they're not going to list
16 somebody as an expert, we can make the decision if
17 we want to take the deposition or if it's a waste
18 of our time.
19 THE COURT: But Mr. Slotchiver, you
20 didn't submit any discovery requests on the
21 attorney for Abbie or her guardian ad litem.
22 MR. DAN SLOTCHIVER: I understand
23 that.
24 THE COURT: So I don't know how that
25 they are precluded from going into these areas or

1 to call witnesses or to examine the witness with
2 respect to the things that maybe Mrs. Cohen,
3 through her attorneys, is precluded from entering.
4 MR. DAN SLOTCHIVER: Because, Your
5 Honor, the only relevancy to this issue for the
6 court to consider would be whether or not it does,
7 in fact, create an affirmative defense.
8 Let's assume that Mrs. Cohen says: I
9 talked to John Smith. John Smith told me I could
10 do this, and I had to do it, and it's my duty to
11 do it, and to spend all the money necessary. Go
12 and do it. And let's assume that Lee Moore asks
13 that question, and that is what is elicited from
14 Mrs. Cohen as to what she was told she could do
15 and what she was told she should do.
16 Even then, at that juncture, it has
17 not been pled as a defense, so it would not be
18 appropriately before the court. And the only
19 purpose of bringing it in would be to show that
20 there was a defense, which she has not asserted,
21 and the case law says that you must assert the
22 affirmative defense.
23 So even if Ms. Moore and Ms. Hedgepath
24 want to go down that road, it would be
25 inappropriate for Mrs. Cohen to testify to it,

1 because the court could not, based on my
2 understanding of the law, consider that as an
3 affirmative defense, and if it's not considered as
4 an affirmative defense, then it has no value.
5 And that's exactly -- this is another
6 issue of going around the requirement of
7 discovery. Had discovery -- had they been -- had
8 they asserted their affirmative defense, we would
9 have had the right to do discovery. Without
10 having asserted it, they can't rely on it as a
11 defense.
12 MR. BOYD: Your Honor, again, there
13 were entire hearings, obviously, dedicated to the
14 subject of Robin Morris and the attempt to obtain
15 the entirety of her file. We didn't object to the
16 deposition of Robin Morris. In fact, we invited
17 the deposition of Robin Morris.
18 And again, I don't know if
19 Mr. Slotchiver -- I think he's trying to impose an
20 obligation on our pleadings. In our pleadings, we
21 specifically responded to his actions in stating
22 that the trustees acted in a manner -- and this is
23 the third defense. This is our third defense,
24 Your Honor. They acted within the scope -- on a
25 good faith basis, within the scope of their

1 fiduciary authority. No less broadly than his
2 allegation that they breached their fiduciary
3 duty, Your Honor.
4 And when we had the hearing -- and so
5 I think we have provided all the notice in our
6 pleadings that we're obliged to provide. And when
7 we had the hearing with Robin Morris, there was
8 no, hey, you can't raise this issue anyway,
9 there's no -- you haven't pled this issue. There
10 was no allegation to that effect that that issue
11 was not raised at the time. In fact, we had the
12 arguments related to Robin Morris. The court
13 ruled. We abided by the court's ruling. The same
14 thing happened in California, Your Honor, and now
15 Mr. Slotchiver is trying to impose limitations on
16 the parties that have not been discussed in months
17 and years of litigation, Your Honor.
18 MR. DAN SLOTCHIVER: I've got some
19 law. I'd be happy to hand it to the court, if
20 you'd like, Your Honor. This is a matter that is
21 incredibly crucial to this case, as you are aware,
22 because without the opportunity to take the
23 depositions, we have no way to verify what
24 happened in advance of trial.
25 MR. BOYD: Your Honor, I invited him

1 to take the deposition of Robin Morris.
2 MR. DAN SLOTCHIVER: They haven't
3 listed her as a witness, and they asserted the
4 attorney-client privilege in the transcript over
5 and over again.
6 THE COURT: I'll be happy to take a
7 look at the cases. I'm not sure, Mr. Slotchiver,
8 if this is going to prevent the attorney or the
9 guardian ad litem for Abbie from calling these
10 witnesses, from examining the witnesses in this
11 respect, but I'll be happy to take a look at your
12 cases.
13 MR. DAN SLOTCHIVER: Well, Your Honor,
14 in that regard, if the Cohens have asserted an
15 attorney-client privilege that precluded us from
16 talking to the witnesses, then how can they waive
17 the privilege and allow the witnesses to come into
18 court and testify? I mean, you cannot have it
19 both ways.
20 And so I understand what you're
21 saying, but that's the problem. Once we start
22 doing that, the whole system falls apart, because
23 you're allowing somebody to say it's privileged,
24 you call them, I'll waive the privilege, but --
25 because it would have to be effectively the Cohens

1 waiving the privilege. And the Cohens to waive
2 the privilege would put us back in the same
3 position that we're in now.
4 So I would take exception, Your Honor,
5 and I would like to be heard on that, if you are
6 inclined to do that, because what if it happens,
7 because I believe it's exactly what the rules were
8 aimed to prevent.
9 MR. BOYD: Your Honor, again, we named
10 Lisa Meyer as a witness. Petitioners did not seek
11 to depose her. We specifically wrote the
12 petitioner, inviting them to take the deposition
13 of Robin Morris. They did not follow up.
14 MR. DAN SLOTCHIVER: Actually, on that
15 issue of Lisa Meyer, Your Honor, we're interested
16 to see what she's being offered for. She's not
17 been listed as an expert. She cannot testify as
18 to the law. She has the attorney-client
19 privilege. They invoked the privilege with
20 reference to her documents when we came to the
21 court seeking to get it. I'm not really sure
22 how -- what she'll be able to testify to, but I
23 figured I'd wait until they put her on the stand
24 and then find out.
25 But before we proceed, Your Honor, I

1 would ask that you review these cases, because I
2 don't know -- I don't want to stop the court, we
3 need to move forward, we've got some issues with
4 other witnesses, obviously, but this is an issue
5 which I think needs to be addressed, I would ask
6 be addressed before Your Honor allows the
7 testimony to proceed.
8 THE COURT: I'll be happy to take a
9 look at the cases.
10 MS. HEDGEPATH: Would he be kind
11 enough to share copies with counsel?
12 MR. DAN SLOTCHIVER: Well, it's not a
13 memorandum, and it wasn't something I was prepared
14 to give. It was just some general case law that I
15 brought with me, so --
16 MR. BOYD: Can we at least get a copy
17 of what's being handed up, Your Honor?
18 THE COURT: I'll be happy to get you a
19 copy.
20 MR. BOYD: Okay. Thank you.
21 MR. DAN SLOTCHIVER: Here's one, Your
22 Honor. Let me look at this one and make sure this
23 is applicable also. I believe it is.
24 THE COURT: This is the case?
25 MR. DAN SLOTCHIVER: This is

1 reference -- some research that we had done on
2 some cases referencing the particular cases.
3 THE COURT: This is -- there's no case
4 citing on here?
5 MR. DAN SLOTCHIVER: No, Your Honor.
6 I wasn't aware that this was going to come up as
7 it did, or it would be up to date.
8 THE COURT: You just want to submit
9 this?
10 MR. DAN SLOTCHIVER: It's some
11 supporting case references.
12 Could I have just a moment, Your
13 Honor?
14 THE COURT: You may. I tell you what,
15 I'm going to take about a five-minute break. I'll
16 make a copy of this and provide this to counsel
17 real quick.
18 (A recess transpired from 4:52 PM to
19 5:08 PM.)
20 THE COURT: We're back on the record
21 in the Abbie Dorn matter.
22 Mr. Slotchiver, I believe you had made
23 an objection to the admissibility of some of this
24 testimony, and you provided, I guess, a portion of
25 a case or, I don't know, a law review article or

1 something.
2 MR. DAN SLOTCHIVER: It's part of a
3 research compilation.
4 THE COURT: And I did make a copy of
5 that and provide that to opposing counsel so they
6 would have a copy of it.
7 And you are concerned about the court
8 allowing this testimony in at this time until the
9 court rules on the objection based upon the lack
10 of an affirmative defense?
11 MR. DAN SLOTCHIVER: Yes, Your Honor,
12 based upon the lack of pleading the affirmative
13 defense and based on the actions of objecting to
14 our getting this information in discovery. And
15 the claiming of the attorney-client privilege, I
16 believe it would be improper, based on that
17 whole -- on all of those circumstances.
18 THE COURT: All right. What I would
19 propose doing is to go forward, allow them to
20 proffer the testimony through the live testimony
21 of the witness, instead of adjourning for the
22 preparation of some type of affidavit to proffer
23 the testimony, and then once I make a decision,
24 I'm happy to allow counsel to submit whatever
25 brief is necessary.

1 It sounds like to me there may be
2 several issues before the court: One is the
3 motion to amend the pleadings to conform to the
4 evidence, another one is that this testimony is
5 not admissible because the reliance of counsel had
6 to be pled as an affirmative defense, and that
7 wasn't done, and I think there's another issue
8 regarding the attorney-client privilege, and also,
9 I guess whether the attorney/guardian ad litem for
10 the protected person, beneficiary of the trust,
11 can call these witnesses and introduce this
12 evidence.
13 MR. DAN SLOTCHIVER: Can assert it
14 from the defense.
15 THE COURT: Yes.
16 MR. DAN SLOTCHIVER: My concern, Your
17 Honor, is that if --
18 THE COURT: If I hear all this
19 testimony --
20 MR. DAN SLOTCHIVER: No, no. Close,
21 but no. If you determine that this testimony is,
22 in fact, permissible, then at that point, I would
23 move before the court to stay this entire
24 proceeding and to afford me the opportunity that
25 the discovery rules give me in order to take -- in

1 order to receive adequate -- or the same thing
2 would be so if you happen to amend it, in order to
3 receive the information and to do my discovery, so
4 if -- and that's why I'm asking Your Honor to make
5 a decision, because otherwise, we proceed with the
6 trial, they proffer the testimony, and assuming
7 next week you make your decision, and you make
8 that decision, which I hope you wouldn't, but if
9 you do, then at that point, I would want the
10 opportunity to come back to take the deposition
11 of -- or to take the testimony of Mrs. Cohen again
12 relative to that issue before you rule. So I
13 believe that these are critical --
14 THE COURT: On the ultimate petition.
15 MR. DAN SLOTCHIVER: -- on the
16 ultimate case.
17 And as a result of that ruling, it may
18 be that we end up adding other witnesses that we
19 did not believe to be prudent or relevant at this
20 juncture, based on the information we had.
21 Now, obviously, if Your Honor rules
22 against the admissibility of that evidence, none
23 of this applies, but it's that parade of horribles
24 that's going to happen if you allow it in, because
25 then we will have to come back and take more

1 testimony, and if we take more testimony, then
2 there's more cross-examination, and then we're
3 bringing more witnesses in, and I'm not sure how
4 that's ultimately beneficial to the entire
5 process, because it could lead me to bring -- I
6 don't know if she's going to say she relied on
7 four people, in which case all of them may come to
8 testify, or certainly, I'll take all of their
9 depositions. Based on their depositions, I may
10 have four more people, and the trial's going to
11 continue to go, all of this not anticipated, but
12 this is the problem that I see us presented with
13 at this time, Your Honor.
14 If I can also hand -- this is the
15 Samples case, if you'd like. I do have a copy of
16 this case. I don't have copies. I just brought
17 it with me over witnesses to introduce later on,
18 but I'm happy to hand this up to the court.
19 But this is why I see a problem,
20 because if we're going to go forward and allow the
21 testimony, I do want discovery, and if we're going
22 to go forward and allow them to amend the
23 pleadings, I would like to have discovery.
24 MS. MOORE: Your Honor, if I can be
25 heard on one issue?

1 THE COURT: Yes, ma'am.
2 MS. MOORE: I mean, the reality is I
3 don't know how we would even have a chance of
4 finishing the trial this week. We're not even
5 finished with Mrs. Cohen, much less have we
6 started with Mr. Cohen, nor have we done anything
7 with regard to Lisa Meyer, much less addressed any
8 witnesses that we might want to call ourselves,
9 much less the two experts.
10 Before Mr. Slotchiver started making
11 the statements that he was going -- he, in fact,
12 made, I was going to make a suggestion that if
13 there is such a concern that he's not been given
14 or afforded the opportunity to take the deposition
15 of various parties or witnesses, that he be
16 allowed to do so, and the only way that that could
17 be accomplished would be through having this trial
18 be held in abeyance and stayed until he's given an
19 opportunity to take the deposition of any
20 witnesses he may want to take.
21 Now, whether or not that then gives
22 him the ability to send discovery requests to us,
23 I realize that opens the door for that, and that's
24 just the reality of that situation. But before he
25 started that, that was the only resolution I could

1 come up with, because by the time we get to the
2 end of the week, we won't be finished with this
3 case.
4 MR. DAN SLOTCHIVER: Well, we agree on
5 that point, Your Honor, but certainly, our intent
6 right now is to proceed with the trial. My
7 client's flown here twice. We've all spent, I
8 believe, a considerable amount of money in
9 preparation and taking time off.
10 And although I question our ability to
11 complete the trial this week, I do believe that we
12 can make substantial progress with the trial, and
13 in fact, it may be to the point that there are
14 some witnesses we may be able to conclude, but we
15 can come back to court and resolve the case, even
16 if some of the witnesses aren't here, because we
17 come back another day to hear testimony. It's one
18 of the advantages of Your Honor hearing the case
19 is that we can, in fact, stop and proceed down the
20 road. I do not want to continue the case.
21 MS. MOORE: I apologize. I didn't
22 mean it in that fashion.
23 MR. DAN SLOTCHIVER: I know.
24 THE COURT: I wasn't sure.
25 MS. MOORE: I didn't mean it in that

1 fashion. I meant --
2 MR. DAN SLOTCHIVER: I didn't think
3 you did. But I think that that's the reality of
4 where we are without a decision being made. Not
5 to pass the buck, but I think we're stuck in that
6 boat.
7 THE COURT: So is it your position
8 that we could go forward over the next day or two
9 to hear some additional testimony, to at least
10 move this case along, until counsel has a time to
11 brief these couple of issues and then I have a
12 time to make a decision?
13 MR. DAN SLOTCHIVER: Absolutely, so
14 long as this line of questioning is discontinued.
15 If this line of questioning continues, then I
16 believe that I would have the right to have
17 evidence before it goes forward, so I can respond
18 to it, which I don't have.
19 Your Honor, by no means am I
20 suggesting that I want to continue the case. I
21 want to proceed with the case, and it's -- and I
22 don't believe that it would be proper to cure
23 this, to just put a Band-Aid on it by saying,
24 okay, well, if we do that, then we can all do
25 discovery and come back, because part of the trial

1 preparation is what did you do and what did you
2 not do and what happens at court, and frankly,
3 what -- discovery affords us things, and if we
4 come back in two months from now, there's a whole
5 lot of other issues that have come forward, just
6 like Ms. Moore said, that we would have the
7 opportunity to throw discovery at them,
8 everybody's going to throw more discovery, and
9 this case is going to blow up even longer.
10 This is the longest -- I will tell you
11 this has made up to be the longest trial I've ever
12 been involved in, and it's going to double in
13 length, is my guess, if we do that. And if we do
14 it, I certainly would have some motions to make
15 before we conclude, but my request is that Your
16 Honor would consider where we are and give us some
17 guidance as to what to do.
18 THE COURT: Mr. Boyd?
19 MR. BOYD: Your Honor, just a couple
20 of brief points.
21 One thing that I want to just observe
22 is there's this suggestion or maybe a direct
23 statement that all of this is a surprise. I just
24 want to remind the parties for the record that
25 Robin Morris is not a new topic of conversation.

1 In her deposition May 2011 --
2 THE COURT: I didn't think she was
3 deposed.
4 MR. BOYD: No. Excuse me. I'm
5 referring to the witness's deposition, Your Honor.
6 She was asked: You accepted responsibility as the
7 trustee. This is a reference to Dan Dorn's
8 request that the trustees bring a marital
9 dissolution action. This is on Page 70. Answer:
10 Yes. And before you accepted it, you had an
11 opportunity to see the trust and to consult with
12 counsel if so desired, correct? Answer: Right.
13 And I'm assuming you did that? Answer: Yes. To
14 understand what you were accepting? Answer: Yes.
15 I spoke with Robin Morris, who advised me, as I
16 said, that I had to defend against the action.
17 Then there's another reference,
18 flipping to Page 87, Your Honor: I believe I had
19 been given approval. This is referring to the --
20 well, let me back up.
21 Were you ever concerned about your
22 ability to pay attorneys fees without court
23 approval in advance? Answer: Yes. Was I
24 concerned? Question: Yes. I believed that I'd
25 been given approval. Which court gave you the

1 approval to pay the attorneys fees? Answer: From
2 my understanding, when I talked to Robin Morris,
3 Horry County court told me I had to defend the
4 invasion of the trust by Dan Dorn. That was my
5 understanding.
6 So this is not, Your Honor, a new
7 issue. Now, we can split infinitely-fine hairs
8 all day long, but this is not a new issue.
9 The other observation I would make is
10 that I think a lot of what Mr. Slotchiver is now
11 raising would have been the appropriate subject
12 for motions in limine prior to these proceedings,
13 but to bring these issues up in the middle of
14 these proceedings puts everyone at a terrible
15 disadvantage, Your Honor.
16 MR. DAN SLOTCHIVER: I had no idea
17 they were going to rely on this affirmative
18 defense, Your Honor.
19 And the statement here, once again, in
20 one of the transcripts, Bret Davis's testimony
21 here, or his statement here, he talks about how
22 the -- and while Mr. Slotchiver's correct, but
23 there is a timeline where she had to file and I
24 had to file, but I've also done a lot of work on
25 this matter, and I have retained documents that

1 may predate my involvement or whatever, so I'm not
2 completely certain that I can separate the things
3 as easily as he may think I can separate them. It
4 is all what I consider my file now and privileged.
5 So it's the same issue we've been discussing.
6 As far as raising the issue, nobody
7 listed Robin Morris as a witness. The last
8 notification -- we had brought this matter to the
9 court, because we knew that she testified in her
10 deposition that based on her deposition, we did
11 try to get documents. We tried exactly that. And
12 they said no, they objected to it, and Your Honor
13 agreed with them that we could not get these
14 documents.
15 You know, the fact that Robin existed,
16 a surprise? No. The fact that they were going to
17 bring her in to testify -- or not to testify, that
18 they were going rely on her and assert her as an
19 affirmative defense, absolutely a surprise. They
20 made the tactical decision we're not going to do
21 that, we're going to claim the attorney-client
22 privilege instead, and we're not going to let you
23 go into it. And that's exactly what they did.
24 Now they want to rely on it, and it's just
25 improper.

1 MR. BOYD: Your Honor, again, we
2 objected to the subpoena which Mr. Slotchiver
3 propounded, which was a subpoena for the entirety
4 of the file. And I keep repeating myself. We did
5 not object to appropriate discovery with respect
6 to Ms. Morris, so --
7 MR. DAN SLOTCHIVER: The transcript
8 speaks for itself, Your Honor. Mr. Boyd,
9 Mr. Davis, and Ms. Morris, each one of them
10 individually, claimed that privilege, and I don't
11 know how they can tell me that it was a limited
12 privilege. And they said: We'll consider
13 interrogatories by questions if you send them to
14 us. Once again, we made a decision based on the
15 fact they never disclosed her as a witness, they
16 never disclosed her as an expert, and they
17 asserted the attorney-client privilege.
18 And what we anticipated was that even
19 if we served her with notice for her deposition,
20 they were going to assert the same privilege
21 they'd asserted all along. We also assumed that
22 if they are asserting these privileges or if they
23 aren't asserting these privileges, that they would
24 have had a duty under the requirements to give us
25 the documents, which they have not done, even 'til

1 today's date they haven't done. I've heard over
2 and over again about the fact that we've offered
3 them opportunity. We have not been provided
4 documents.
5 Your Honor, it goes back to an
6 argument that I made several months ago, maybe
7 twice. It is not our duty -- and we made this on
8 the motions to compel. It's not our
9 responsibility, as petitioner's counsel, to ask
10 somebody to supplement the discovery. It is their
11 responsibility to be proactive, not reactive.
12 In the same vein, it's not our duty to
13 ask them again: Are you going to call her as a
14 witness, or are you going to assert documents? In
15 good faith we trusted their answers, which are
16 governed by the court to be correct. When they
17 said it's -- they came into court -- and we have
18 the transcript. I believe we've turned it into
19 evidence. But it clearly stated we got a
20 privilege, we got a privilege, we got a privilege.
21 MR. BOYD: Your Honor, with respect to
22 the specific advice that Mr. Slotchiver is
23 referring to, I believe Ms. Morris was right, I
24 believe Bret Davis was right, and I don't believe
25 I made any representation to this court that was

1 incorrect. I don't believe there was a responsive
2 document.
3 Now, when a document from Ms. Morris
4 was delivered to me by email, yes, it was a rather
5 recent arrival, but I did produce it. I produced
6 it along with the email which showed the
7 provenance of the document, Your Honor, but that
8 document has been produced. It is the document
9 that Robin Morris provided me, and I did produce
10 it.
11 Now, I don't believe there's a written
12 document that says exactly and specifically, in my
13 opinion, what advice that Mr. Slotchiver is
14 getting at, but that doesn't mean that the witness
15 should be precluded from referencing her consult
16 with counsel throughout this process.
17 MR. DAN SLOTCHIVER: We also requested
18 witnesses to the defense. Now they want to assert
19 that she's a witness to the defense because she
20 had a conversation with Mrs. Cohen. And even if
21 it's not a document, if she is a critical witness
22 with which they are relying their defense on, they
23 should have provided us with her as a witness,
24 which they did not do, never. We only learned
25 about Robin Morris through taking the deposition

1 of Mrs. Cohen, not through discovery responses.
2 MR. BOYD: Your Honor, again,
3 discovery is a multifaceted undertaking. It's
4 intended to provide notice, prevent surprise.
5 There's written discovery. There's
6 interrogatories, there's requests for production,
7 obviously, but there's also the deposition of
8 witnesses, and Mrs. Cohen made it plain in her
9 deposition that she had relied on the advice of
10 Robin Morris throughout these proceedings.
11 MR. DAN SLOTCHIVER: Followed by our
12 moving for the court to give us the documents that
13 I'm objecting to it based on privilege.
14 MR. DAVIS: He just said there was no
15 documents. There was a conversation.
16 MR. BOYD: I just explained, Your
17 Honor, that I still to this day don't believe
18 there's a responsive document that provides -- I
19 have not seen it. If it exists, I have not seen
20 it, Your Honor. But the witness has testified
21 previously and would testify -- her testimony has
22 not changed. It's been consistent.
23 THE COURT: So, Mr. Slotchiver, your
24 position is that you would rather the court not
25 allow the testimony of the witness with respect to

1 reliance upon counsel --
2 MR. DAN SLOTCHIVER: Yes, Your Honor.
3 THE COURT: -- until I've ruled on the
4 matter?
5 MR. DAN SLOTCHIVER: Yes, Your Honor.
6 THE COURT: And is there other
7 testimony, Ms. Moore, from the witness that you
8 would like to enter at this time? I think there
9 was some discussion that counsel felt like that
10 there were other witnesses that we could hear from
11 over the next couple of days.
12 MS. MOORE: Your Honor, some of the
13 testimony that I wanted to elicit would be kind of
14 intermingled with some other testimony.
15 THE COURT: That's already been
16 introduced?
17 MS. MOORE: Correct, but I'd rather
18 not pick and choose those pieces, because I
19 intended to question her kind of in a
20 chronological order. And if I understand, are
21 they only objecting to her reliance upon the
22 advice of attorneys, not the reliance of advice as
23 to doctors?
24 MR. DAN SLOTCHIVER: Your Honor, we're
25 relying on -- or we're objecting to any matter

1 which should have been pled by an affirmative
2 defense.
3 I'm at a little bit of a handicap
4 here, because I'm provided new things different
5 days I come into court, so I don't want to limit
6 myself to that. Right now what I'm objecting to
7 is the introduction of testimony from what the
8 lawyer told them, but likewise, it appears that
9 there's an attempt to bring in testimony from what
10 a doctor told them.
11 For example -- and I don't know what
12 would happen, but for example, if they said: A
13 doctor told me that if you don't do these things,
14 it will be critical, well, we don't have -- and
15 that, I think, would be an affirmative defense:
16 We had to do it because we were told if we didn't
17 do it, it would be critical. Well, I don't have
18 that information. I don't know if it's true.
19 I've never been provided that information. And
20 I'm just making it up, Your Honor. I have no idea
21 if it exists.
22 But those are items which we believe
23 should have been pled if they existed, so that we
24 would have an opportunity to look at them. We've
25 got a lot of eyes on us, obviously, but I'm not

1 asking for something that I haven't asked for all
2 along, and we just want that information, and I've
3 provided the court with what I believe is the
4 proper law to support what I'm asking for. I've
5 said it in discovery. I've given the court
6 authority to substantiate what I have, and I'm
7 asking for the opportunity to continue with the
8 case.
9 It seems to me, Your Honor, that if
10 you were so inclined to allow the testimony to go
11 forward, limited to not testifying about issues
12 which arguably would be an affirmative defense,
13 but it is a very small -- hoping a very small area
14 that you would be precluding, and that if, in
15 fact, you were to decide a week from now or ten
16 days from now that you were inclined to allow it
17 to come in, it would be as simple a task as to
18 call in Susan or Paul Cohen, because they're the
19 only people involved, to come testify to it, but
20 for the fact that it might open the door for us to
21 do other things. It's -- that's our position.
22 THE COURT: Does that answer your
23 question, Ms. Moore?
24 MS. MOORE: I'm not sure it did,
25 Judge. If I understood Mr. Slotchiver correctly,

1 that if I were to go into questions about her
2 reliance upon various medical professions as to
3 what steps she may have then taken, he would
4 object?
5 MR. DAN SLOTCHIVER: Well, I have no
6 objection to her testifying as to what she did and
7 what she paid for to be done. It's more along the
8 lines of the basis for why she did it, and I think
9 there is a distinction. And it goes back to the
10 same example as before. If she says: I did this
11 because I was told that if I don't do this, it
12 would be critical, I would object to that. If she
13 says: I did -- I gave her this therapy because I
14 believe it prudent and appropriate to give her,
15 then there'd be no objection to it.
16 THE COURT: But reliance on the
17 opinion of a medical provider --
18 MR. DAN SLOTCHIVER: Well, and only so
19 much as it goes toward the ultimate defense of the
20 case. I mean, there were questions asked earlier
21 that we certainly had no objection to -- there
22 were a few -- such as who referred you to this
23 doctor, and we weren't objecting because that
24 doesn't go to the underlying issue of the case.
25 It wasn't what we thought would be inappropriate.

1 It was a very appropriate question.
2 But why did you do this? Well,
3 because I was told if I don't do this, this would
4 happen. I'm just making it up, because I don't
5 know that that's going to be the testimony. That
6 would be objectionable, because that appears to me
7 to go back into the issue of being an affirmative
8 defense. I had to do it, and if I didn't do it,
9 it would be a problem. And that's the things that
10 we have not been provided.
11 THE COURT: So Ms. Moore?
12 MS. MOORE: I think that for a
13 different variation of the hypothetical he's
14 giving, he would probably object to the balance of
15 my inquiries to Mrs. Cohen, because it's more than
16 simply whether or not she expended money for the
17 purpose of various therapies. It's based on what
18 advice she received from various medical
19 professionals as to why that would have been an
20 appropriate therapy for Abbie to have been engaged
21 in in the first place, much less whether or not it
22 was reasonable to pay for it and continue to
23 provide her with such therapy.
24 THE COURT: So at this point, you
25 don't have any further questions for Mrs. Cohen?

1 MS. MOORE: Based -- I want to make
2 sure I'm real clear. I do have other questions --
3 THE COURT: Yes, ma'am.
4 MS. MOORE: -- but it's in the area of
5 dealing with what steps she took based on advice
6 provided to her by attorneys, by medical
7 professionals, et cetera.
8 THE COURT: But based on
9 Mr. Slotchiver's objection to those questions, at
10 this time, until the court rules on the objections
11 before the court and the motions, you don't have
12 any further testimony at this time and would like
13 the opportunity to re-call Mrs. Cohen to get into
14 these matters --
15 MS. MOORE: Re-call, correct.
16 THE COURT: -- once the court rules?
17 MS. MOORE: Correct.
18 THE COURT: Thank you.
19 Mr. Kachmarsky, anything from you at
20 this time?
21 MR. KACHMARSKY: I do have -- I would
22 like to request about a two- or three-minute
23 recess and come back in and get started.
24 THE COURT: All right. That would be
25 fine. We'll go off the record, take a very, very

1 brief recess.
2 (A recess transpired from 5:32 PM
3 to 5:40 PM.)
4 THE COURT: We're back on the record
5 in the Abbie Dorn matter, and I believe
6 Mr. Kachmarsky was going to examine Mrs. Cohen.
7 CROSS-EXAMINATION
8 BY MR. KACHMARSKY:
9 Q. Good afternoon, Mrs. Cohen.
10 A. Good afternoon.
11 Q. I think Ms. Moore probably asked you a
12 lot of questions I was going to ask, so I'm hoping
13 this will go a lot quicker.
14 A. Excuse me. Could you speak a little
15 bit louder?
16 Q. Sure.
17 A. Thank you.
18 Q. I wanted to take a look at some of the
19 trust expenses. We had previously looked at the
20 spreadsheet that was filed with the court for the
21 accountings, 2008, '09, '10, and '11.
22 MR. KACHMARSKY: Could you put 2008
23 up, please?
24 THE WITNESS: I can't see anything.
25 Do I get a copy?

1 THE COURT: Do we have that document,
2 the exhibit number?
3 MR. DAN SLOTCHIVER: Is this the
4 accounting or the ledger?
5 MR. KACHMARSKY: The accounting.
6 MR. DAN SLOTCHIVER: The accounting, I
7 believe, is No. 95, Your Honor.
8 THE WITNESS: Excuse me. Is this what
9 you're referring to?
10 MR. KACHMARSKY: This is 2008, that's
11 correct.
12 BY MR. KACHMARSKY:
13 Q. Ms. Moore asked you earlier if you had
14 considered placing Abbie in a nursing home, and
15 you responded that for a lot of reasons, you had
16 not decided to go that way, so to speak, but did
17 you look into the price of what it would cost to
18 put her into a nursing home?
19 A. Well, she was in an initial nursing
20 home in California. It was $1,000 a day.
21 Q. Was she still in like a critical care
22 unit? I was talking about in her present
23 condition now.
24 A. She was not in critical care, no. She
25 was not on a ventilator. She was not requiring

1 any particular -- any particular critical care
2 needs.
3 Q. So do you believe if she were to go
4 into a nursing facility today, it would be a
5 similar cost?
6 A. I have no idea. I just would not do
7 that.
8 Q. Since she's already gone through the
9 expenses, the ones I wanted to ask you about were
10 the agency employee cost. In 2008, that cost was
11 $65,000?
12 A. Yes.
13 Q. And then you also have net salary paid
14 through AccuChex, that's another $68,000. Could
15 you explain --
16 A. Show me what line. Could you tell me
17 what line?
18 Q. That is Line 25.
19 MS. MOORE: She's referring to the two
20 point number.
21 BY MR. KACHMARSKY:
22 Q. 2.19.
23 A. Salary paid through AccuChex, that's
24 correct.
25 Q. So what are the differences between

1 the two costs?
2 A. Well, these are -- the ones from
3 AccuChex are from all of my other caretakers. I
4 have two people who I employ for a large number of
5 hours, about 50 to 60 hours, because they wanted
6 those additional hours, and then I pay an agency
7 fee, and they chose to be employed that way, and
8 they're excellent employees.
9 Q. So arguably, it's all just one number,
10 adding the two numbers together?
11 A. Yes, it is.
12 Q. So the total salaries in 2008 looks
13 like it's about $65,000 and $68,000, for a total
14 of roughly 133?
15 A. Approximately, yes.
16 Q. And then, also, I wanted to take a
17 look at physician. And can I see the detail on
18 that one? That is 2.20. And you have McCarthy
19 Counseling included in that item as well?
20 A. I don't know if McCarthy Counseling is
21 included. He's not a physician.
22 Q. It is included in there as well. It
23 looks like there are some other physicians as
24 well, but there are some -- it looks like a lot of
25 that could be classified really as therapy?

1 A. Therapists, 2.23.
2 Q. If we can go back to the 2.23. Or
3 back to the total expenses, I guess. And we have
4 therapists of $12,000, roughly. So for 2008,
5 again, would you agree that the total -- I guess
6 mostly therapy would be roughly about $22,000 for
7 that year, $10,000 and $12,000?
8 A. I can't tell you a physician is a
9 therapy. That may have been -- there are medical
10 expenses that are not paid by Medicaid.
11 Q. Let's take a look at 2009 real quick.
12 I just want to look at the same expenses.
13 A. I don't have 2009. I just have 2008.
14 Q. Again --
15 A. What page?
16 Q. We're looking at the ledger page that
17 has the total expenses.
18 A. I'm sorry. I don't know what the
19 ledger page is. That one was obvious because of
20 the long columns. Cash expenses, the back page,
21 QuickBooks?
22 Q. Let me see if I can help you. And
23 you've got Item 2.01, again, agency employee cost.
24 It's approximately $88,000. Is that correct?
25 A. That's correct, yes.

1 Q. And let's see. Scooting down to
2 payroll expense through agency, $105,000?
3 A. 2.22?
4 Q. Correct. So I'm coming up with
5 $105,000, $88,000, for roughly a total cost in
6 2009 for employees equaling $193,000. Would you
7 agree with me on that?
8 A. I don't understand what you're talking
9 about right now.
10 Q. I'm talking about the total, 2.01 plus
11 2.22. It's $88,000 plus $105,000. It's $193,000.
12 And you testified for 2008 that would have been
13 roughly the employee costs that you incurred in
14 2008, and for 2009, that cost would be $193,000?
15 A. Are you saying that that's AccuChex?
16 Q. Let's look at 2.01. That's agency
17 employee cost, $88,000. Is that correct?
18 A. I'm assuming it is, yes.
19 Q. Well, are you looking at it?
20 A. Yes.
21 Q. It's 2.01. It's $88,000.
22 A. Yes, I see that.
23 Q. And then look at 2.22, payroll expense
24 through agency, $105,000?
25 A. I think that means that that's

1 supposed to be written as AccuChex, through
2 AccuChex. There's not another line for AccuChex.
3 Q. But those two expenses equal your
4 total employee cost for that year. Is that
5 correct? That's what you testified for 2008.
6 A. I guess.
7 Q. And 2.27, therapists, would you agree
8 that number is -- I'm just going to round it down
9 to $21,000.
10 A. Yes.
11 Q. And then also look at the physician
12 expense, 2.23, and that's another $21,000. And I
13 would like to look at the detail of that, please.
14 A. What do you mean the detail? What am
15 I supposed to look at?
16 Q. Are you able to see -- you're not able
17 to see the screen, or are you?
18 A. Now I can, if you make it large.
19 Q. If you scroll through most of that, I
20 think you'll see that most of that is McCarthy
21 Counseling.
22 A. McCarthy, Lisa, okay.
23 Q. If we could go in and back out -- who
24 is Lisa Falcone, by the way?
25 A. She is her chiropractor, and Corrine

1 is --
2 Q. So she wouldn't really be a physician,
3 either, would she?
4 A. No. Corrine Merrill is the only
5 physician.
6 Q. You can keep scrolling down.
7 A. Yes. She sees her five times a week.
8 Q. There's Ms. Merrill. She is a
9 physician, right?
10 A. Yes.
11 Q. But the bulk of that $21,000 is
12 basically therapy?
13 A. That's correct.
14 Q. I just want to run through all the
15 years real quick and just look at those numbers.
16 We're going to go ahead and move to 2010, and we
17 have a line item 2.01, agency employee cost. You
18 would agree it's $94,000?
19 A. Yes.
20 Q. Are you okay looking at the screen, or
21 would you want the physical document?
22 A. I'm fine with that. Can you make it a
23 tad larger?
24 Q. And then let's scroll down and look
25 at -- the payroll agency through -- payroll

1 expense through agency is $118,000. Would you
2 agree with me on that?
3 A. Yes.
4 Q. And that's a total of $212,000 for
5 2010. Also, take a look at the therapy expenses
6 on 2.24 of $36,000. Do you agree with that?
7 A. Yes.
8 Q. And also the physician fees of
9 $46,000?
10 A. Yes.
11 Q. And let's take a look at the detail on
12 that, as well, 2.20. Who is Joe Cozolino? Did
13 you testify about him previously?
14 A. I didn't testify about him, but he's a
15 psychologist.
16 Q. Is he a medical doctor?
17 A. He's a PhD psychologist.
18 Q. But not an MD?
19 A. No.
20 Q. Who's Dr. John Brown?
21 A. He is also a psychologist.
22 Q. Ms. Falcone, it says psych
23 evaluations. Is she also a psychologist?
24 A. No. Psych evaluation? I don't know.
25 Q. And I do see some miscellaneous

1 expenses for Ms. Merrill again, and there's a
2 dentist, but for the most part, the $46,000 would
3 appear to be related to therapy. Is that correct?
4 A. Tell me what number.
5 Q. You got McCarthy Counseling, 238
6 payments for $27,000.
7 A. Yes.
8 Q. Lisa Falcone, chiropractor, $3,760.
9 What's Oasis Hyper --
10 A. Hyperbarics is a treatment to add
11 additional oxygen to the brain.
12 Q. Let's just move on to 2011. And
13 Line 2.01 is agency employer cost. Let's call it
14 $93,000. Then scroll down to payroll expense
15 through agency, $106,000. Do you agree with those
16 two numbers?
17 A. Yes.
18 Q. So that would be a total of $199,000
19 for that year.
20 And now looking at therapists is
21 $27,000. Do you agree with that number?
22 A. Yes.
23 Q. Then also looking at physicians, which
24 I'm just going to say is basically therapy, unless
25 you would like to look at the detail again.

1 A. No. That's fine.
2 Q. So that's a total of $61,000 in
3 therapy for 2011.
4 And then finally, 2012. Agency
5 employee cost, $86,000. Do you agree with that?
6 A. Yes.
7 Q. Then down to the payroll expense
8 through agency, $67,000?
9 A. Yes.
10 Q. That would be a total of $153,000 for
11 2012, and then we have therapists at $24,000. Do
12 you agree with that?
13 A. Yes.
14 Q. And then also physicians, which I'm
15 also going to call therapy, for $27,000, 2.20. Do
16 you agree with that?
17 A. Yes.
18 Q. Could you explain -- basically, your
19 employee cost goes from, in 2008, $133,000, then
20 it goes to 2009, $193,000, up to $212,000 for
21 2010, back down to $199,000 in 2011, and then
22 finally, now at $153,000 for 2012. What's going
23 on in 2012 that are making these expenses go down?
24 A. Well, in 2012, Abbie is much better.
25 She can go out to therapists, thank God. That

1 does make a huge, huge difference in cost. I
2 don't need as much help as I used to need. She's
3 able to help herself more.
4 MR. DAN SLOTCHIVER: Your Honor, I
5 object to the statement that she's better, and I
6 object to the statement that she's able to help
7 herself more. She's testifying as to things that
8 Abbie -- about Abbie, not about herself, and I
9 don't believe she has the capacity to testify as
10 to those items. We've talked about this over and
11 over again. I believe you've continuously ruled
12 that she cannot testify as to what Abbie can do,
13 but instead, she can testify as to her
14 observations.
15 THE WITNESS: My observation is that I
16 don't need as much help.
17 THE COURT: Thank you. I'll strike
18 the other statement.
19 MR. KACHMARSKY: I think that's
20 responsive to the question. Thank you.
21 I've prepared a document which makes a
22 couple of assumptions, but it basically shows what
23 the trust might look like, the trust balance, and
24 I'd like to admit this.
25 MR. BOYD: Your Honor, I'm going to

1 object to this document on the grounds that this
2 is just purely speculative, and there's no
3 foundation for what he's put in here in the way of
4 projections. I'm not sure it has any relevancy.
5 The issue here is not what might have happened in
6 a perfect world. The issue is what's actually
7 happened, what the trustees have actually done.
8 MR. DAN SLOTCHIVER: Your Honor, I'm
9 seeing this document now, but I believe that the
10 issue before the court is not just what happened
11 with money that was spent, but what it would
12 require the court to make the trust whole. In
13 other words, if you determined, Your Honor, that
14 $10,000 was inappropriately spent, putting
15 $10 back doesn't make the trust whole.
16 As I understand it, the litigation
17 I've done in FINRA, is they've got to put the
18 $10 back and figure out how much money would that
19 $10 have made, had it been invested appropriately,
20 where would you be today, and I believe that's
21 what this document is going to attest to.
22 MR. BOYD: Your Honor, this is
23 completely speculative.
24 MR. KACHMARSKY: I don't think it's
25 completely speculative. It is based on assets

1 that did exist in the trust and arguably might
2 need to be put back into the trust in order to --
3 in the finding of a breach of fiduciary duty, does
4 calculate what that amount might look like, and it
5 makes -- there have to be some assumptions, I
6 mean, a reasonable assumption as to an interest
7 rate. There's no assumption as to the annuity
8 payments. They go up 3.5 percent per year,
9 period.
10 I did make an assumption on interest
11 income being calculated on a balance at 3 percent,
12 and that number would vary. The 3 percent is not
13 unreasonable over a sustained period of time. And
14 then also what would be reasonable expenses being
15 paid out of the trust, because what we've seen in
16 a lot of these years is that the money's been
17 completely dissipated. And now we understand that
18 there's not as much need for as many expenses, and
19 I'm just attempting to demonstrate that this trust
20 could have a lot of money in it and --
21 MR. DAVIS: Your Honor, I would like
22 to say one thing, if I may. Apparently, he's
23 taking the position that the ward should be -- or
24 Abbie should be placed in a nursing home. The
25 money should not -- as much money should not have

1 been spent on doctors. It should have been held
2 in the trust for the children. We can't lose
3 sight of the purpose of the trust.
4 And I think this is irrelevant. We're
5 here talking about Abbie's care. We've got
6 information in an order from California that says
7 they provide her excellent care, and now he's
8 going back and questioning what the California
9 court said and said they shouldn't have spent so
10 much money on these medical or therapists, or
11 whatever he just went through, and should put it
12 back in the trust and use these fantasy numbers to
13 come up with some kind of $9 million figure. It's
14 fantasy, and it's irrelevant. This should not be
15 admitted at all.
16 MR. KACHMARSKY: It's not fantasy,
17 Your Honor. The trust -- and I could pull this up
18 and take a look at it -- I saw at the end of the
19 2012 accounting has $150,000 in it, and that's all
20 that's in it.
21 And it seems like at this juncture
22 that they have stopped spending all the money, but
23 I maintain that a lot of the expenses -- it looks
24 like, when you look at the total numbers and the
25 total amounts that have come out of here, I mean,

1 arguably, it's kind of a free-for-all, and I'm
2 just attempting to demonstrate what something a
3 little more reasonable might look like, still
4 spending a substantial amount of money on Abbie's
5 care -- I think I started at $20,000 a month --
6 and then also showing what the result would be if
7 they had not spent all the money from the
8 attorneys fees.
9 MR. DAVIS: And that's fine, Your
10 Honor, but he's first got to overcome the reason
11 for the need for a trust, and I would encourage
12 him, along with the court, to remember what the
13 d4A trust is for. It's for Abbie's sole benefit.
14 Whatever she needs -- whatever she needs -- the
15 trust can pay for it. It's not -- it's not
16 designed to retain money for the children. It is
17 there for Abbie, and the trustees have used the
18 money for Abbie's benefit, so it doesn't make any
19 sense to then come back and say after the
20 California court has said they've acted properly,
21 to come back and say, well, they spent too much
22 money on medical care. That is exactly what the
23 trust is for, that is the sole purpose of the
24 trust, so it doesn't make any sense for him to
25 come back and give us these numbers here that are

1 highly inflated.
2 MR. DAN SLOTCHIVER: I don't believe
3 there's a place where California has ruled that
4 they acted appropriately with reference to the
5 expenditures. I don't believe that's ever been an
6 issue in front of California.
7 MR. BOYD: Your Honor, the court --
8 MR. DAN SLOTCHIVER: And Your Honor,
9 now both are arguing. We've gone back and forth.
10 I've heard Bret and Reese. It's back and forth.
11 I'm going to ask that only one of them argue, Your
12 Honor, as we discussed last week.
13 THE COURT: I would give Mr. Davis a
14 little bit of leeway in arguing on this particular
15 issue. I understand that the Cohens retained him
16 after Ms. Moore, so I think he is probably a
17 little bit more familiar with the special needs
18 trust, so I'd certainly appreciate the right to
19 hear from him on that.
20 MR. BOYD: Your Honor, the court in
21 California, in contrast to fantasy, whatever
22 this -- you may call this, again, it's not the
23 purpose of the trust. Abbie is the beneficiary of
24 the care that the Cohens have provided.
25 Specifically, the California order

1 that's been talked about so much, on Page 4, the
2 court says: Abbie has already outlived the life
3 expectancy given to her by her treating physicians
4 because of Susan's extremely persistent and
5 devoted attention to every detail of Abbie Dorn's
6 life.
7 So now you want to come in and make
8 the argument that the care should have been the
9 economy special, that the money should be pooling
10 in the trust. The fact of the matter is, Your
11 Honor, if Abbie Dorn had not been receiving the
12 extremely devoted care that Mrs. Cohen has
13 provided, there's a very good chance she wouldn't
14 be here today, and there would be no annuity.
15 THE COURT: Anything from
16 Ms. Hedgepath or Ms. Moore on this?
17 MS. HEDGEPATH: He has reasonable
18 expenses, but there's been no testimony or
19 evidence presented as to what are reasonable
20 expenses, so I don't know where he got his
21 numbers. There's been no foundation or basis laid
22 for these calculations.
23 THE COURT: Anything from you,
24 Ms. Moore?
25 MS. MOORE: Your Honor, whether or not

1 this is something he may want to argue in closing
2 arguments is one thing, but he's producing an
3 exhibit and then wants this witness to testify
4 based on numbers that he's calculated. I just
5 don't think that's an appropriate foundation for
6 her to be able to testify to, number one. And
7 number two, the numbers are calculations that
8 Mr. Kachmarsky admits that he came up with. From
9 where? Where does the number 240 come from?
10 And that's assuming that all the other
11 expenses that were actually expended from the
12 trust in any given year were, in fact, not
13 reasonable and should not have been used to reduce
14 the gross amount of the monies that were being
15 held in trust.
16 So I don't see a foundation. I think
17 the more appropriate use, if there is an
18 appropriate use, would be for him to utilize it in
19 the closing argument.
20 MR. KACHMARSKY: I would like to --
21 I'll go into the employee agency expenses and also
22 some of the therapies each year.
23 BY MR. KACHMARSKY:
24 Q. How many employees do you employ that
25 total this $199,000 that was incurred in 2011?

1 A. Well, that depends, but sometimes I've
2 had as many as nine people in AccuChex. The list
3 of therapists also varies. That could be anywhere
4 from 10 to 15, 20 people. So there are quite a
5 number of people involved in Abbie's care, and we
6 try to get her the best care available. That's
7 why the trust was set up, not to save the money
8 for the children. It's the Abbie Dorn Special
9 Needs Trust, and my concern is about Abbie and
10 getting Abbie the best care and keeping Abbie
11 alive.
12 Q. Well, let's talk about the nine
13 people. Tell me who they are, and tell me what
14 they do.
15 A. Well, right now, there aren't nine
16 people, but I've had up to six caretakers doing
17 the work of now it's four caretakers. One of the
18 reasons is that some of the caretakers requested
19 additional hours.
20 Q. They requested additional hours?
21 A. Right, and that seemed to be more
22 efficient, to give them additional hours and
23 because they were very experienced.
24 Q. Is somebody with her 24 hours a day?
25 A. Absolutely, 24 hours a day.

1 Q. How many times during a 24-hour period
2 would she have more than one person with her?
3 A. At any time that it's needed. If we
4 need to take her in the pool, she needs two
5 caretakers. If I'm gone like this all day, then
6 she needs two caretakers. I am the second person
7 when there isn't a second person in the room. If
8 I am gone, she may need a second caretaker, for
9 whatever reason.
10 Q. If she had two caretakers with her
11 working eight-hour shifts, she would have -- two,
12 four, six -- six caretakers would be sufficient to
13 keep her 24/7, with two caretakers around the
14 clock. Is that not true?
15 A. There are two caretakers. Nobody
16 works only an eight-hour shift. Sometimes, unless
17 it's a second person.
18 Q. So sometimes you would have maybe
19 three caretakers?
20 A. No, never three. There's no need for
21 three. If I am home, and it's not the pool,
22 because I can't handle the pool anymore, because
23 it's too hot for me, then I have to have a second
24 caretaker.
25 Q. I'm still trying to understand how you

1 got to nine when six would be sufficient to have
2 two with her --
3 A. No, six would be sufficient. I have a
4 physical therapist who's on the payroll, that's
5 Heidi McGovern, who is my Felderchrist therapist.
6 She's a physical therapist, a licensed physical
7 therapist. She comes five days a week.
8 And then I have Abbie -- because we
9 have a lot of people in the house, we've got a
10 cleaning staff.
11 And then I have my son Jeffrey, who
12 does some of the accounting and some other tasks
13 to make my life a little easier, because I work
14 with Abbie approximately 12 to 14 hours a day.
15 There are times that I need a rest, many times
16 that I need a rest.
17 Q. And when you need a rest, you need one
18 or two caretakers?
19 A. I need -- if I am gone, I need to
20 either have Jeffrey in the home, or I need another
21 caretaker in the home. You can't move Abbie from
22 one activity to the other with one person.
23 Q. What do most of the caretakers get
24 paid on an hourly basis?
25 A. That depends. One caretaker who is

1 not there as long I believe gets either $9.50 or
2 $9.75 an hour up to $14.50 or $15.50 an hour.
3 Q. So on a high end, it'd be $15.50 an
4 hour?
5 A. Yes.
6 Q. I need to do a little math.
7 THE COURT: Do you need a calculator?
8 THE WITNESS: Every person I have is
9 there for Abbie's benefit, and Abbie needs that
10 care. That's why the trust was established.
11 MR. DAN SLOTCHIVER: Your Honor, I
12 object to the --
13 THE COURT: I didn't know if you
14 needed a calculator.
15 MR. DAN SLOTCHIVER: I object to the
16 reference that everybody that she has is there for
17 Abbie's benefit. I don't believe it proper. I
18 believe she can state in her opinion, she's hired
19 everybody for Abbie's benefit, but there's a
20 distinction between her opinion of what benefits
21 Abbie and what actually does benefit Abbie.
22 THE COURT: I'll so note that on the
23 record, your objection --
24 MR. DAN SLOTCHIVER: Thank you, Your
25 Honor.

1 THE COURT: -- and strike
2 her testimony to the extent it was -- allow it as
3 her opinion as to --
4 MR. BOYD: Your Honor, I believe
5 that's what she said. She's just giving her
6 response to the people that she had hired for the
7 benefit of Abbie.
8 THE COURT: I'll allow it to that
9 extent.
10 MR. KACHMARSKY: I've calculated that
11 at $12 an hour, 365 days a year, 24 hours a day,
12 that was costing about $105,000 for somebody to be
13 with her 24/7. That's one person. And then we
14 make a little adjustment for people who would be
15 in there during times when she needs to go into
16 the pool, and I come up with something maybe
17 $150,000, or something like that. So the basis
18 of, I guess, my $240,000 number is just having
19 some sort of, I guess, limits on what is done for
20 her and not just being basically a free-for-all.
21 Your Honor, this case --
22 MR. BOYD: Your Honor, I object to the
23 use of the term free-for-all. I mean, the
24 majority of the -- there's no basis or foundation
25 for what Mr. Kachmarsky is saying. As a matter of

1 fact --
2 MR. KACHMARSKY: I'll withdraw it.
3 THE COURT: Thank you.
4 BY MR. KACHMARSKY:
5 Q. And you maintain that the trust, the
6 special needs trust, is for the sole benefit of
7 Abbie?
8 A. Absolutely. It's for Abbie's sole
9 benefit, not to save money for the children.
10 Q. And do you understand that South
11 Carolina also has laws relating to duties of
12 loyalty, impartiality, prudent administration, and
13 prudent investment that apply to your decisions in
14 the trust?
15 A. I think that I have been extremely
16 prudent. I have put innumerable hours, to the
17 point of utter and complete exhaustion. I'm
18 looking into everything for Abbie and doing very
19 careful due diligence in every single thing I have
20 done. And the only reason she was awarded this
21 amount of money is because we were paying that
22 much for her care. I was right at her side. I
23 was not sleeping at night.
24 MR. DAN SLOTCHIVER: Your Honor, I'm
25 going to object to her --

1 THE COURT: I'm going to -- yes, sir.
2 MR. DAN SLOTCHIVER: She's testifying
3 now as to why they were awarded that amount of
4 money that they were given. I don't believe she
5 has any foundation with which to testify to that.
6 THE WITNESS: Yes, I do.
7 MR. BOYD: She's just answering based
8 on her personal knowledge, Your Honor. She's
9 doing her best to answer Mr. Kachmarsky's
10 question. She's entitled to answer the question.
11 THE COURT: To the extent --
12 MR. DAN SLOTCHIVER: Actually, Your
13 Honor, she is using it as an opportunity to say
14 what she wants to say, not in response to the
15 question, and I don't believe that she has the
16 ability to give that opinion.
17 THE COURT: To the extent that she is
18 testifying as to her own knowledge, I will allow
19 that.
20 THE WITNESS: In my own knowledge, I
21 have looked up California awards. We had,
22 apparently, the second-largest malpractice award.
23 It was because of the care that we were giving to
24 Abbie. It had no other basis than the care that
25 my husband and I were providing for Abbie.

1 BY MR. KACHMARSKY:
2 Q. I'm asking you about South Carolina
3 law as it relates to the --
4 A. Yes, and I do believe that I was very,
5 very careful with all that, that I did comply.
6 Q. Have you ever considered the interest
7 of the three children in any decision you've ever
8 made out of this trust?
9 A. That's not what I'm supposed to do.
10 It's about Abbie.
11 MR. DAVIS: I object. Again, I would
12 implore him and the court to remember what the
13 purpose of the trust was and who the trust was
14 for. The children are remote contingent
15 beneficiaries. If there happens to be something
16 there, then they may get something after Medicaid
17 is paid back. That is not the purpose of this
18 trust.
19 I've written a memorandum to this
20 court. And his questioning here is putting the
21 witness in an awkward position. She has no
22 responsibility whatsoever to think about the
23 interest of the minor children, and I believe
24 there's provisions in the trust that say that she
25 does not have to consider that interest. It's

1 solely for Abbie. That's an improper question,
2 Your Honor.
3 MR. KACHMARSKY: Your Honor, I would
4 like to introduce this case, Lewis v. Alexander.
5 And as I said in my opening, this case was heard,
6 I think, back in March or April of 2012. The
7 decision came down in June, and then there was a
8 writ for certiorari up to the supreme court that
9 was denied in January of this year.
10 So basically, this case is, as I see
11 it, the law of the land, and it's gone into a lot
12 of detail regarding special needs trusts.
13 It's been asserted throughout this
14 trial that the interests of the children can be
15 completely ignored. This case talks about duties
16 of loyalty, impartiality, and prudent investment
17 and says that it is the state, in this case, the
18 state of South Carolina and the probate court, who
19 has the right to make decisions as to whether or
20 not the trustee acted prudently.
21 THE COURT: I'll be happy to consider
22 that case if there's not an objection.
23 MR. DAVIS: I'd like to see it first,
24 Your Honor, to see what --
25 MR. BOYD: We've got it.

1 Your Honor, it is my understanding
2 that Mr. Kachmarsky said this was a South Carolina
3 case. I just want to point out --
4 MR. KACHMARSKY: I did not say it was
5 a South Carolina case. It's a Pennsylvania case.
6 MR. BOYD: I just wanted to clarify
7 that.
8 MR. DAVIS: He also said it was
9 probate.
10 MR. KACHMARSKY: These do not have
11 page numbers, which makes them kind of difficult
12 to look at. I'm looking at the page that has --
13 the number is VE6 at the bottom. It's about five
14 from the back.
15 MS. HEDGEPATH: I'm sorry?
16 MR. KACHMARSKY: It's five from the
17 back.
18 It states that Pennsylvania's general
19 trust law contains numerous provisions for
20 protecting the trust and the interest of its
21 beneficiaries. For example, Pennsylvania law
22 imposes duties of loyalty, impartiality, prudent
23 administration, and prudent investment. These
24 duties may be enforced by a court when the court's
25 jurisdiction is invoked by an interested person or

1 as provided by law, and the proceeding may relate
2 to any other -- any matter involving the trust
3 administration. The court's authority includes
4 the power to remedy breaches of trust, remove the
5 trustee, or terminate trust.
6 It basically stands for the general
7 proposition that all of the South Carolina -- in
8 this case, South Carolina trust law, does not
9 simply go out the window because we're talking
10 about specialties trusts. So I take objection to
11 Mr. Davis's objection about me talking about the
12 interest of the remainder beneficiaries, who are
13 the children in this case.
14 THE COURT: At this point I will
15 overrule the objection and allow him to question
16 her in that respect.
17 MR. BOYD: Your Honor, just for the
18 record, I just want to point out I don't object to
19 the court considering this for the weight of the
20 authority of the opinion, but it's not binding,
21 obviously, on this tribunal.
22 THE COURT: Thank you. I'll take that
23 into consideration.
24 If you've got a copy, I'll be happy to
25 include that.

1 BY MR. KACHMARSKY:
2 Q. Your testimony is that you have not,
3 in fact, sought to see how much it would cost to
4 put Abbie in a nursing home here in Myrtle Beach?
5 You've never even looked at the cost?
6 A. No.
7 Q. You never even considered it?
8 A. And it's totally inappropriate. We
9 take care of her at home. She's our daughter.
10 The trust was set up for her care, not to put her
11 in a nursing home to get ulcers and die, when
12 there are two nurses, at most, for 24 patients.
13 That is absolutely not acceptable.
14 MR. DAVIS: Your Honor, may I say one
15 more thing for the record? I need to respond to
16 Mr. Kachmarsky. Paragraph 17 on Page 11 of the
17 trust: In the administration and management of
18 the trust, including, without limitation, the
19 investment and reinvestment of the trust estate,
20 the trustees shall consider solely the interest of
21 the beneficiary, Abbie Dorn.
22 THE COURT: Thank you. So noted.
23 BY MR. KACHMARSKY:
24 Q. You said that there was a lot of
25 concern about whether or not certain expenditures

1 would disqualify the trust for Medicaid. Is that
2 correct?
3 A. I didn't say certain expenditures; I
4 said the request for the child support. That was
5 the concern. That has always been the concern. I
6 didn't say anything about certain.
7 Q. Did you have a concern that the
8 payment of the California GAL fees would
9 disqualify the trust?
10 A. Not for Abbie, but for Dan's portion,
11 yes.
12 Q. Were you concerned that payment of my
13 fees out of the trust would disqualify the trust?
14 A. Not if the court told me to pay them.
15 Q. But you were certain that there would
16 be a problem with child support payments?
17 A. Yes. I had been given --
18 Q. Even if they were done pursuant to a
19 court order?
20 A. Didn't matter. You couldn't pay child
21 support. It was only for Abbie.
22 Q. But the trust has been ordered to pay,
23 for example, the expenses of Dan and the children
24 coming to see Abbie?
25 A. Oh, no, oh, no. We pay that

1 privately. The trust has not been ordered to pay
2 that, and the trust has not. And he has not even
3 documented it. He just makes up any number he
4 wants, and we write him a check.
5 Q. I've read the order. The order states
6 that the Cohens shall pay for those expenses.
7 A. We do.
8 Q. Correct?
9 A. We do, not the trust.
10 Q. But you were in that -- you've taken
11 that position, and that's fine, but the order,
12 when it says that you're supposed to pay those
13 expenses, it's talking to you as conservator or as
14 trustee. Is that not correct?
15 A. I don't know. I'm not an attorney. I
16 pay them myself.
17 Q. You did pay the California GAL fees,
18 did you not?
19 A. We paid them personally, yes.
20 Q. And you did pay my fees out of the
21 trust. Is that correct?
22 A. Yes.
23 Q. And as far as you know, neither of
24 those events, nothing has caused any problem with
25 the Medicaid qualification, nobody's asserted that

1 Abbie should not be on Medicaid because of those
2 expenditures?
3 A. I paid -- they did assert if I had
4 paid in California, that she would be
5 disqualified, that was definitely a claim, so I
6 paid it myself.
7 Q. You paid the expenses for the GAL
8 yourself out of the trust?
9 A. In California, yes. I was -- Medicaid
10 asserted that they would not accept that. It was
11 not acceptable for us to pay that out of the
12 trust.
13 Q. What about the payment of my fees?
14 A. This nonsensical action was brought
15 here in South Carolina.
16 Q. I'm just asking you what about the
17 payment of my fees? Was it paid out of the trust
18 or not?
19 MR. BOYD: Your Honor, objection,
20 asked and answered. And he's talking about fees
21 that were specifically argued and approved in this
22 tribunal after a lengthy argument. He's already
23 asked and answered this. The witness has told him
24 what she did.
25 MR. KACHMARSKY: I've actually asked a

1 very simple question. I've yet to get an answer.
2 I asked if my fees were paid out of the trust or
3 not.
4 MR. BOYD: And she's answered it.
5 THE COURT: And she said yes.
6 THE WITNESS: Yes.
7 MR. BOYD: She said yes, pursuant to
8 this court's authority.
9 THE COURT: Thank you.
10 MR. KACHMARSKY: I didn't hear that.
11 Thank you.
12 THE WITNESS: Yes. Pursuant to this
13 court's authority, your fees and all the -- Lee
14 and Lynette have been paid out of the trust.
15 THE COURT: And it's my understanding,
16 based on her testimony, that the California
17 guardian ad litem was paid for by the Cohens
18 personally and not out of the trust?
19 THE WITNESS: That's exactly correct.
20 THE COURT: Thank you.
21 MR. BOYD: Just want to point out for
22 the record, Your Honor, she wasn't a minor -- she
23 wasn't a GAL; she was minors' counsel.
24 THE COURT: Thank you.
25 MR. BOYD: Just clarification for the

1 record.
2 THE COURT: Thank you.
3 BY MR. KACHMARSKY:
4 Q. Do you recall what year those fees
5 were paid, the GAL fees? Was that 2012?
6 A. I don't recall, maybe 2011. I'd be
7 making it up. It's 2010, 2011, or 2012, but we
8 paid them ourselves, so it wouldn't be on there.
9 Or I don't know if it would be on there. I don't
10 know anything about -- I don't look at those
11 accounting sheets. I testified to that.
12 Q. We'll go to the detail on 2.21. Let's
13 go to 2011, please. Back up to the top, please.
14 Who is Ruth Estep, E-S-T-E-P?
15 A. She is minors' counsel, and that's
16 Abbie's portion.
17 Q. I'm sorry. She's who?
18 A. She is minors' counsel, and that's
19 Abbie's portion. Did you say Ruth Estep?
20 Q. Yes.
21 A. I cannot see this at all.
22 Q. Is that the California GAL?
23 A. She's not a GAL; she's minors'
24 counsel.
25 Q. The court ordered ultimately you to

1 pay all the minors' fees. Is that correct?
2 A. All the minors' fees?
3 Q. Yes.
4 A. They ordered Abbie to pay it, but we
5 made arrangements for us to pay Abbie's -- Dan's
6 half that he put on us by releasing confidential
7 documents claiming that he was poor and couldn't
8 pay them, and suddenly he's rich now and can
9 afford all this nonsense.
10 Q. I'm just asking you paid these two
11 amounts out of the trust?
12 A. Those were Abbie's half. They were
13 part of Abbie's.
14 Q. And nobody's ever asserted that
15 payment of those amounts would disqualify --
16 A. Because that was for Abbie. That was
17 not Dan's.
18 Q. Could you just answer the question,
19 please?
20 A. Yes, I did, because they were for
21 Abbie.
22 Q. Nobody's ever asserted that the trust
23 should be disqualified for Medicaid, or Abbie
24 should be disqualified?
25 A. No, but they did assert if I paid

1 Dan's half, it would disqualify.
2 MR. DAN SLOTCHIVER: Your Honor, I
3 object to the last statement. I don't know of any
4 evidence where there's a document or -- and I
5 haven't been provided any evidence that Medicaid
6 had communication with her where they asserted
7 this.
8 MR. BOYD: Your Honor, she's
9 explaining why she paid the funds out of her own
10 pocket, as opposed to drawing money out of the
11 trust. I thought this case was about drawing
12 money out of the trust improperly. Now she can't
13 even justify spending money out of her own pocket.
14 MR. DAN SLOTCHIVER: Your Honor, all
15 we're asking for is that if they have a document
16 or a person they're going to rely upon as part of
17 their defense, that they provide that person or
18 that document in advance.
19 And now, for the first time, I'm
20 hearing about this communication with Medicaid
21 where they told her certain things that she could
22 or couldn't do, without disqualifying it. I've
23 never been privy to that information before. I
24 don't know about Medicaid having any communication
25 with her and talking with her and speaking with

1 her and telling her these are problems, and this
2 is going to disqualify you if you do these things.
3 I'm not familiar with this stuff.
4 THE COURT: Mr. Boyd?
5 MR. BOYD: Your Honor, Mr. Kachmarsky
6 asked the witness why the funds were paid in the
7 manner that they were paid. She's answered to the
8 best of her ability. I'm not sure what
9 Mr. Slotchiver would have the witness do, other
10 than answer the question truthfully. She's
11 answered it based on her own knowledge, based on
12 her own reason for paying the money out of her own
13 pocket, as opposed to paying the money out of the
14 trust.
15 MR. DAN SLOTCHIVER: It goes back to
16 the affirmative defense issue we asserted earlier.
17 MR. BOYD: Your Honor, this case is
18 not about the payment of Ruth Estep's fees. The
19 fees that they're talking about were paid by the
20 witness, by the Cohens, out of their own pockets.
21 Mr. Slotchiver keeps saying that Mr. Dorn is not
22 accountable for any of the things that the Cohens
23 are, simply because he's spending his own money.
24 She's talking about money that came out of her own
25 pocket, Your Honor.

1 MR. DAN SLOTCHIVER: And Your Honor,
2 Mrs. Cohen was also served in this action. She is
3 an individual party to this action. There's not
4 just an action against her as a trustee of the
5 conservator. She has individually been sued in
6 this action. She is part of it.
7 MR. BOYD: Your Honor, how did
8 Mrs. Cohen run afoul of any of the allegations in
9 Mr. Slotchiver's complaint? I would love for him
10 to point out to the court how she, the witness, in
11 any way ran afoul of any of the allegations that
12 he makes in his complaint by paying a minor
13 counsel's fee out of her own pocket, which is a
14 fee that was rightly chargeable to
15 Mr. Slotchiver's client.
16 MR. DAN SLOTCHIVER: From my
17 perspective, Your Honor, had she testified that:
18 I paid the fee, I wouldn't be making the
19 suggestion, but she's testifying as to why she
20 paid the fee and who contacted her. My objection
21 is limited to the contact and the interaction that
22 she allegedly had and is now testifying to with
23 Medicaid. It's not objecting to her stating that:
24 I made the payment. I understand that I've seen
25 that document. I'm objecting to the hearsay

1 statement about a communication she had with
2 Medicaid.
3 MR. BOYD: She's testified, Your
4 Honor, that she was concerned that payment of
5 those fees out of the trust would create a problem
6 for the trust, end of story.
7 THE COURT: I'm going to sustain the
8 objection. She testified that she was concerned
9 based on I believe the Medicaid agency in
10 California told her if she paid it --
11 THE WITNESS: No. I didn't mean the
12 agency in California.
13 THE COURT: I'm sorry.
14 THE WITNESS: It wasn't -- it didn't
15 have anything to do with California.
16 THE COURT: Did you not testify,
17 ma'am, that you paid Ruth Estep because that
18 was -- out of the trust -- you paid Ms. Estep's
19 fees, one-half for Abbie, because that was for
20 Abbie's benefit, but that you were told that if
21 you paid Dan Dorn's fees out of the trust, that
22 would be a problem for Medicaid.
23 THE WITNESS: Yes, but I thought you
24 said something about California, that that would
25 be --

1 THE COURT: I thought that was in
2 California that you were -- maybe the California
3 Medicaid agency that told you that.
4 THE WITNESS: No, no. It wasn't the
5 California Medicaid agency.
6 THE COURT: But someone told you that?
7 THE WITNESS: Someone did tell me
8 that.
9 MR. DAN SLOTCHIVER: And that's what
10 we object to.
11 THE WITNESS: I acquired the
12 knowledge. Would that be more acceptable?
13 THE COURT: I don't think so, ma'am.
14 Thank you.
15 I'll sustain the objection and strike
16 that.
17 MR. DAVIS: Well, Your Honor, one
18 thing.
19 MR. DAN SLOTCHIVER: Now they're both
20 arguing the case again.
21 MR. DAVIS: How would she obtain that
22 information is how I'm just going to -- how would
23 she know whether to do it or not to do it?
24 There's got to be at some point where she gathers
25 information.

1 THE COURT: And I think
2 Mr. Slotchiver's objection is that the information
3 wasn't provided him through discovery. Is that
4 correct?
5 MR. DAN SLOTCHIVER: Yes, or through
6 an affirmative defense.
7 THE COURT: Or an affirmative defense.
8 MR. DAVIS: So all the information
9 that she's -- I know this sounds wacky, but it
10 sounds like where we're headed. All the
11 information that she's ever used in the past to
12 formulate her opinions is subject to being
13 produced to him is basically what he's saying.
14 How can she formulate any knowledge without some
15 hearsay somewhere sometime? It's impossible.
16 So, I mean, I don't know how much
17 information we can provide to him. She's got to
18 formulate an opinion, and it's got to be based on
19 something. It's not appropriate for him to say --
20 just throws up his hands: Nope, I don't have it
21 in discovery. Can't talk about it. I mean, you
22 can't do that, Your Honor. She's got to formulate
23 an opinion. It's got to be based on something.
24 THE COURT: Thank you, Mr. Davis.
25 Mr. Slotchiver?

1 MR. DAN SLOTCHIVER: If you're going
2 to rely upon advice or a statement made by
3 somebody else in defending your actions, then you
4 have to plead an affirmative defense or have it
5 provided to us. This is new information, but
6 that's all I'm objecting to, and that's why I did.
7 THE COURT: Thank you.
8 BY MR. KACHMARSKY:
9 Q. There's been a lot of testimony here
10 today about the California litigation, and I guess
11 what each of the parties' roles were and fees that
12 were spent.
13 When you first went to California
14 right after the, I guess, accident that Abbie had,
15 was it your understanding that Dan was the person
16 who would be making medical decisions on Abbie's
17 behalf?
18 A. He turned it over to my husband
19 immediately.
20 MR. DAN SLOTCHIVER: Your Honor,
21 briefly, can my client be excused until tomorrow?
22 He did the red-eye last night, and it's been a
23 long day for him, as all of us, but I'd certainly
24 like him to be excused. He was subpoenaed to be
25 here, and I wanted to make sure he could be

1 excused.
2 THE COURT: Any objection?
3 MR. BOYD: No objection, Your Honor.
4 THE COURT: No objection.
5 MR. DAN SLOTCHIVER: He'll be back
6 tomorrow.
7 THE COURT: Thank you.
8 MR. DAN SLOTCHIVER: Thank you, Judge.
9 BY MR. KACHMARSKY:
10 Q. But you understood that under
11 California law, that those decisions were his to
12 make if he'd wanted to make them. Is that
13 correct?
14 A. Had he chosen to make them.
15 Q. Had he chosen to make them. But he
16 didn't choose to make them, did he?
17 A. No. He knew he didn't have the
18 confidence.
19 Q. He allowed you and your husband to
20 make them. Isn't that correct?
21 A. Primarily my husband.
22 Q. And also under California law, he
23 would have been the sole beneficiary of Abbie's
24 estate. Is that correct, or do you know?
25 A. Abbie had no estate. He had stolen

1 everything from her.
2 MR. DAN SLOTCHIVER: Objection, Your
3 Honor.
4 MR. KACHMARSKY: I would move to
5 strike that as --
6 THE WITNESS: She had no estate.
7 THE COURT: Okay. I'll strike the
8 statement that he stole everything from her.
9 BY MR. KACHMARSKY:
10 Q. I think, Mrs. Cohen, under California
11 law, there was a period of time for about a month
12 when Abbie's care, it was very acute. Is that
13 correct?
14 A. That's correct.
15 Q. She was on a ventilator. Is that
16 correct?
17 A. That's correct.
18 Q. And he could have, for lack of a
19 better way of saying it, pulled the plug on her?
20 A. He could have murdered her, yeah, he
21 could have.
22 Q. He could have done that?
23 A. Yes, he could have murdered her.
24 Q. But he didn't do that, did he?
25 A. He was very aware of community

1 opinion, and he was pretending to be a God-fearing
2 man at the time.
3 MR. DAN SLOTCHIVER: Your Honor, I
4 object to her statement that he was aware or what
5 he was aware of. There's no foundation for her to
6 be able to support what my client was aware of.
7 THE WITNESS: Okay. Then can I change
8 that?
9 THE COURT: Thank you. I'll strike
10 that.
11 THE WITNESS: Okay. The hospital was
12 surrounded by rabbis at that time and other people
13 from the religious community. I saw them with my
14 own eyes.
15 BY MR. KACHMARSKY:
16 Q. I only want to make the point that
17 these are decisions that he had the right to make,
18 and he chose not to do them?
19 A. Yes. He could have murdered her. He
20 chose not to murder her in front of his rabbis.
21 Q. And he was also the person who would
22 have been the trustee of this Abbie Dorn Special
23 Needs Trust if he had so chosen to be, right?
24 A. He didn't even want her to come into
25 her house to visit her children. He said --

1 Q. Could you answer the question? The
2 question is: He would have been the person who
3 could have been the trustee of the trust if he so
4 chose to. Is that correct?
5 A. If he so chose to actually take care
6 of her --
7 Q. Is that correct?
8 A. -- and not desert her --
9 Q. Please answer the --
10 A. -- it is correct.
11 MR. DAVIS: Your Honor, I object. I
12 don't know if that was established -- I don't know
13 if that was established in California, because in
14 South Carolina we have to go through a whole
15 process, as you know. I've brought a number of
16 them before you. There's no way she can say that
17 he would have been the trustee. There's not
18 enough information for her to provide that to
19 Mr. Kachmarsky today.
20 MR. BOYD: There's no foundation --
21 MR. DAN SLOTCHIVER: Your Honor,
22 they're both arguing.
23 THE COURT: I know. Please, Mr. Boyd,
24 if you and Mr. Davis could decide who's going to
25 raise the objections and argue, please.

1 MR. BOYD: Your Honor, the objection
2 is there's just no foundation for the question,
3 and I don't know how Mr. Kachmarsky expects the
4 witness to respond. There's absolutely no
5 foundation for the question that he asks. It's
6 totally speculative.
7 MR. KACHMARSKY: He's the surviving
8 spouse and, as such, would be the first person to
9 be in the slot for --
10 MR. BOYD: He's asking the witness to
11 comment on something that Mr. Dorn affirmatively
12 avoided and affirmatively chose not to do.
13 MR. DAN SLOTCHIVER: Your Honor, at
14 this point now Mr. Boyd is testifying about what
15 Mr. Dorn did, and I would ask that that be
16 stricken from the record. I don't believe
17 Mr. Boyd has a foundation to testify as to what my
18 client did, nor would it be proper for him to
19 testify about what anybody did in this case.
20 MR. BOYD: Your Honor, I'm simply
21 commenting that Mr. Kachmarsky is asking the
22 witness questions about what may have happened or
23 what might have happened. It's not -- he's not
24 asking her about what actually happened.
25 MR. DAVIS: I hate to do this, Your

1 Honor --
2 MR. KACHMARSKY: I've got to object to
3 this now, double-teaming.
4 THE COURT: Mr. Davis --
5 MR. DAVIS: As it relates the trust, I
6 do have particular information and knowledge that
7 I think would be helpful to the court.
8 THE COURT: But Mr. Davis, this
9 relates to, I believe, California law, I believe
10 is what Mr. Kachmarsky was asking her, as to who
11 would be the trustee normally of the trust under
12 California. Was that not your question,
13 Mr. Kachmarsky?
14 MR. KACHMARSKY: Yes. I'm just asking
15 her since he is the surviving spouse, obviously,
16 he would be a person who would be -- if he wasn't
17 first in line, he certainly would have been right
18 at the top of the names that would have been
19 thrown in the hat for all those positions.
20 THE COURT: I will allow that, and I
21 will --
22 MR. DAVIS: Well, that sounds more
23 reasonable. Names thrown in the hat is more
24 reasonable than assuming that he would be the
25 first choice.

1 THE COURT: Thank you. If you could
2 rephrase your question, Mr. Kachmarsky.
3 BY MR. KACHMARSKY:
4 Q. As the surviving spouse, Dan would
5 have been a person who, first of all, could
6 have -- would have and could have made the medical
7 decisions on Abbie's behalf. Is that correct?
8 A. He could have.
9 Q. And he was a person who would have and
10 could have been most likely the trustee and the
11 conservator?
12 A. You're assuming he was a decent human
13 being and he took care of her and showed an
14 interest.
15 MR. DAN SLOTCHIVER: Your Honor,
16 that's not responsive.
17 THE COURT: Ma'am, I'm sorry. I know
18 you're upset. I'm trying to --
19 THE WITNESS: I'm sorry. The name
20 would have been thrown into the hat, okay.
21 THE COURT: Wait, please.
22 MR. DAN SLOTCHIVER: If I --
23 THE COURT: No. All right. I'm going
24 to strike that from the record.
25 Let me just caution you, Mrs. Cohen.

1 THE WITNESS: I'm sorry.
2 THE COURT: I understand your personal
3 feelings are getting the better of you. I know
4 we've been here for a long time. We would like to
5 continue for a little bit longer. If you could
6 please try to keep your personal feelings to
7 yourself.
8 THE WITNESS: I'm sorry. So the
9 answer is yes, his name would have been thrown
10 into the hat.
11 THE COURT: Thank you.
12 BY MR. KACHMARSKY:
13 Q. About a year after the accident, is
14 that when the lawsuit was basically getting ready
15 to settle?
16 A. No. It was considerably longer than
17 that.
18 Q. How much longer?
19 A. Well, we were out there for 17 months,
20 and they were talking about settling by August,
21 September, and it didn't actually -- the paperwork
22 didn't get signed, I don't believe, until
23 November, we didn't get the first check until
24 January of 2008, so it was -- I don't know the
25 months -- 19 months, 20 months. I don't know.

1 Q. After he let you make the medical
2 decisions, after he let you take Abbie to South
3 Carolina, after he let you become the conservator,
4 after he let you become the trustee of the special
5 needs trust, you brought this action for divorce,
6 which you said you had agreed with him that that
7 was what he wanted. Y'all were in agreement on
8 that. Is that correct?
9 A. We were in agreement, and he asked me
10 to bring the action because he was embarrassed.
11 Q. And with regard to the visitation
12 action, is it true that you told Dan initially
13 that you wanted his children to be raised by your
14 daughter Amy?
15 A. That is -- there's absolutely no basis
16 for that. My daughter has five children. She
17 runs a house. She has no time to raise three more
18 children, God forbid, if she was needed, but
19 never, never, never, never.
20 Q. When you started discussing visitation
21 with him, is it true that you wanted to have the
22 children for the entire summer or wanted Abbie to
23 have the children for the entire summer?
24 A. I wanted Abbie to have -- I called --
25 I can't say that. I looked up how much normal

1 visitation was. Eight weeks was what I put in,
2 but I had said all along, every time I tried to
3 settle, that I would accept anything --
4 Q. I'm just asking you about the
5 initial period of time.
6 MR. BOYD: Your Honor, the witness has
7 a right to answer the question.
8 MR. KACHMARSKY: She's not being
9 responsive to my question.
10 MR. BOYD: She's answering the
11 question that counsel asked her. She has a right
12 to answer the question.
13 MR. KACHMARSKY: I asked her if it was
14 true whether or not she had asked for the entire
15 summer.
16 MR. BOYD: And she was --
17 THE WITNESS: I didn't ask -- eight
18 weeks is not three months.
19 BY MR. KACHMARSKY:
20 Q. And eight weeks is a sufficient
21 answer.
22 Did you also not want the visitation
23 to be without Dan being present?
24 A. I would have preferred that, yes.
25 Q. And those were the items that Dan

1 objected to, and that's how this thing got
2 sideways, so to speak. Is that not true?
3 A. Not at all. I was perfectly clear
4 that I was more than willing to compromise on
5 that, very clear.
6 Q. Did you or Lisa Meyer hire a publicist
7 in the California case?
8 A. I never hired a publicist, and I don't
9 know about Lisa Meyer. I can't speak for her.
10 Q. Did you take the position in the court
11 and in the media that Abbie was merely disabled
12 and that Dan was denying her visitation?
13 A. Abbie is merely disabled, whatever
14 merely means. I don't understand that term.
15 Q. So would you agree or disagree that
16 her condition while she was at Mt. Sinai in Los
17 Angeles, that she was -- was she in a coma for any
18 period of time?
19 A. She was never at Mt. Sinai. She was
20 only in a coma for about a month.
21 Q. What was the hospital she was at?
22 A. She was at Cedars-Sinai Medical
23 Center.
24 Q. Cedars-Sinai. I stand corrected.
25 Thank you.

1 And was she in a coma at any period of
2 time?
3 A. Yes.
4 Q. Was there ever a point in time when
5 there was discussion about possibly, I guess,
6 removing life-sustaining procedures?
7 A. There was a physician who called a
8 conference, but even Dr. Mamelak said he would not
9 have permitted her to be removed from life
10 support.
11 MR. KACHMARSKY: I have nothing
12 further.
13 THE COURT: Thank you.
14 I don't believe that this was
15 admitted.
16 MR. BOYD: What are you referring to,
17 Your Honor?
18 THE COURT: This is the --
19 MR. DAN SLOTCHIVER: Do you want to
20 introduce that?
21 MR. KACHMARSKY: Yes. I would
22 introduce it as -- what would it be? -- R2-1?
23 THE COURT: I don't think I --
24 MR. BOYD: Your Honor, I'd object to
25 this again.

1 THE COURT: I ruled that it was -- no.
2 I said I don't think it was admitted.
3 MR. KACHMARSKY: No. I apologize.
4 MR. DAN SLOTCHIVER: Your Honor, it's
5 almost 7:00. We've been at it for almost --
6 THE COURT: How long do you think it
7 would take you to reexamine Mrs. Cohen?
8 MR. DAN SLOTCHIVER: I never imagined
9 it would take as long as it did today. I don't
10 know, to be honest with you. My guess is maybe,
11 at most, an hour.
12 MR. BOYD: Your Honor, if I may, it
13 appears to me that the witness is about at the
14 limit of her endurance. She's been on the stand a
15 long time. If I may suggest, if Mr. Slotchiver is
16 agreeable -- I'm going to go way out on a limb.
17 If Mr. Slotchiver is agreeable, what I'd like to
18 suggest is that we call Ms. Meyer first thing in
19 the morning, because time is now becoming an issue
20 for her, that we interrupt the witness's
21 testimony, we do Lisa Meyer first thing in the
22 morning, and that we take up whatever questioning
23 Mr. Slotchiver or anyone else may have for this
24 witness at the conclusion of that testimony.
25 THE COURT: Any objection to that?

1 MR. DAN SLOTCHIVER: Your Honor, I'm
2 not opposed to that, provided that we kind of have
3 our own little schedule. I want to make sure
4 that -- because I don't know how long Ms. Meyer is
5 going to take it, and it might be a long time, it
6 might be very brief, and I don't know how long the
7 redirect and recross of Mrs. Cohen will take, and
8 then I presume that afterwards, we'll call Paul
9 Cohen. I would just like to be in a position to
10 advise my other witnesses that we'll call them the
11 next day, and other than that --
12 THE COURT: On Wednesday.
13 MR. DAN SLOTCHIVER: -- I have no
14 objection.
15 THE COURT: Okay. I wouldn't think,
16 because I --
17 Any objection?
18 MR. BOYD: No objection, Your Honor,
19 but I do think there's some disclosure that we're
20 entitled to at this point with respect to -- I'm
21 hearing about a surprise expert witness, and I
22 think whatever there may be in that regard, I
23 think at this point we're entitled to know that.
24 THE COURT: So at this point -- we'll
25 get to that in just a minute. The witness can

1 step down.
2 THE WITNESS: Thank you.
3 THE COURT: So we'll be adjourning in
4 just a few moments, and Mr. Boyd has requested to
5 call Ms. Meyer in the morning. We will take her
6 testimony -- there's not an objection to that --
7 and allow everyone to examine her, because I
8 understand that she has to go back to California
9 tomorrow.
10 MR. BOYD: That's correct, Your Honor.
11 THE COURT: So we'll try to get her
12 out of the way so that she can leave, and then we
13 will -- Mr. Slotchiver has asked that we go
14 forward with re-calling Mrs. Cohen, Dr. Cohen, and
15 then you have an opportunity to tell your expert
16 witness, Professor Freeman, that we will start
17 with him on Wednesday or at some point early
18 Wednesday, I assume.
19 MR. DAN SLOTCHIVER: Yes.
20 THE COURT: Try to finish Mrs. Cohen,
21 Dr. Cohen, and then your witness beginning
22 mid-morning or so on the --
23 MR. DAN SLOTCHIVER: I was going to
24 ask if we could do it mid-morning. That would be
25 great. And I'm assuming all of that, obviously,

1 predicated on our being able to finish Dr. Cohen
2 tomorrow and Mrs. Cohen tomorrow after the
3 testimony of --
4 THE COURT: And I'm prepared to go
5 tomorrow night late again if we need to, so that
6 we could try to finish them up and -- or we would
7 finish them first thing on Wednesday morning,
8 because I understand that your witness is coming
9 from Columbia.
10 MR. DAN SLOTCHIVER: Correct. That
11 would be great, yes, Your Honor.
12 THE COURT: And if he could be here,
13 we would say, by 10:00, and that would give us a
14 couple hours or an hour-and-a-half on Wednesday
15 morning to try to finish up.
16 All right. Now, Mr. Boyd raised an
17 issue about entitled to discovery.
18 MR. BOYD: Yes, Your Honor.
19 MR. DAN SLOTCHIVER: We have responded
20 to discovery. We stuck everything in the mail on
21 Friday.
22 THE COURT: Perhaps you should check
23 with your office.
24 MR. BOYD: As of today, Your Honor, my
25 office advised that nothing had been received, but

1 we will double-check, and if that's still the case
2 in the morning, we'll raise the issue. I don't
3 understand why -- it's certainly within this
4 court's authority to simply say disclose whatever
5 information was provided by mail. We're all in
6 the same courtroom, Your Honor. This is -- quite
7 frankly, this is too cute by half.
8 MR. DAN SLOTCHIVER: Your Honor, I had
9 offered to do it, but to coin a phrase used by Lee
10 Moore earlier today when she referenced all
11 lawyers can have some games that they can play,
12 she herself refused -- and I offered on last week.
13 Mr. Boyd wasn't here, but I offered to disclose
14 all -- everybody, but I said I want to make sure
15 that if I do it, everybody does it, and they
16 decided they didn't want to do it, which is their
17 right, and I had exercised the same right, subject
18 to Your Honor overruling that right.
19 MR. BOYD: I wasn't aware of that
20 discussion, Your Honor, but again, I think the
21 whole issue of I mailed it on Friday is just,
22 quite frankly, too cute by half. I'm not sure why
23 the document simply wasn't handed to us today.
24 MR. DAN SLOTCHIVER: See you tomorrow
25 morning, Judge.

1 THE COURT: I think he has a right to
2 mail it to you. I looked at the rule, like I said
3 I would. I didn't see that it was -- I didn't see
4 the need to order him to give it to you, other
5 than by mail, which he was entitled to do.
6 MR. BOYD: Thank you, Your Honor.
7 THE COURT: So perhaps it will be here
8 tomorrow.
9 We are adjourned. We'll start again
10 in the morning, like we did this morning, to be
11 here at 8:00 to get in, and then we'll start as
12 soon as we can get set up, if that's okay.
13 MR. DAN SLOTCHIVER: Can we start at
14 8:30? Would that be okay?
15 THE COURT: So what time -- we can
16 start at 8:30. What time would you like to get
17 here?
18 MR. DAN SLOTCHIVER: Well, it's
19 just -- I think you want to work late tomorrow
20 night, and it's been a long day today.
21 THE COURT: It has. I understand.
22 Okay. So we'll be here and try to start at 8:30?
23 MR. DAN SLOTCHIVER: That would be
24 great.
25 THE COURT: We have a deputy here, so

1 I guess we're going to lock the courtroom?
2 THE SHERIFF DEPUTY: Yes.
3 THE COURT: So everybody, you can
4 leave what you want. Nobody will be able to get
5 in the back door. Nobody will be able to get in
6 the front door. And to the extent you want to
7 leave things, you can certainly leave any and all
8 things that you would like. And we'll be here and
9 try to start at 8:30 in the morning.
10 MR. DAN SLOTCHIVER: Thank you, Your
11 Honor.
12 MR. KACHMARSKY: Thank you, Your
13 Honor.
14 MR. BOYD: Thank you, Your Honor.
15 THE COURT: Thank you.
16 MR. DAVIS: Your Honor, would you
17 advise her on who she can talk to and who she
18 cannot talk to?
19 THE WITNESS: I thought I was
20 finished. I'm very confused.
21 THE COURT: No, ma'am. Because
22 Mr. Slotchiver is going to call you to re-question
23 you again, so you can't talk about your testimony
24 to anyone, ma'am.
25 THE WITNESS: Oh, just my testimony.

1 THE COURT: Or anything related to
2 your testimony in this case.
3 THE WITNESS: Okay.
4 MS. MOORE: It's not that you can't
5 talk to people, like say: Hi, how was your
6 dinner? That's a great TV show. You can fuss at
7 your husband.
8 THE COURT: I'm sorry you were here
9 all day, ma'am. We will get to you in the morning
10 first thing.
11 (The proceedings were concluded at
12 6:57 PM.)
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CERTIFICATE OF REPORTER

I, Marie H. Bruegger, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 16th day of October, 2013, at Charleston, Charleston County, South Carolina.

Marie H. Bruegger
Registered Professional
Reporter, CCR
My commission expires
April 18, 2021

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STATE OF SOUTH CAROLINA
PROBATE COURT
COUNTY OF HORRY
DANIEL B. DORN, in his Capacity as
the Parent and Natural Guardian of
Esti Dorn, Reuvi Dorn, and Yosse Dorn,
Petitioner,
CASE NO. 2008-GC-26-25
vs. CASE NO. 2008-GC-26-50
PAUL S. COHEN and SUSAN COHEN,
individually and in their capacity as the
Co-Conservators of the person of Abbie
Ilene Dorn, a protected person and ward,
and in their capacity as Co-Trustees of
the Abbie Dorn Special Needs Trust,

Respondents.

VOLUME IV

BEFORE: HONORABLE DEIRDRE W. EDMONDS,
Judge

DATE. March 5, 2013

TIME: 8:55 AM

LOCATION: Horry County Courthouse
1301 Second Avenue
Conway, SC

REPORTED BY: MARIE H. BRUEGGER, Registered
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19 (INDEX AT REAR OF TRANSCRIPT)
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1 THE COURT: We are back in the matter
2 of Abbie Dorn, File No. 2008-GC-26-25 is the
3 conservatorship matter, and File No. 2008-GC-26-50
4 is the supplemental needs trust matter. Today is
5 March 5th, Tuesday morning.
6 And I think we were going to proceed
7 this morning, Mr. Slotchiver, Mr. Boyd, with some
8 preliminary matters?
9 MR. DAN SLOTCHIVER: Yes, Your Honor.
10 I'd like to take something up outside the presence
11 of the witness, if I may, Your Honor.
12 THE COURT: On the record?
13 MR. DAN SLOTCHIVER: On the record. I
14 would ask that she be excused until we've heard
15 this matter.
16 MR. BOYD: Which witness are you
17 referring to?
18 MR. DAN SLOTCHIVER: Ms. Meyers.
19 THE WITNESS: It's Meyer.
20 MR. DAN SLOTCHIVER: Meyer, excuse me,
21 Ms. Meyer.
22 THE COURT: Ms. Meyer, if you could
23 step out.
24 THE WITNESS: Sure, of course.
25 (The witness is excused from the

1 courtroom.)
2 THE COURT: Mr. Slotchiver?
3 MR. DAN SLOTCHIVER: Thank you, Your
4 Honor.
5 As stated to the court when we began
6 this matter, I advised the court that I
7 anticipated some objections to Ms. Meyer
8 testifying, and while some of these objections
9 will come in the form of hearsay, attorney-client
10 privilege, work product, and so forth, before we
11 even get there, more pending, and the reason I
12 want to bring this matter in front of the court
13 without Ms. Meyer is it appears to us that
14 Ms. Meyer is co-counsel in this case, and if I can
15 provide the court some evidence supporting same,
16 and as co-counsel, she would not be allowed to
17 testify whatsoever.
18 THE COURT: Okay.
19 MR. DAN SLOTCHIVER: I'm looking at
20 the redacted bills that have been introduced into
21 evidence, and I'll start with Exhibit 16. On
22 Exhibit 16, Page 4 --
23 THE COURT: Just so I'm clear, is that
24 Exhibit 16 that was submitted in this action?
25 MR. DAN SLOTCHIVER: Every exhibit I'm

1 going to refer to is one that I've exhibited in my
2 case-in-chief, for clarity.
3 THE COURT: Okay. Thank you.
4 MR. DAN SLOTCHIVER: On Page 4 of
5 Exhibit 16 --
6 THE COURT: And let me -- I'm sorry.
7 If I could get that exhibit. Do you have that,
8 ma'am?
9 THE REPORTER: He's got it.
10 THE COURT: Oh, you have got it.
11 MR. DAN SLOTCHIVER: I grabbed it to
12 read off of, but if I can provide you with other
13 copies.
14 THE COURT: You go ahead while he
15 pulls that out, and then once he gets that, if you
16 could let me have one to look at while you're --
17 MR. DAN SLOTCHIVER: Yes, absolutely.
18 I'm sorry I marked the exhibit, but we'll give you
19 copies to look at.
20 THE COURT: You've marked on them?
21 MR. DAN SLOTCHIVER: No. I've put
22 stickers.
23 THE COURT: Well, I wouldn't want to
24 take that one, then. It would throw you off, I'm
25 sure.

1 MR. DAN SLOTCHIVER: It would very
2 much. It would slow us down.
3 MR. STEVE SLOTCHIVER: These are the
4 exhibits.
5 THE COURT: So on Exhibit 16?
6 MR. DAN SLOTCHIVER: On Exhibit 16, on
7 Page 4 of Exhibit 16, the third entry: Continue
8 drafting declaration of Lisa Helfend Meyer in
9 response to the South Carolina probate action.
10 THE COURT: What page, sir?
11 MR. DAN SLOTCHIVER: I'm sorry. 3632
12 Bates number, and it's Page 4.
13 THE COURT: Third item down?
14 MR. DAN SLOTCHIVER: Yes.
15 And then again, if you go down to the
16 third-to-the-last item: Continue drafting
17 declaration of Lisa Helfend Meyer in response to
18 the South Carolina probate action.
19 We go further in this document, Your
20 Honor, to 3636, which is Page 8.
21 THE COURT: 38?
22 MR. DAN SLOTCHIVER: 3638, Page 8.
23 Are you with me?
24 THE COURT: Yes, sir.
25 MR. DAN SLOTCHIVER: The fourth entry:

1 Review of Bret Davis' changes to the declaration
2 of Lisa Meyer. Review and advise declaration to
3 reflect same.
4 This shows that they're working
5 together, but I'll keep going, Your Honor.
6 There's some --
7 THE COURT: I'm sorry. The first one
8 I didn't get.
9 MR. DAN SLOTCHIVER: I'm sorry.
10 THE COURT: I'm on 3638.
11 MR. DAN SLOTCHIVER: 3638, and this is
12 the fifth entry.
13 THE COURT: Fifth entry down?
14 MR. BOYD: Would you cite that again?
15 I'm not -- what I have doesn't match.
16 MR. DAN SLOTCHIVER: Page 3638, the
17 fifth entry: EAS, review and advise
18 correspondence to -- excuse me. Did I reference
19 the wrong one? I'm sorry. I moved ahead.
20 3636, I apologize, Your Honor, and the
21 fifth entry.
22 THE COURT: I see that.
23 MR. DAN SLOTCHIVER: Review of Bret
24 Davis' changes to declaration.
25 If we go to Page 3638, sixth entry

1 down: Phone call with Reese re protective order
2 issues.
3 Next, Your Honor, if we go to
4 Exhibit 17.
5 THE COURT: Yes, sir.
6 MR. DAN SLOTCHIVER: And if we start
7 with the third entry -- excuse me, the second
8 entry on Page 3654.
9 THE COURT: Which entry, sir?
10 MR. DAN SLOTCHIVER: Let's start with
11 the second entry: Receipt and review of email
12 from Bret, respond to Bret.
13 Fourth entry: Receipt and review of
14 emails from Reese, Felicia, and Erica and
15 response.
16 Fifth entry -- or I guess the fourth
17 entry -- review of email from Bret Davis re the
18 status of the South Carolina action and upcoming
19 hearing. Review of Lisa's response to same.
20 Next entry: Review of email from
21 Reese.
22 Next entry: Phone call with Reese.
23 If you move a little further down the
24 page, Your Honor, at the last entry: Receipt and
25 review of complete email by Reese, proposed order

1 from South Carolina, draft memo.
2 We go to Exhibit 18.
3 MR. BOYD: Your Honor, if it'll save
4 us some time, I'm willing to stipulate that these
5 billing records have numerous references to both
6 Bret Davis and myself. I don't know that it's
7 really necessary for counsel to walk through --
8 we'll stipulate that the records reflect
9 references to both Bret Davis and myself.
10 MR. DAN SLOTCHIVER: Your Honor, I
11 believe that -- unless they're willing to
12 stipulate that she's co-counsel, I believe the
13 records speak to the fact that she's advising them
14 all along the way, apparently is working with them
15 on every matter of this case dealing with the
16 South Carolina action. They have asserted an
17 attorney-client privilege, and now they're calling
18 her as a witness, which is improper.
19 THE COURT: One of you, just one.
20 MR. DAVIS: He referenced both, that
21 he advised me and him.
22 THE COURT: Bret -- excuse me,
23 Mr. Davis -- are you going to make the objections
24 or Mr. Boyd?
25 MR. DAVIS: Well, I'm willing to

1 address any reference to me, and I think it's fair
2 that we both have an opportunity, because there's
3 references to Bret and to Reese, so she was not
4 co-counsel to me, so if he wants to speak, I just
5 want to make that clear.
6 THE COURT: Thank you.
7 MR. BOYD: Your Honor, I'll respond.
8 She is not on the record. She has not been
9 co-counsel in this case. She's never made an
10 appearance. In fact, she was designated as a
11 witness from the beginning, if Mr. Slotchiver
12 wants to continue, but I certainly want to respond
13 to what he suggested.
14 MR. DAN SLOTCHIVER: Perhaps I can
15 finish before they respond, Your Honor.
16 THE COURT: Let me let him finish real
17 quick. Thank you.
18 So we're on 18?
19 MR. DAN SLOTCHIVER: Yes, Your Honor,
20 18, Page 3681, second-to-the-last-entry: Receipt
21 and review of email to Bret.
22 Next entry: Phone call with -- excuse
23 me. That's not one. I apologize.
24 If we go to the next page, at the very
25 top of 3682: Phone call to Bret Davis re blank.

1 Third entry: Draft electronic
2 correspondence to Felicia and Lisa regarding
3 edited DVDs for the South Carolina probate action.
4 Two entries down: Phone call with
5 Bret, blank, draft email to Reese and Bret, blank.
6 If we go to the fourth -- excuse me,
7 the fifth from the bottom, 2/25/11: Phone call
8 with Reese.
9 Two more: Phone call with Reese.
10 That's the end of that exhibit, Your
11 Honor. If you go to Exhibit 20. I'm sorry.
12 THE COURT: That's okay. Yes, sir.
13 MR. DAN SLOTCHIVER: Page 3705, the
14 entry date stamped 4/13/11: Organize files --
15 Excuse me. Let's go one before that,
16 Your Honor. Research re the case docket for use
17 in probate action. Draft email to Reese.
18 The next action: Organize files for
19 photographs for probate action. Take photos.
20 Draft email to Reese.
21 Next entry: Receipt and review of
22 email to Reese.
23 Next action, next one: Develop
24 telephone call to Terry re hearing in South
25 Carolina, receipt and review of emails.

1 Next entry, Your Honor: Review of
2 message from Reese re blank, draft email re same
3 with attachments.
4 Next number, we don't know what this
5 is for, the phone call with Reese -- or with
6 Susan, but the next entry: Meet with Erica re
7 South Carolina case.
8 Next number, we don't know what it's
9 referring to, but the one after, which is the last
10 one: Telephone conference with Reese Boyd.
11 Go to the next page, Your Honor.
12 Second entry: Receipt and review email re the
13 South Carolina.
14 Next number: Telephone call to Reese
15 and Felicia.
16 Next entry: Receipt and review of
17 email from Reese.
18 Next entry: Two telephone conferences
19 with Reese Boyd. Research the guardian ad litem.
20 Next entry: Review of -- excuse me,
21 two more down: Call to Reese Boyd, email.
22 Next entry, Your Honor: Review
23 Reese's documents.
24 Next entry: Receipt and review of
25 answer to petition filed by the Cohens in the

1 South Carolina, draft notes.
2 Next number: Receipt and review of
3 email from Reese. Respond to Felicia and Reese.
4 Next number: Review file and compile
5 timeline of hearings and depositions for use in
6 call to John Kachmarsky. Phone call with Felicia.
7 Last entry on this page: Phone
8 conference with Bret, John, and Reese.
9 Go to the next page, Your Honor, 3707:
10 Phone call with Reese re blank.
11 If we go a few more down, it's the
12 eighth entry: Emails to and from Reese and team
13 re blank.
14 If we go towards the bottom of the
15 page, Your Honor, three up from the bottom:
16 Telephone call to Reese Boyd, then phone
17 conference with Reese Boyd re something, then
18 phone call to court re status of order. Draft
19 email to Reese.
20 Go to the next page: Telephone
21 conference with Reese Boyd.
22 Next entry: Draft email re South
23 Carolina case.
24 MR. BOYD: Your Honor, just again, in
25 the interest of time, I'm willing to stipulate --

1 MR. DAN SLOTCHIVER: If I can finish,
2 Your Honor. I want to establish the record.
3 THE COURT: Okay. I'm going to let
4 him --
5 MR. BOYD: Fair enough.
6 MR. DAN SLOTCHIVER: Under the 4/28/11
7 date on Page 3708: Conference call with Lisa,
8 Felicia, and Reese.
9 Next entry: Calls with Leah Bishop
10 and Reese Boyd.
11 Next entry: Emails re settlement.
12 Telephone conference with client re blank.
13 Telephone conference with Reese Boyd re blank.
14 Calls to expert in Los Angeles.
15 And Your Honor, the last entry on
16 Page 3708: Receipt and review of minute order
17 from court. Receipt -- and carry on to the next
18 page -- of emails from Susan and Reese.
19 Next exhibit, Your Honor, is 21.
20 THE COURT: Yes, sir.
21 MR. DAN SLOTCHIVER: Last entry on the
22 page: Phone call with Reese. That's on page, I'm
23 sorry --
24 MR. BOYD: What's the Bates number?
25 MR. DAN SLOTCHIVER: 3713.

1 On Page 3714, fifth entry down, Your
2 Honor: Telephone conference with Reese Boyd.
3 And on Page 3715, first entry: Phone
4 call to Reese Boyd re something, left message.
5 Draft email.
6 Next entry: Telephone conference with
7 Reese Boyd.
8 And the third from the last entry:
9 Review of email from Reese re something. Draft
10 response to same.
11 And next entry: Email to and from
12 Bret.
13 Exhibit 22. Are you ready, Your
14 Honor?
15 THE COURT: Yes, sir.
16 MR. DAN SLOTCHIVER: Page 1, first
17 entry: Receipt and review of emails between Bret
18 and Reese. Draft notes.
19 Second entry: Phone conference with
20 Reese and Bret re something, re blank.
21 Next entry: Draft memo Lisa to
22 probate. Letter/phone call with Felicia and Bret
23 re blank.
24 Last entry on that page -- this is
25 3718 -- telephone conference with Reese Boyd.

1 . Review of letter re minors' counsel fees. This is
2 other stuff that isn't relevant to it.
3 If we go to the next page, Your Honor,
4 3719, first entry: Telephone conference with
5 Reese Boyd re blank.
6 Third entry: Review of settlement
7 proposal from Reese Boyd. Phone call with Reese
8 re blank.
9 Next entry: Phone call with Reese re
10 blank.
11 Next number, or next entry: Review of
12 additional comments from Reese re blank.
13 Next entry: Phone call with Bret
14 Davis re changes.
15 Two more entries down: Review of
16 draft letter from Bret Davis.
17 Next entry: Email to Bret re changes
18 to the letter.
19 Next entry: Review and revise letter
20 from Bret.
21 Next entry: Preview or review of
22 email from Reese re blank.
23 Next entry: Go through file and
24 identify pleadings to send to South Carolina
25 counsel in response to their request for same.

1 Next entry: Receipt and review of
2 final letter from Bret re blank.
3 If we can go to Page 3722, Your Honor,
4 same exhibit.
5 THE COURT: May I ask you a question?
6 MR. DAN SLOTCHIVER: Yes. I'm sorry?
7 THE COURT: Never mind. I'm just
8 wondering. I see this receipt and review of
9 emails from Dan. Would that have been you?
10 MR. DAN SLOTCHIVER: I don't know. I
11 never sent her a letter.
12 THE COURT: Your client?
13 MR. DAN SLOTCHIVER: I doubt it. I'm
14 assuming it's probably an email that I would have
15 sent to -- I don't know, because I don't have the
16 privy to know, but I'm assuming it would be an
17 email that I would have sent to counsel, and they
18 would have shared with her, which is perfectly
19 fine for them to do, but that's my best guess. I
20 don't know, because I don't have -- I don't have
21 the ability to review the file because they
22 objected to my reviewing it.
23 MR. BOYD: Your Honor, I'm going to
24 object. He never requested to review the file in
25 its entirety. What he requested for -- what he

1 requested were billings, which we obviously
2 provided, because he's reading them to you now.
3 MR. DAN SLOTCHIVER: We can rehash
4 this again, Your Honor. I requested discovery.
5 THE COURT: Let's focus on this one
6 issue, and then we'll move on.
7 MR. DAN SLOTCHIVER: If we can go to
8 Page 3722, Your Honor. The fourth entry: Phone
9 call with Reese Boyd re something.
10 Sixth entry: Review -- receipt and
11 review of emails from Reese and Susan.
12 Next entry: Review of email from
13 Reese.
14 Two more down: Receipt and review of
15 emails from Reese and Susan and respond to Reese.
16 Next entry: Telephone conferences
17 with Susan and Reese.
18 Last entry: Phone conference with
19 Honey, Lisa, Reese, and Felicia re something. I
20 don't know what it was for.
21 And on the next page, Your Honor,
22 3723, the second entry: Telephone conference with
23 client, Honey Amado, and Reese Boyd re blank.
24 Analyze the appropriate motion.
25 If we go, Judge, to Exhibit 23. I

1 believe it starts on Page 3729, the ninth entry:
2 Phone call with Reese Boyd re blank. And then
3 there's some more language: Office conference
4 with Mary re blank. Legal research re joinder of
5 parties. Phone conference to client advising of
6 status. Phone conference with Gary Zimmerman.
7 Phone calls with Reese Boyd.
8 Two more entries down: Phone calls
9 with Reese Boyd re something. I don't know what
10 it is.
11 Your Honor, I'm not putting in the
12 times, if you'd like me to go back, but I'm
13 assuming you can follow the time entries next to
14 it or review that if you're so inclined, but it's
15 a substantial amount of time, as the record
16 reflects.
17 Next page, Your Honor, 3730, which is
18 a carryover from 3729, but then at the top of the
19 page, there is a new entry: Phone calls with
20 Reese Boyd.
21 Second entry: Phone calls to Reese
22 Boyd.
23 Third entry: Phone call with Reese
24 Boyd.
25 If we can go, Your Honor, to

1 Exhibit 24, whenever you're ready. I'm sorry.
2 THE COURT: I'm good.
3 MR. DAN SLOTCHIVER: At the bottom of
4 the first page, 3733: Phone call with Reese re
5 blank.
6 Next page, 3734, third entry: Receipt
7 and review of emails from Felicia and Reese.
8 Page 3735, third entry: Phone call
9 with Reese Boyd.
10 Fifth entry: Review of email from
11 Reese re something.
12 Seventh entry: Phone call with Reese
13 re something.
14 Ninth entry: Receipt and review of
15 email from Reese. Email from Honey, email from
16 Erica and response. Prepare memo.
17 I believe that is it for that
18 document, Your Honor. If we can go to Document
19 No. 25.
20 THE COURT: All right.
21 MR. DAN SLOTCHIVER: First entry:
22 Receipt of emails from Reese and Susan re
23 settlement.
24 Second entry: Receipt and review of
25 email from Reese and response.

1 Last entry: Telephone call to Reese.
2 Carry on to the second page. Receipt and review
3 of email from Susan and respond. Email from
4 Patricia.
5 THE COURT: Felicia.
6 MR. DAN SLOTCHIVER: Felicia, excuse
7 me.
8 And if we go to Page 4743.
9 MR. BOYD: Dan, could you repeat that
10 last entry that you just entered into the record,
11 please?
12 MR. DAN SLOTCHIVER: Telephone
13 conference with Reese. Email to Lisa re
14 something.
15 MR. BOYD: Are you on 3742?
16 MR. DAN SLOTCHIVER: I am.
17 3743, the fourth entry: Prepare for
18 telephone call. Telephone conference with Susan,
19 Felicia, and Reese.
20 Next entry: Telephone conference with
21 Reese and Susan re conference with Lisa.
22 And Your Honor, we haven't gone
23 through the billing, but this one shows almost
24 two-and-a-half hours of billings just for that one
25 call, or the two calls combined.

1 Next entry, or two entries down:
2 Receipt and review of email from Reese.
3 The second entry under 9/23/11:
4 Telephone conference with Susan and Reese.
5 Two more down: Conference call with
6 Reese and Susan.
7 Two more to go, Your Honor.
8 Exhibit 26. Fourth entry: Review
9 emails and telephone conference with Reese.
10 Seventh entry: Telephone conference
11 with client and Reese Boyd.
12 Second page, 3749, seventh entry:
13 Receipt and review of emails from Susan, Felicia,
14 and Bret. Draft note re stipulation.
15 Next entry: Continue review of
16 investigator report. I don't even know what
17 that's referring to. Emails with Reese and Susan.
18 Next entry: Receipt and review of
19 emails from Susan, Felicia, and Bret.
20 Last entry: Telephone conference with
21 Reese. Revise stipulation.
22 Your Honor, if we can go to
23 Exhibit 29.
24 THE COURT: Not 27 or 28?
25 MR. DAN SLOTCHIVER: Correct. There

1 is something I've listed in those, but 29 clearly
2 has more.
3 The second entry: Receipt and review
4 of email from Reese.
5 And I believe, Your Honor, that is the
6 last entry that I saw.
7 Judge Edmonds, between December 31st
8 of 2010 and January 31st, 2012 --
9 THE COURT: What is that date?
10 MR. DAN SLOTCHIVER: The invoice, it
11 showed December 31st, 2010, which actually go back
12 to December 1st, based on the billing, but from
13 the period of December 1st, 2010, until
14 January 31st of 2012 -- I haven't counted them.
15 I'm assuming it's about 40 entries, but I can
16 count them if you like, Your Honor. I believe you
17 have them listed. But there have been a
18 tremendous amount of entries, communications,
19 emails, correspondence, reviews between counsel.
20 Now, assuming that Ms. Meyer was, in
21 fact, acting as co-counsel, but not listed on the
22 pleadings, I believe that there was nothing
23 inappropriate with reference to those
24 communications. However, assuming that she is not
25 co-counsel, then the privilege would not extend,

1 and we should have had those communications, if
2 they're relying on them as part of their defense.
3 Also, Your Honor, assuming that she is
4 not co-counsel, then she should not be able -- or
5 excuse me. Believing that she is co-counsel,
6 based on the documents that clearly support that
7 she's advising them in the South Carolina case,
8 and I could take a few minutes and add it, but I
9 would venture, Your Honor, that we're going to
10 find somewhere 50 or 60 or 70 hours of time, which
11 we can't clearly delineate because we don't have
12 all the entries because they were redacted, but I
13 do not believe she should be able to testify. If
14 she's counsel, the privilege has been asserted.
15 Alternatively, if she comes to
16 testify, she will only be testifying to a limited
17 amount of information, not providing us with
18 everything. We haven't had the opportunity to see
19 any communication between her and Mr. Boyd or
20 Mr. Davis. We had asked for it. The court ruled
21 we were not entitled to it.
22 That being the case, we should have
23 had an opportunity to see it and to review it, if
24 she's going to testify, so we can ask her about
25 those particular communications. Other than that,

1 I don't know of anything that she could testify to
2 that the witnesses themselves, the parties, could
3 not testify to.
4 But certainly, Your Honor, I believe
5 that there is more than ample evidence to support
6 the fact that she is, in fact, acting as
7 co-counsel. Whether they call her co-counsel or
8 not, she's clearly advising them. She's clearly
9 working with them. She's talking with them on, if
10 not a daily, certainly a weekly or certainly a
11 monthly basis, except for just a couple periods of
12 time, oftentimes, many times in a row, and they're
13 meeting with her together with their client, and
14 she is giving advice, based on the entries, on
15 dealing with the South Carolina issue.
16 So based on that, Your Honor, I would
17 move to exclude her from testifying in any manner
18 whatsoever as a result of her having acted as, we
19 can call it, de facto co-counsel, although I would
20 assume that it's co-counsel in this case. She
21 should not be allowed to testify. Thank you.
22 THE COURT: So it's your position,
23 Mr. Slotchiver, that she's precluded from
24 testifying whether she's co-counsel or not?
25 MR. DAN SLOTCHIVER: She is just as

1 precluded as I'm precluded from testifying, as
2 Mr. Boyd is precluded from testifying, as
3 Mr. Davis is precluded from testifying. To call
4 her would be waiving the attorney-client
5 privilege, which was not done in advance of court.
6 And for her to be called to testify as
7 to a limited amount of things, whatever they want
8 her to testify to, would be prejudicial to us,
9 because she is selecting certain things to testify
10 to, but she's not giving us an opportunity to
11 cross-examine her based on all of the things that
12 she's done involved in this particular case. They
13 haven't given us these documents. We don't have
14 them.
15 MR. BOYD: Your Honor, he's stating
16 things in the record that are simply not true.
17 THE COURT: So I just kind of wanted
18 to clarify a little bit. Mr. Boyd?
19 MR. BOYD: Thank you, Your Honor, may
20 it please the court.
21 THE COURT: Yes, sir.
22 MR. BOYD: Your Honor, this case is
23 unusual in that what has been alleged is that the
24 trustees acted improperly with respect to their
25 actions in California prosecuting the marital

1 action. This case is about the manner in which
2 the California proceeding was prosecuted.
3 The reason that Mr. Slotchiver's able
4 to stand here and give you detailed information
5 about the communications between the individuals
6 involved and why he's able to tell you why he
7 thinks that Ms. Meyer was acting as co-counsel
8 when she was not is because we did not assert a
9 privilege over this information. We produced this
10 information. That's why he's able to sit here and
11 read into the record these billing records. It's
12 like they want to have their cake and eat it too.
13 They want to say, well, you're asserting the
14 privilege. Well, no, we're not asserting the
15 privilege, because you're reading the document.
16 We, in fact, have done just exactly
17 what Mr. Slotchiver suggested needed to be done.
18 Ms. Meyer is in effect -- not in effect. She is a
19 fact witness in this case, Your Honor. Going back
20 to the beginning of the proceeding, way back in
21 2011, we named Ms. Meyer and also Ms. Greene, for
22 that matter, as a potential fact witness in the
23 case.
24 Excuse me, Your Honor. My notebooks
25 are jumping around on me.

1 I'm going to go back to our answers to
2 interrogatories, Your Honor, dated May 2nd, 2011.
3 In our answer to interrogatory on Page 3, which is
4 No. 2, answer to Interrogatory No. 2, we named --
5 the second witness -- actually, the third. We
6 named Carl and Rosalyn Dorn, the parents of
7 Dan Dorn, as potential witnesses. The third
8 witness named, Your Honor, is Lisa Helfend Meyer,
9 along with Felicia Meyers and Erica Swensson, two
10 other attorneys at the same firm representing the
11 Cohens in California, that handled the proceeding.
12 The fourth witness named is Vicki Greene, who
13 represented Dan Dorn in the California proceeding,
14 Your Honor. These individuals -- it's not usual
15 to name an attorney as a fact witness, Your Honor,
16 but, in fact, in this case, the attorneys are
17 relevant factual witnesses.
18 And again, we communicated with the
19 MOLM firm throughout this case in the same manner
20 that attorneys would communicate with any factual
21 witness. The privilege was asserted only to the
22 extent that it existed on behalf of our clients in
23 the California proceeding, and the revelation of
24 information would have been harmful to our clients
25 over a protected piece of information in the

1 California proceeding.
2 If Your Honor will recall,
3 Mr. Slotchiver came before this court and argued
4 on the attorney-client privilege issue, that once
5 the case was settled in California, that the
6 attorney-client privilege went away.
7 And as Your Honor will recall, we
8 responded no, clearly, that is not the law in
9 South Carolina. The attorney-client privilege
10 survives the death of the privilegee. It
11 survives -- and it certainly survives the end of
12 the case if it survives the end of the death of
13 the person who owns the privilege. Our clients
14 own that privilege with respect to the MOLM firm
15 in California.
16 And because the proceeding in
17 California and their rights within that proceeding
18 would have been harmed, Your Honor, we did make a
19 limited assertion, but we did exactly what
20 Mr. Slotchiver suggested that we should do, which
21 is we produced those documents that we rely upon.
22 They have those documents.
23 Ms. Meyer filed, prepared -- as Your
24 Honor knows, as Mr. Slotchiver's just discussed
25 with you, she filed a factual memorandum, a fact

1 affidavit, which was filed in this case very early
2 on. So not only was she listed as a witness, Your
3 Honor, she filed a factual affidavit.
4 Mr. Slotchiver's never objected to any of this.
5 And here in the midst of trial, when
6 we're about to call her as a witness, he says:
7 Hey, you can't use her as a witness. We named her
8 as a witness in May of 2011, Your Honor, so to
9 exclude her at this point would be incredibly
10 unfair and incredibly prejudicial to my clients.
11 I think what we have here, Your Honor,
12 is a question -- it's a very simple -- it's simple
13 if you think about it this way, Your Honor. What
14 this case has become, this case has become a case
15 about another case, and there were privileges that
16 existed and that remain within that other case;
17 however, Mr. Dorn, by his petition, has made the
18 manner in which the California proceeding was
19 prosecuted and evolved, he's made that the
20 substance of this case.
21 MR. DAN SLOTCHIVER: I'm not sure how
22 this is addressing the argument, Your Honor.
23 MR. BOYD: I'm establishing, Your
24 Honor, the context for the filing of Ms. Meyer's
25 affidavit, the fact that we did name her as a

1 witness, the fact that it was nearly two years ago
2 when we named her as a witness, and, in fact, that
3 there's never been an objection to our reliance
4 upon her as a witness right up until this moment.
5 Mr. Slotchiver never witnessed her deposition --
6 never noticed, excuse me, her deposition, and we
7 did produce volumes of information, Your Honor,
8 which we did not assert a privilege over.
9 That's why he's able to stand before
10 you and read these records. He's saying they
11 asserted the privilege. Well, how do you know --
12 how do you know all these things if we blanket
13 asserted a privilege to protect Ms. Meyer? We did
14 not, Your Honor. So I think it's highly improper.
15 THE COURT: So let me ask you this,
16 Mr. Boyd: What did you produce with respect to
17 his request? I guess there was a blanket request
18 for the discovery of Ms. Meyer's file?
19 MR. BOYD: May I answer the court's
20 question, Counsel?
21 THE COURT: Well, let me ask: Was it
22 a blanket request, discovery request of
23 Ms. Meyer's file?
24 MR. DAN SLOTCHIVER: No, Your Honor.
25 We asked for discovery, and at one point we made a

1 motion to get a copy of all of the California
2 files.
3 Once again, what's repeatedly come up
4 here, Your Honor, is that it's as if we're
5 supposed to remind you to do your job. We sent
6 off discovery requests. We got answers. We sent
7 off -- we filed a motion to get California
8 information. They stopped us.
9 We do have these bills, Your Honor,
10 that you've seen, but as you can see, they've been
11 redacted throughout, and even though there's
12 references to memorandums and references to
13 communications, we don't have those. I don't have
14 any memos back and forth between Lisa Meyer, or
15 Ms. Helfend, and Bret Davis or Reese Boyd or memos
16 about this case that they've had that are
17 reflected in these billings here that we've just
18 looked at. According to the billings here,
19 there's emails back and forth.
20 I don't believe that you can say piece
21 and part. I've answered you, although I really
22 haven't. I've said -- it would be like me saying:
23 Do you have documents to provide? And I say I
24 have some documents, but I don't provide them.
25 They've given us very -- they've given us enough

1 here to be able --
2 And the court's ruling, I believe,
3 Your Honor, was we were entitled to see the bills,
4 but they're entitled to redact them of any
5 privileged information, and the reason was because
6 we would have to see the bills in order to be able
7 to talk about the damages, but the court told them
8 they were able to redact the bills from the
9 attorney-client privileged information. They have
10 done that. We have a skeleton of what they've
11 got. We don't have the documents supporting it.
12 And this is not, Your Honor, the first time I've
13 mentioned it.
14 First off, as we all know, just
15 because you list a witness doesn't mean you're
16 going to call them, and it doesn't mean that
17 there's no objection if I don't object to it the
18 second you list the witness. That's not what the
19 rules say.
20 I came into court last Monday and
21 advised the court that understanding that
22 Ms. Meyer may be coming, that we anticipate
23 objections. I advised the court on several
24 occasions, as recently as yesterday, but also last
25 week, that we anticipate objections to her

1 testimony for a variety of reasons, and that I
2 would reserve those until the time that they
3 called her. I never really thought they were
4 going to bring her, but they did, and they can
5 bring her. I don't have to agree that she should
6 testify.
7 But I did advise the court that we
8 were going to do that. Just because they list her
9 doesn't mean that she is a witness who properly
10 can testify. What right, Your Honor, do they have
11 to say we made a limited objection to
12 attorney-client privilege without telling me that
13 it's a limited objection, without writing it down,
14 without giving me a privilege log saying that it's
15 limited, but these are the things we're not going
16 to give you. I don't have any of those things. I
17 just don't have them.
18 All I have, relevant to the billings,
19 is what you've seen in front of you and what --
20 the bills that I didn't give you because they -- I
21 didn't see reference in there to Reese or Bret.
22 But certainly, these documents reflect ongoing
23 communication between counsel.
24 When a witness comes to testify, my
25 understanding is that short of a protective order

1 given, I can ask that witness anything that's
2 relevant to the case. I'm not limited to what
3 other counsel says I should be limited to; I'm
4 limited to what is relevant based on the court's
5 ruling.
6 And I haven't been given privy to this
7 information. And we can call it based on the
8 attorney-client, we can call it based on the
9 co-counsel, we can call it based on a lot of
10 different things that I think fit, but in this
11 case, I thought it relevant, Your Honor, to point
12 out to the court what I'm guessing I thought 40,
13 my partner thinks 100, entries I just marked per
14 page of communications between them.
15 Witnesses generally testify to what
16 they saw and what they observed, and they're
17 subject to cross-examination. I don't know the
18 purpose for which they seek to call her, but I
19 don't think that she should be entitled to be
20 called at all, any different than any lawyer in
21 the case can be called as a witness in the case
22 that they're involved, and especially in a matter
23 where they haven't presented the documents.
24 Your Honor, counsel for the Cohens is
25 asserting that they are prejudiced. In reality,

1 the person who will be prejudiced, if she's
2 allowed to testify, is us, is Mr. Dorn. All of
3 this -- all of this was at their hand, the old
4 phrase you're the author of your own dilemma.
5 They had the right to have given us
6 these documents. They had the right to clarify
7 this issue. It was their choosing not to do it,
8 and their choosing not to do it is something that
9 shouldn't be weighed against us. It goes back to
10 them.
11 We've had the same type of argument
12 throughout this case on a variety of issues, but
13 this is something that they chose not to do. And
14 they've stated that we want to have our cake and
15 eat it too. You can say it's us. The reality is
16 it's not us. We just want to be able to examine
17 somebody based on what we're entitled to know and
18 what we were entitled to know in advance.
19 We think that she was clearly acting
20 as counsel. She clearly was advising them on the
21 case. She clearly was getting paid to be involved
22 in the case. She's getting paid by the same
23 people to be involved in the case. These are
24 billings that went to the trust. So we've got the
25 same clients, same person paying the bills,

1 talking to everybody about the same issues. How
2 is that not acting as co-counsel?
3 And she's not limited her
4 communication here from -- clearly, we can see
5 from the record that she's not limited her role to
6 what she's doing in California and their role in
7 South Carolina. They're talking. She's reviewing
8 documents that they plan to file, and they're
9 sending documents back and forth for the cases.
10 They're working in concert together. I don't know
11 any other way to look at it.
12 THE COURT: Thank you.
13 MR. BOYD: Your Honor, first of all,
14 counsel is stating things that are not accurate
15 into the record, that we already made the point,
16 established that the Cohens individually were
17 paying the fees for Bret Davis and myself. The
18 fees for the MOLM firm were being paid for the
19 trust.
20 Your Honor, we did produce the
21 relevant documents from the MOLM firm to the
22 opposing counsel. I have here in my hand a stack
23 of documents that were handed to counsel in
24 December of 2010. And again, I would encourage
25 Your Honor to --

1 THE COURT: Could I see those, please?
2 MR. BOYD: I would encourage Your
3 Honor to look at the billings and look at the
4 redactions that we made, Your Honor. Again, the
5 billings were redacted --
6 Your Honor, I'd really enjoy another
7 filibuster, but if you'll give me just a couple of
8 minutes to speak, I would appreciate it.
9 THE COURT: Mr. Boyd?
10 MR. BOYD: Your Honor, the approach
11 that Mr. Slotchiver would suggest turns the whole
12 concept of trust litigation on its ear. According
13 to Mr. Slotchiver's approach, simply because my
14 clients are fiduciaries, if a beneficiary, Susan,
15 trustee, effectively, what he's suggesting is that
16 there is no attorney-client privilege and that the
17 trustee must open their files across the board and
18 produce any document anywhere, regardless of the
19 context, regardless of the nature of the counsel
20 sought, and it's a world where nobody would be a
21 trustee, Your Honor.
22 Who is going to litigate a dispute
23 with a beneficiary under the rules that
24 Mr. Slotchiver's suggesting to you? I mean,
25 Mr. Slotchiver's suggesting that the entirety of

1 the file in California needed to be produced to
2 him, or we effectively have no defense. It's
3 absurd, Your Honor, and again, I would encourage
4 the court to look at the billings that we produced
5 and look at the very selective redactions that we
6 undertook.
7 Again, Mr. Slotchiver took the
8 position that because the California case had
9 settled, that there was no privilege to be relied
10 upon or that could be relied upon by my clients.
11 Your Honor, that's clearly not the law. And we
12 had that argument, and we did produce everything
13 that Mr. Slotchiver requested, all the billings,
14 very limited redactions, Your Honor, plus the
15 documents that I handed up, which were produced
16 initially, which are those documents that we
17 intended to rely on in this case.
18 We've done exactly what he suggested
19 that we should do, and he's got some crazy idea
20 that the entirety of the MOLM firm's file should
21 be produced to him or else we can't rely on
22 anything. That's absurd, Your Honor. That's
23 absolutely absurd.
24 The clients still have an
25 attorney-client privilege in California, which

1 does not go away. We had that argument. It is
2 the law. We only redacted those documents that
3 would have been harmful to my clients in the
4 context of the California proceeding. We don't
5 know --
6 Your Honor, again, when this
7 litigation commenced, the California proceeding
8 was still ongoing, and again, under
9 Mr. Slotchiver's paradigm, the only option
10 available to my clients was unilateral
11 disarmament.
12 And the fact remains that when
13 Mr. Slotchiver started his case, the California
14 proceeding was ongoing, and so if the only way
15 they could defend themselves in this proceeding
16 was to unilaterally open up the doors of the MOLM
17 firm and say: Yes, come on in, Your Honor, it's a
18 catch 22, and it turns the whole concept of a
19 trustee's ability to prosecute an action, to
20 defend themselves in court, and to engage counsel,
21 it turns all those concepts on their ear, Your
22 Honor. It's inconceivable that that should be the
23 standard.
24 MR. DAN SLOTCHIVER: If I may?
25 THE COURT: Yes, sir.

1 MR. DAN SLOTCHIVER: Your Honor, first
2 I want to clarify the Cohens were not paying the
3 fees from the individual accounts; they were
4 paying the fees for the lawyers from the trust
5 proceeds. They've testified -- or Mrs. Cohen
6 testified, and I can show you reference to Paul
7 Cohen in his deposition, if you like, they were
8 paying the fees from the trust. In fact, they
9 weren't paying anything into this --
10 MR. BOYD: I'd ask counsel verify what
11 fees he's referring to, Your Honor. There's
12 multiple lawyers, multiple fees, and I'm not sure
13 what fees he's referring to.
14 MR. DAN SLOTCHIVER: Your Honor, they
15 were paying the fees for the defense of the action
16 brought by my client in the South Carolina case
17 directly from the trust funds. Mrs. Cohen even
18 testified they didn't change that until we had
19 discussed it in her deposition. And I asked her
20 how it is that she's using trust funds to pay for
21 her individual defense, and she said, well, after
22 that conversation, she went back and changed it.
23 So I wanted to clarify that. There's not a
24 distinction between them. They certainly were
25 using the trust funds to pay for it.

1 Your Honor, if I may finish. The
2 argument that they delivered the documents they
3 relied on, well, can you imagine if every time a
4 lawyer only wanted to give you the documents that
5 you wanted to rely on, but not the bad documents,
6 that's the problem. By what right do they have to
7 determine what they relied on?
8 There's a very easy answer to this
9 matter, and I would argue that it applies all the
10 way from the beginning of this case to the end.
11 Our argument in this case is had they sought court
12 approval, it's an easy answer. We wouldn't be
13 here today. The court would have ruled on what
14 could have been done.
15 At the time the case in California
16 ended, and it did end, they, at that point, had to
17 make the decision. In fact, they made the
18 decision, I would argue, at the time we came into
19 court, and I said the case in California's over,
20 and that property -- that we should be entitled to
21 look at these documents, to see the
22 decision-making power and see what transpired in
23 the California case, because we are coming to
24 court arguing that we believe the trustees acted
25 inappropriately, and we should be able to see what

1 they did.
2 It's not a whole lot different, Your
3 Honor, than when the lawyers in this case came
4 forward and took the stand and were questioned
5 about what they did in order to get their fees.
6 You've got to explain what you did if somebody has
7 a question with it, and then you answer, and Your
8 Honor makes a decision.
9 Well, in that case, they could have
10 said: You know what, California case is over, and
11 I'm going to give you those documents, because you
12 can have them all, and you can look at everything.
13 That was an easy decision to make. The decision
14 they made instead was, no, we're not going to do
15 that. We are asserting the privilege, and by
16 asserting the privilege, they put themselves into
17 the quandary that they're in today.
18 Litigation in trust cases doesn't
19 occur all that often. I would disagree vehemently
20 with the argument that if we make the trustees
21 live up to all the things that the rules say, then
22 who would ever want to be a trustee? I believe,
23 Your Honor, there are multiple people in companies
24 and banks and people all over the world who would
25 jump at the opportunity to be trustees. There are

1 corporate trustees that are available to be
2 involved in these cases. We all know that. I
3 think you could take judicial notice. They're all
4 over the country. That's what they do. But when
5 they do it, I would argue they do it a little bit
6 differently. And that was an option that the
7 Cohens and their counsel, I'm assuming, conferred
8 on and made a decision as to how do we want to
9 proceed.
10 Now they want to bring in a witness to
11 testify without giving us the opportunity to see
12 all that she did when she was actively involved in
13 it and to assert, Your Honor, that she was a
14 witness, and they spoke to her.
15 I believe you can look at the billings
16 yourself. It's not independently in California.
17 She's working on the South Carolina case.
18 References all over the file talk about the South
19 Carolina case. She's actually editing documents
20 submitted to her by both Mr. Boyd and Mr. Davis.
21 I haven't seen where they were editing her
22 documents, but I've seen numerous entries where
23 she was editing their documents and sending them
24 back. They've got memos going back and forth.
25 The case, to coin a phrase used

1 earlier when we tried to get Robin Morris's file,
2 and we were told that they were commingled, these
3 cases are highly commingled, and the lawyers are
4 working on both sides. They're seeking her advice
5 as to what to do, and she's advising them on how
6 to do it. The cases are absolutely joined.
7 MR. BOYD: Your Honor?
8 THE COURT: Yes, sir.
9 MR. BOYD: The references to editing
10 documents, I'd encourage the court to look at the
11 references. I believe what Mr. Slotchiver's
12 referring to are edits to the declaration which
13 Ms. Meyer prepared. That's the only document that
14 I recall any involvement with respect to editing,
15 and that was a document that was filed in this
16 action. They have it.
17 Again, Your Honor, every document
18 filed in this action, either one of two things
19 with respect to the MOLM firm, either the
20 affidavit of Lisa Meyer or the attachments
21 thereto. Generally, all of the -- I believe all
22 of those things, for the most part, and Your Honor
23 has the stack, everything in that stack, Your
24 Honor, was a matter of public record in
25 California. There were some provisions that were

1 redacted pursuant to public protective order, but
2 that was something that both parties were aware of
3 in California. Those documents were a matter of
4 record in California, and Mr. Slotchiver's free to
5 bring any other documents from the record in
6 California that he wants the court to consider.
7 We filed what we felt was relevant in this
8 proceeding.
9 And again, Mr. Slotchiver's rather
10 fabulous construction creates a world in which any
11 disgruntled beneficiary who becomes irritated with
12 a trustee's exercise of a trustee's authority in
13 the pursuit or defense of litigation, a
14 disgruntled beneficiary, no matter how remote, no
15 matter how contingent, brings an action
16 questioning the trustee's authority, and according
17 to the methodology, the analysis, the paradigm
18 that Mr. Slotchiver wants you to adopt, the
19 trustee has got a choice. He's either got to open
20 up the entirety of his file --
21 (Interruption in proceedings.)
22 MR. BOYD: May I proceed?
23 THE COURT: Yes, sir.
24 MR. BOYD: Your Honor, this analysis
25 that Mr. Slotchiver's suggesting to the court,

1 again, it puts the trustee in an untenable
2 position. You've got to choose -- when you're
3 sued for the way you've prosecuted an action or
4 the way you've defended an action, you've got to
5 choose between either opening up the entirety of
6 your file in the underlying action, waiving the
7 privilege, which is a sacrosanct privilege, Your
8 Honor, and is to be very carefully invaded.
9 The law -- the case law is nearly
10 infinite, and the nature of the privilege -- and
11 we're all extremely cautious when we get into
12 areas of attorney-client privilege. That's our
13 nature. That's the way we're trained to be, Your
14 Honor.
15 But the fact is in this case, as Your
16 Honor will see from the billings, we were very
17 careful and very selective in that information
18 that we were redacting, trying to find a balance
19 of disclosure for Mr. Slotchiver, and we did not
20 assert a blanket privilege in the action.
21 So Mr. Slotchiver's approach puts the
22 trustee in a box where he's got to choose either
23 give away the farm in the underlying action or
24 raise no defense in the primary action brought by
25 the beneficiary. It's a Hobson's choice, Your

1 Honor. It's not the way the law works.
2 THE COURT: Thank you.
3 MR. DAN SLOTCHIVER: Your Honor, if
4 the trustee stands by what they say and stands by
5 their actions, I don't know why this is such a
6 difficult choice. Any action a fiduciary does,
7 they're accountable for. And they're right. They
8 have the right to hide behind the attorney-client
9 privilege if they want, and it's a right they
10 have, and they can say we're not hiding it, we're
11 just asserting it, but it's their choice.
12 But they have that choice. They can
13 come forward. They can produce it or not. It's
14 their decision, and they have the right to make
15 that decision. It's no different than any kind of
16 case where people can assert a privilege. They
17 have the right to assert it. You've got to make a
18 decision is this what I'm going to assert.
19 And with reference to the case, it
20 doesn't matter, to a large extent, if Susan Meyer
21 doesn't testify. It does matter if they call her
22 to testify because --
23 MR. BOYD: Susan Meyer, Your Honor?
24 I'm not --
25 MR. DAN SLOTCHIVER: Excuse me, Lisa

1 Meyer.
2 Because they selectively decided what
3 they would give us. It wasn't within our
4 parameter to agree to this. They never came to
5 the court and asked the court to do an in camera
6 review and to make a determination that this is
7 appropriate. They never sought a protective order
8 allowing them to limit the responses of what they
9 would give us. So without that, without a
10 privilege log, without any guidance, they
11 unilaterally decided how they were going to handle
12 the discovery.
13 And keeping in mind, Your Honor, that
14 this case has had -- I think at one point we had
15 filed four motions to compel. We had two that
16 were granted. This is not a case without its
17 issues dealing with discovery, so we would ask
18 that you bar her from testifying.
19 THE COURT: Just very briefly,
20 anything else, Mr. Boyd?
21 MR. BOYD: Yes, Your Honor, just to
22 reiterate.
23 We produced -- and the matter of the
24 MOLM firm's material information was the subject
25 of a hearing before this court. We argued it,

1 Your Honor, and we did exactly what the court
2 directed us to do with respect to the information
3 that had been sought.
4 With respect to the information that
5 we sought to produce, we did exactly what
6 Mr. Slotchiver's suggesting, and in fact, what was
7 appropriate. We produced -- everything that she's
8 going to testify about and everything that we
9 intended to rely upon, we produced, Your Honor.
10 And apparently, the only alternative,
11 from Mr. Slotchiver's perspective, is to unleash
12 the entirety of the file in California, which
13 would be incredibly unfair, Your Honor, and
14 incredibly imprudent on my client's part. So we
15 have produced that information that we intend to
16 rely upon. Mr. Slotchiver's had it for well over
17 a year, and they've had many opportunities to look
18 at the California file. Both parties to this
19 litigation have access to the California
20 proceedings.
21 MR. DAN SLOTCHIVER: I did not have
22 access, Your Honor, to the memorandums, to the
23 emails, to all of the internal communications.
24 MR. BOYD: She's not going to testify
25 about any of that.

1 MR. DAN SLOTCHIVER: But I should be
2 able to cross-examine her on that.
3 THE COURT: Thank you. Anything else
4 from any other counsel?
5 MR. BOYD: She's not going to testify
6 on that, Your Honor. Anything that she's going to
7 testify to, they've long since had.
8 THE COURT: Anyone else on this issue?
9 Ms. Hedgepath?
10 MS. HEDGEPATH: On behalf of Abbie, I
11 want to know what Lisa Meyer has to say about what
12 caused the bills to be so high in California. I
13 want to hear it from her. We've heard from Susan,
14 but I want to hear why the expenses were what they
15 were and whether or not they were justified or
16 necessary.
17 Now, if I buy Dan Slotchiver's
18 argument, any time an attorney confers with
19 another or counsels another, then they're
20 co-counsel. Is John Freeman co-counsel to
21 Mr. Slotchiver because he worked with him on
22 preparing the case? That's the argument he's
23 making.
24 This case is separate and apart from
25 the one in California. I don't think Mr. Boyd

1 worked with him -- with Lisa Meyer in preparing
2 the California case. She, as I understand it, and
3 of what I'm aware, worked with him on preparing
4 the declaration which was handed up to you, which
5 we've all been provided.
6 Now, if Mr. Slotchiver was concerned
7 about what Lisa Meyer may say or how she came
8 about the statements made in her declaration, he
9 certainly had the opportunity to depose her. And
10 I don't think, in good conscience, Mr. Boyd or
11 Mr. Davis could raise that attorney-client
12 privilege as to that declaration.
13 MR. DAN SLOTCHIVER: Your Honor, as
14 the record should reflect, the declaration was
15 worked on on December 6th of 2010. All of the
16 rest of it had nothing to do with the declaration.
17 THE COURT: Thank you.
18 Mr. Davis, very briefly?
19 MR. DAVIS: Very briefly, Your Honor.
20 Your Honor, as you know, they brought
21 a case saying that the fees in California were too
22 high. The trustees spent too much money. We have
23 got to have an opportunity to explain why the fees
24 were what they were.
25 An affidavit's been filed with a

1 number of exhibits. I personally handed this to
2 Mr. Slotchiver. That is what Ms. Meyer's going to
3 testify about, Your Honor. They have got
4 disclosure, have had it for a year, or whatever
5 it's been. We've also, as Reese said, provided
6 the billings. How can he come back now and say he
7 didn't have that information or it wasn't
8 disclosed to him?
9 Assume also, Your Honor, that Mr. Dorn
10 comes up with some crazy -- and you know this is a
11 litigious matter and has been. That's why we're
12 here. Comes up with some kind of crazy idea --
13 MR. DAN SLOTCHIVER: Your Honor, I
14 object to the reference to --
15 MR. DAVIS: I don't believe that --
16 THE COURT: Bret, Mr. Davis. Excuse
17 me, sir. Mr. Davis, I'm going to ask you not to
18 speak out in that manner again. You understand?
19 We're all here. We're all being civil. There's
20 no sense to raise your voice like that and point
21 over at Mr. Slotchiver and jump all over him in
22 that manner, and I'm not going to have it.
23 MR. DAVIS: All right. No problem.
24 Do you want me to finish, or do you want him to
25 go?

1 THE COURT: Finish in the manner in
2 which you should.
3 MR. DAVIS: Okay. As I was, Your
4 Honor.
5 This is a litigious matter, very
6 litigious. Assume, for instance, that Dan Dorn
7 brings some kind of an unusual action in
8 California, and assume that the MOLM firm has
9 opened their whole entire file. Would that not
10 give him an unfair advantage in California? He
11 now had -- he brought an action in South Carolina
12 to go back and get the complete information in
13 California. And assume he brings some new action
14 in California, he's got all this information at
15 his disposal. That would not be fair. It would
16 be completely prejudicial to the Cohens, Your
17 Honor, and that should not be allowed.
18 And Your Honor, I would remind -- and
19 you obviously know this, but this is in your
20 discretion to make a decision whether she can
21 testify or not. The case law that I've reviewed
22 clearly indicates that.
23 And Your Honor, for the record, as
24 well, counsel in California has not advised me on
25 how I should proceed in this case in South

1 Carolina.
2 MR. DAN SLOTCHIVER: Objection.
3 That's not before the court, Your Honor. There's
4 no evidence to support that.
5 MR. DAVIS: I'll let him finish, as
6 you mentioned, Your Honor, but I believe it's
7 exactly before the court. He said that counsel in
8 California advised me on this case, did he not?
9 Am I missing something? Did he not say that?
10 MR. DAN SLOTCHIVER: Your Honor, I
11 only referenced what the documents showed, but now
12 counsel's testifying, and I don't believe that's
13 appropriate.
14 MR. DAVIS: I appreciate his position,
15 Your Honor, but that's exactly what he claims that
16 we did, so I'm simply addressing what he claimed.
17 MR. DAN SLOTCHIVER: Do I understand
18 Mr. Davis is now waiving the privilege as to
19 attorney-client privilege also, and he's going to
20 testify in this case?
21 THE COURT: No, sir.
22 MR. DAVIS: That's all I have, Your
23 Honor. Thank you.
24 THE COURT: Thank you. Anything else?
25 MR. DAN SLOTCHIVER: Your Honor, the

1 last thing I want to address is that Ms. Meyer has
2 not been listed as an expert in this case to
3 testify as to the basis for the expenditure of
4 fees. The privilege has continued to be asserted
5 with her, and I believe that any testimony that
6 she would provide to this court, even despite
7 these billings, would be barred either through
8 attorney-client privilege or work product, the
9 affirmative defense issue that we've already
10 discussed, hearsay.
11 I believe there's really nothing that
12 I'm aware of that she could testify to that could
13 not have been introduced or brought to the court's
14 attention through the Cohens, so even if we get
15 beyond the argument, which I certainly argue
16 against, as to the attorney relationship between
17 counsel working together, we still have the
18 attorney-client privilege issue, and we still have
19 all the objections related to it.
20 THE COURT: Thank you.
21 MR. BOYD: Your Honor, is this a new
22 argument with respect to Ms. Meyer, or is it a
23 supplement or a restatement? How many bites at
24 the apple are we going to have on this question?
25 THE COURT: I think he's finished.

1 Anything else from you, Mr. Boyd?
2 MR. BOYD: Your Honor, what she's
3 going to testify to is not hearsay. She's going
4 to testify to her direct knowledge. Again, she
5 filed a first person factual affidavit in this
6 matter which was produced in December 2010 to
7 every party involved. She's going to testify as
8 to the contents of her direct knowledge being
9 involved in the California proceedings, which are
10 the subject of this litigation.
11 MR. DAN SLOTCHIVER: Even if it was
12 produced, it doesn't make it admissible, Your
13 Honor, for that purpose, for the truth of the
14 matter asserted.
15 MR. BOYD: It's certainly not hearsay,
16 Your Honor.
17 MR. DAN SLOTCHIVER: I believe that
18 any communication she would give regarding
19 interaction with other counsel, regarding
20 interaction with other witnesses, would be hearsay
21 unless it dealt with the parties directly, and if
22 she talks about the parties, then it's a breach of
23 the attorney-client privilege.
24 THE COURT: Which can be waived.
25 MR. DAN SLOTCHIVER: Which can be

1 waived, but if it was to be waived, it should have
2 been waived before we came to court, so that we
3 would have had an opportunity to do some discovery
4 on that.
5 MR. BOYD: Your Honor, if the
6 affidavit Ms. Meyer filed waived the privilege,
7 the only thing she's going to testify to is to, in
8 essence, confirm for the record what she testified
9 to in her affidavit. If the affidavit did not
10 waive the privilege, then her testimony today
11 should not waive the privilege. And if her
12 affidavit, in fact, waived the privilege, then
13 Mr. Slotchiver should have raised that issue in
14 the motion hearing before the court on the MOLM --
15 on the information that they sought from the MOLM
16 firm. He did not.
17 MR. DAN SLOTCHIVER: Actually, Your
18 Honor, it's not my job to be proactive. I can be
19 reactive. If the affidavit waived the privilege,
20 they should have given us the documents.
21 MR. BOYD: We did give them the
22 documents, Your Honor.
23 MR. DAN SLOTCHIVER: They did not
24 provide us the documents. They gave us the
25 documents they wanted to introduce, but not all of

1 the documents.
2 If the affidavit did not waive the
3 privilege, it would be inappropriate to come in
4 here today and to waive it. Either way, this is
5 an orchestrated defense which is coming forward to
6 the court, and I believe that in no way whatsoever
7 should she be allowed to testify. Thank you.
8 MR. BOYD: I'm not sure what an
9 orchestrated defense is, Your Honor.
10 Again, it's my position that
11 Mr. Slotchiver's argument puts the trustees in a
12 box where they've either got to compromise legal
13 rights that they clearly enjoy in California or
14 effectively mount no defense in South Carolina.
15 It's absurd. Thank you, Your Honor.
16 THE COURT: Thank you.
17 I'm going to take a break to review
18 the documents that Mr. Boyd provided to me, as
19 well as counsel's argument, and then come back in
20 with a ruling on the objection to Ms. Meyer
21 testifying. I would anticipate 20 minutes, maybe,
22 so why don't we break until 10:30.
23 MR. DAVIS: Can I ask the court one
24 thing?
25 THE COURT: Yes.

1 MR. DAVIS: May I advise Ms. Meyer why
2 we're still waiting, or would you suggest that we
3 not have communications?
4 MR. DAN SLOTCHIVER: I would object to
5 that, Your Honor, subject to your ruling.
6 THE COURT: You can just let her know
7 that there were some motions to be heard, and the
8 court is taking them under advisement, and we'll
9 reconvene at 10:30, and once I make my ruling,
10 then you can advise her.
11 We'll be back at 10:30.
12 MR. DAVIS: Thank you, Your Honor.
13 THE COURT: Thank you.
14 (A recess transpired from 10:05 AM to
15 11:01 AM.)
16 MR. DAN SLOTCHIVER: Your Honor, I
17 understand you're going to give us your decision.
18 I had one more matter to bring before the court
19 when it's convenient.
20 THE COURT: All right.
21 MR. DAN SLOTCHIVER: It will take one
22 moment.
23 THE COURT: We are back on the record
24 in the matter of Abbie Dorn. Let me just get my
25 stuff together.

1 Mr. Slotchiver?
2 MR. DAN SLOTCHIVER: Your Honor, I
3 would -- I'm concerned about a development that
4 took place during this break.
5 THE COURT: A development?
6 MR. DAN SLOTCHIVER: A development or
7 comments that were made. I'm worried that it's
8 leading to an issue which I will call witness
9 intimidation. My client, Daniel Dorn, is going to
10 testify. He is here to testify. He's traveled
11 here to testify.
12 While in the hallway, Mrs. Cohen,
13 while talking to the rabbis that are here, who are
14 in the back, made a comment he's pure evil that he
15 overheard. While I was walking by, I overheard
16 her make the comment: He wants to kill her. He
17 wants her dead.
18 And I believe these are inappropriate
19 comments to be made in any proceeding, Your Honor.
20 This is a civil proceeding. I would ask that she
21 be under a gag order to restrain her from having
22 any conversation at all about any matters
23 pertinent to Abbie or this case in the presence of
24 Mr. Dorn, because we don't know where he's going
25 to be, as the courtroom moves, in the courthouse,

1 unless she's separately and privately with her
2 counsel, because I think it's inappropriate.
3 We've heard -- there was an admonition
4 that Mr. Kachmarsky gave to her last week when she
5 made comments. We've heard comments throughout
6 the testimony yesterday referring to him as
7 different -- in different manners. And I don't
8 believe it's appropriate. I don't believe that
9 anybody who comes to testify should have to face
10 that kind of comment, and I believe it is
11 intimidation, and he should be allowed to come and
12 freely testify about this case without being
13 subject to that type of conduct.
14 THE COURT: Thank you.
15 Mr. Boyd?
16 MR. BOYD: Your Honor, I'm not privy
17 to the comments that Mr. Slotchiver -- I'm sure
18 there was no effort to intimidate Mr. Dorn.
19 Mr. Dorn's a grown man. My client -- it's a very
20 emotional case, Your Honor, but to sit here and
21 suggest that she's under a gag order, Your Honor,
22 this is just -- there's no basis for that, Your
23 Honor. That's absurd.
24 THE COURT: Thank you.
25 Let me just say this: I do understand

1 that this is a very emotional case for the
2 parties, for all of the parties. I do think it's
3 inappropriate for there to be comments by the
4 parties to either other parties, to counsel -- I'm
5 sorry. Let me take out the counsel. To other
6 parties or friends or people that are here to view
7 this trial that may be perceived as intimidation
8 or comments that are purely derogatory towards
9 another party. I don't think it's appropriate.
10 I would caution Mrs. Cohen if she
11 could refrain especially -- I understand she has a
12 right to say what she wants to, but when it comes
13 to saying things that may be overheard by either
14 Dan Dorn himself or his attorneys or the attorneys
15 for Abbie, the guardian ad litem for Abbie, or the
16 attorney guardian ad litem for the children, I
17 think is inappropriate, and so Mrs. Cohen, I will
18 caution you.
19 Certainly, you can speak with your
20 attorneys and your religious advisers however you
21 would like to, but when you are in the vicinity of
22 Mr. Dorn or the other attorneys in this matter, I
23 would caution you to be very careful about what
24 you say and to say things in a very quiet manner,
25 not in a derogatory manner or in any way to

1 intimidate anybody in this case.
2 MRS. COHEN: I'm sorry.
3 THE COURT: Thank you, ma'am.
4 She has apologized.
5 MR. DAN SLOTCHIVER: Thank you, Your
6 Honor.
7 THE COURT: Thank you.
8 MR. BOYD: Your Honor, if I may just
9 real briefly, may I just -- for the record,
10 there's one item that I wanted to mention to the
11 court that I did not mention that I'd just like to
12 read into the record, if I may.
13 THE COURT: Yes, sir.
14 MR. BOYD: Regarding the matter that's
15 before the court at the moment.
16 Referring again to our
17 interrogatories, Your Honor, which, again, go back
18 to 2011, we provided the following with respect to
19 the statement that we've been discussing of Lisa
20 Meyer: Respondents are aware of a recorded
21 statement captioned Declaration of Lisa Helfend
22 Meyer, Esquire, which was given by Lisa Helfend
23 Meyer, Esquire, on or about December 2010 in
24 connection with this matter, which declaration was
25 previously filed with the court and produced to

1 the petitioner.
2 Respondents are aware of numerous
3 depositions that have been taken, as well as
4 hearing transcripts that have been recorded, in
5 connection with the California litigation
6 involving the petitioner and respondents. Such
7 recorded statements are not produced herewith
8 since both respondents and petitioner presumably
9 have access and/or possession to such recorded
10 statements already.
11 I just wanted to make sure that the
12 court was aware that those were in our discovery
13 responses, Your Honor.
14 THE COURT: Thank you.
15 With respect to the motion by
16 Mr. Slotchiver on behalf of Dan Dorn to preclude
17 Ms. Meyer from testifying, just a little bit of
18 statement of the issue, has to do with the
19 confidential relationship between the attorney and
20 the client, and those relationships, as we all
21 know, are considered privileged when they are
22 claimed to be within the attorney-client
23 privilege, and they are not discoverable.
24 The attorney-client relationship
25 privilege serves a very important public interest

1 by promoting a full and fair disclosure between an
2 attorney and his or her client. Because the
3 privilege withholds information from the
4 fact-finder, which would be this court, it is
5 tailored to protect only those confidences within
6 the confidential relationship of the
7 attorney-client, only those communications that
8 are considered confidential.
9 There are some communications between
10 an attorney and his client that are not considered
11 confidential and that are not protected. That
12 would be nonconfidential communications between
13 the attorney and the client. Those that are
14 intended to be used as evidence in a trial are not
15 considered to be confidential communications.
16 That's based on the South Carolina
17 State Highway Department versus Booker case,
18 195 SE 2nd 615.
19 Also, information that is used as part
20 of negotiating with a third party are not
21 confidential relationships -- communications
22 between the attorney and the client when they're
23 communicated with third parties.
24 And also, communications that are
25 known to third persons are not considered

1 confidential and privileged. And just by taking
2 the stand, a client or the attorney does not waive
3 the privilege.
4 That's State v. James 12 SE 2nd 657.
5 The case of Booker said that
6 privileged matter in South Carolina is matter that
7 is not intended to be introduced into evidence
8 and/or testified to in court.
9 In this matter, the Cohens have
10 disclosed certain information to Petitioner Dan
11 Dorn, including Ms. Meyer's declaration and
12 documents that were filed -- produced by her,
13 filed in the California proceeding. They have
14 been filed with this court, admitted into evidence
15 in this trial, numerous documents that counsel for
16 the Dorns have provided to the court that they
17 have turned over in discovery, some of which she
18 drafted, some of which were responsive pleadings
19 in the California case. These matters have been
20 filed with the court. They are not considered
21 privileged.
22 I'm going to overrule Dan Dorn's
23 objection to Ms. Meyer testifying today, find that
24 she can testify as to those matters that have
25 previously been provided through discovery to Dan

1 Dorn, previously filed with this court, previously
2 admitted into evidence in this court, including
3 those matters that are set forth in her
4 declaration.
5 I further find and conclude that her
6 communications with Mr. Boyd, Mr. Davis, and/or
7 the Cohens in this matter, based on the references
8 in her billing statements, do not in any way make
9 her counsel for the Cohens in this probate matter.
10 She is counsel for the Cohens in the
11 California litigation, but is not counsel of
12 record, and I do not determine that her
13 communications with them in this case in any way
14 make her counsel for the Cohens in this probate
15 matter.
16 So therefore, I'm going to deny the
17 motion to exclude her from testifying and allow
18 her to be called as a witness to testify as to
19 those matters that have been provided to Dan Dorn
20 through his counsel.
21 MR. DAN SLOTCHIVER: Your Honor, may I
22 have a short period of time in which to question
23 Ms. Meyer before she testifies about the
24 interaction with counsel in South Carolina?
25 One of the reasons that I wanted her

1 excluded -- she's still excluded from the
2 courtroom -- is so that she would not know what we
3 were asking about. I would like an opportunity to
4 talk to her, very limited, or for the court to
5 engage her very limited, to chat with her about
6 would she agree or does she agree that she did
7 have multiple communications with counsel in
8 California, does she agree that she did, in fact,
9 work with them in setting forth a plan to respond
10 to certain actions and respond to certain matters,
11 because one of the things that we don't have is
12 anything more than what that redacted log shows.
13 I believe the log seems to give a good faith basis
14 to assert that she is co-counsel, but it doesn't
15 go to the extent of listing her as co-counsel.
16 But if the court could allow us to
17 make that inquiry before her testimony goes
18 forward, then I think we'll have a better
19 opportunity to see if she truly was co-counsel in
20 the case.
21 And if the court determines that
22 there's not sufficient basis after that testimony,
23 then certainly, I understand the court's ruling
24 with reference to her talking about those issues
25 that have been provided, but before we get there,

1 I would certainly like the opportunity to find
2 out, no different than the opportunity to address
3 somebody to determine if they are an expert before
4 they give their expert opinion.
5 THE COURT: Mr. Boyd?
6 MR. BOYD: Your Honor, let me just
7 compliment counsel. His arguments are nothing if
8 not extensive. But there's a habit here from
9 Mr. Slotchiver of continuing -- Your Honor, he's
10 raised the issues, Your Honor has ruled, now
11 Mr. Slotchiver is rearguing the point, and that's
12 a habit that's evolved in this case is I'll
13 continue to make objections and continue to make
14 arguments until I get the decision that I want
15 from the court.
16 We argued this matter for several
17 hours this morning. Your Honor has ruled, as I
18 understand it. I think further discussion at this
19 point is inappropriate.
20 What Mr. Slotchiver, in effect, is
21 talking about is a deposition, Your Honor. I'd
22 remind the court that we named Ms. Meyer, as in
23 evidence, in May of 2011. He's had nearly two
24 years to depose Ms. Meyer. He has not deposed
25 her. He's never noticed her deposition.

1 So now to suggest that I need 15
2 minutes to meet with this witness to go into
3 matters that we just argued about over the last
4 three hours and which the court just ruled upon,
5 is inappropriate.
6 THE COURT: Thank you.
7 Denied. I think you had an
8 opportunity during your initial argument to
9 request that she be called in to question
10 specifically on this issue, and you did not do
11 that, and I'm not going to give you an opportunity
12 to do it now.
13 MR. DAN SLOTCHIVER: I wasn't aware I
14 had waived a different argument, which I think
15 truly is distinguished, but I understand and ask
16 that my objection be noted on the record.
17 THE COURT: So noted.
18 MR. DAN SLOTCHIVER: Thank you.
19 THE COURT: Thank you.
20 Mr. Boyd?
21 MR. BOYD: Thank you, Your Honor.
22 Shall I retrieve the witness?
23 THE COURT: Yes, sir. Thank you.
24 MR. BOYD: Your Honor, I apologize.
25 We caught her off guard, and she asked for five

1 minutes to go to the restroom.
2 THE COURT: That would be fine.
3 (A recess transpired from 11:14 AM to
4 11:16 AM.)
5 THE COURT: We're back on the record
6 in the Abbie Dorn matter.
7 Mr. Boyd, I believe you've called a
8 witness to testify.
9 MR. BOYD: Yes, Your Honor. Thank
10 you. May it please the court?
11 THE COURT: Yes, sir.
12 LISA HELFEND MEYER
13 being first duly sworn, testified as follows:
14 DIRECT EXAMINATION
15 BY MR. BOYD:
16 Q. Good morning, Ms. Meyer. How are you
17 this morning?
18 A. Good. How are you?
19 Q. I'm doing fine. I'm sorry to keep you
20 waiting. I understand you have a flight this
21 afternoon, and I'm going to do my best to move
22 along so we can hopefully get you out.
23 Would you begin by stating your full
24 name and address for the record, please?
25 A. Yes. Lisa Helfend Meyer. Do you want

1 my business address or my home address?
2 Q. Business address would be fine.
3 A. 10100 Santa Monica Boulevard,
4 Suite 1425, Los Angeles, California, 90067.
5 Q. And what do you do, Ms. Meyer? What
6 is your line of work?
7 A. I'm an attorney.
8 Q. And how long have you practiced as an
9 attorney?
10 A. Over 30 years.
11 Q. What are your areas of practice,
12 please?
13 A. My area of specialty is family law.
14 Q. I take it you are a member of the
15 California Bar?
16 A. Yes, I am.
17 Q. Do you have any specialty designations
18 from the California Bar?
19 A. Yes. I've been certified by the State
20 Bar of California in the area of family law.
21 Q. Can you -- I'm sorry. I didn't mean
22 to interrupt. Anything else?
23 A. No. Go ahead.
24 Q. Can you briefly explain to the court
25 your role in the California litigation that is the

1 subject of these proceedings here in South
2 Carolina?
3 A. Yes. I was originally retained by
4 Abbie in I believe it was February of 2010.
5 MR. DAN SLOTCHIVER: Objection, Your
6 Honor.
7 THE COURT: Yes, sir.
8 MR. DAN SLOTCHIVER: I don't believe
9 she could be obtained by Abbie; it would be the
10 trustee. And I also would object to the
11 relevancy -- not the relevancy, but I believe, for
12 the record, she would have been retained by
13 trustees, unless she had direct communication with
14 Abbie.
15 THE WITNESS: Actually, I was
16 retained, not obtained, and the Cohens were
17 conservators, not trustees.
18 THE COURT: So you were retained by
19 them as conservators for Abbie?
20 THE WITNESS: That is correct, Your
21 Honor.
22 THE COURT: Thank you.
23 MR. DAN SLOTCHIVER: Thank you, Your
24 Honor.
25 BY MR. BOYD:

1 Q. Thank you, Ms. Meyer. And I'm sorry.
2 I'm just trying to lay a baseline foundation for
3 why you're here today.
4 Again, could you just explain how you
5 came to be involved?
6 A. Yes. So I was originally retained by
7 the Cohens, who were the conservators -- or are
8 the conservators for Abbie in the state of
9 California, and they initially retained our firm
10 to represent Abbie in connection with the marital
11 dissolution proceedings in California.
12 Should I continue?
13 Q. Go ahead.
14 A. The initial work that we undertook was
15 to contact Vicki Greene, who represented Mr. Dorn,
16 and the purpose of contacting her was to ascertain
17 whether or not she would be in agreement that
18 Abbie could have visitation rights with her
19 children.
20 Q. Do you recall -- at some point you did
21 become aware that the Cohens had been sued in
22 South Carolina in connection with that action,
23 correct?
24 A. Yes, later on.
25 Q. Do you recall preparing an affidavit,

1 Ms. Meyer?
2 A. I did.
3 Q. To be used in these proceedings?
4 A. I did.
5 MR. BOYD: May I approach, Your Honor?
6 THE COURT: Yes, sir.
7 (RES. EXH. 5, Affidavit of Lisa
8 Helfend Meyer, was marked for identification.)
9 BY MR. BOYD:
10 Q. I'm going to ask you if you recognize
11 that document, please?
12 A. I do.
13 Q. Is that the affidavit that you
14 prepared?
15 A. Yes.
16 MR. BOYD: Your Honor, I'd like to
17 move for the admission into evidence of what's
18 been marked as Respondent's Exhibit 5, which is
19 the affidavit of Lisa Meyer which we have been
20 discussing at length this morning.
21 THE COURT: Any objection?
22 MR. DAN SLOTCHIVER: Your Honor, no
23 objection to admitting it for the purposes of
24 proving that it is an affidavit that she created,
25 but we certainly do not agree to admit it for the

1 truth of the matters asserted within it.
2 THE COURT: Thank you.
3 Any other objections?
4 Court will admit the affidavit of Lisa
5 Meyer as Respondent's No. 5 without objection,
6 other than as noted on the record.
7 MR. BOYD: Thank you, Your Honor.
8 (RES. EXH. 5 was admitted into
9 evidence.)
10 BY MR. BOYD:
11 Q. Let's talk about the history of the
12 case, Ms. Meyer, in California. You were not the
13 first attorney, correct?
14 A. Correct.
15 Q. Who was originally retained to
16 represent Ms. Dorn in the case?
17 A. Her name is Rosanna Velen, V-E-L-E-N.
18 Q. Ms. Dorn, Abbie.
19 A. Oh, I'm sorry. I didn't --
20 Q. Who was originally retained to
21 represent Abbie Dorn in the case?
22 A. I believe it was Rosanna Velen.
23 Q. And was there counsel for Mr. Dorn in
24 the matter?
25 A. I believe it was always Vicki Greene.

1 Q. In your experience, Ms. Meyer, what
2 sort of lawyer, in family court, is Ms. Greene
3 generally regarded as in terms of how aggressively
4 she litigates?
5 MR. DAN SLOTCHIVER: Objection, Your
6 Honor. There is no foundation for asking this
7 question. She is called merely as a witness, not
8 an expert in this case.
9 MR. BOYD: Your Honor, she had
10 firsthand experience litigating cases with Vicki
11 Greene. I've just asked her for her knowledge,
12 her opinion, based on her experience.
13 MR. DAN SLOTCHIVER: Her knowledge or
14 her opinion is different than what he asked. He
15 asked her what is her reputation in the community.
16 That would call for hearsay. She couldn't give a
17 reputation without knowing what the reputation
18 would be. It should be barred.
19 THE COURT: Mr. Boyd?
20 MR. BOYD: I'll restate the question,
21 Your Honor.
22 THE COURT: Thank you.
23 BY MR. BOYD:
24 Q. When you realized that opposing
25 counsel in the case was Vicki Greene, Ms. Meyer,

1 did it give you pause for concern?
2 A. It did.
3 Q. Why was that?
4 A. Because I have known Vicki for
5 approximately at that time about 20 years or so,
6 and I knew her to be a very aggressive attorney
7 who took very hard-line positions on issues.
8 Q. Let's look at your affidavit. I'm
9 going to ask you, Ms. Meyer, let's take a look
10 at -- I'm going to ask you to take a look at
11 what's previously been marked, Ms. Meyer, as an
12 exhibit in this matter and admitted. Those are
13 the letters of conservatorship that were issued by
14 the California court with respect to the Cohens,
15 as conservators.
16 A. Yes.
17 Q. What was your understanding of the
18 authority? You reference this on Page 2. What
19 was your understanding of the rights of the
20 conservators to pursue the California marital
21 proceeding?
22 MR. DAN SLOTCHIVER: Your Honor, I
23 would object. She is not an expert to testify to
24 the law. I don't believe that someone, even an
25 expert, could -- if she was an expert, could be

1 called to testify as to the law, and that's
2 exactly what he's asking her to do. She can
3 testify as to what she witnessed, what she did, if
4 it's not barred, but I don't believe she can
5 answer this question.
6 MR. BOYD: Your Honor, the Cohens, as
7 conservators, retained Ms. Meyer as counsel for
8 Abbie in the divorce proceeding, and she explained
9 in her affidavit, Paragraph 3, Page 1, the basis
10 for her retention by the conservators. The
11 letters of conservatorship were attached as
12 Exhibit A to her affidavit. I'm merely asking her
13 to put into the record effectively what her
14 understanding was with respect to her retention.
15 It's her firsthand knowledge of her being retained
16 by the Cohens under the authority granted to them
17 by the letters of conservatorship.
18 THE COURT: And I'm sorry. The
19 question, again, for Ms. Meyer?
20 MR. BOYD: I was asking her did she
21 understand that she was retained pursuant to the
22 authority granted the Cohens under the letters of
23 conservatorship issued by the California court,
24 which is exactly what she addresses in Paragraph 3
25 of her affidavit.

1 MR. DAN SLOTCHIVER: And that would
2 allow her to opine on the fact that they had the
3 authority to hire her in this case.
4 MR. BOYD: Your Honor, she was the
5 attorney that was retained. I think the court can
6 take judicial notice of the fact that if Ms. Meyer
7 did not feel that her clients had authority to
8 retain her, that she would have questioned the
9 retainer, questioned the retention by the Cohens.
10 THE COURT: I will allow it. Thank
11 you.
12 BY MR. BOYD:
13 Q. So, Ms. Meyer, again I would ask you,
14 what was your understanding of the nature of your
15 retention by the Cohens pursuant to the authority
16 of the letters of conservatorship?
17 A. That pursuant to the letters of
18 conservatorship, that I could be retained by the
19 Cohens on behalf of Abbie in connection with the
20 pending proceeding for dissolution of the
21 marriage, which would incorporate all issues in
22 the marital dissolution proceeding, including, but
23 not limited to, property, support, custody,
24 et cetera.
25 MR. DAN SLOTCHIVER: Your Honor, once

1 again, I object. She is now opining as to what
2 the California order provided, and she has now
3 opined that it would include not only the
4 dissolution, but also all other matters. She is
5 not here as an expert, she is not a practicing
6 lawyer in the field of trusts or estates, and I
7 believe that that reference should be stricken.
8 THE COURT: Mr. Boyd?
9 MR. BOYD: Again, Your Honor, she's
10 explaining her understanding of what she undertook
11 as her job in the case in California and why she
12 felt that she had -- under the documents that she
13 reviewed, why she felt that she had authority to
14 do that.
15 THE COURT: I will accept her
16 testimony as to her understanding, not as an
17 expert --
18 MR. DAN SLOTCHIVER: Thank you, Your
19 Honor.
20 THE COURT: -- witness in the matter.
21 BY MR. BOYD:
22 Q. I'm losing my train of thought,
23 Ms. Meyer.
24 So you did review the letters of
25 conservatorship, correct?

1 A. Yes, I did.
2 Q. Were there any limitations set forth
3 in the letters of conservatorship as to the scope
4 of retainer that gave you any cause for concern?
5 A. My understanding was there was none.
6 MR. DAN SLOTCHIVER: Your Honor, now
7 she's opining on limitations of the order. How is
8 that not being called for expert testimony?
9 MR. BOYD: I've asked Your Honor --
10 Your Honor, can we get some leeway
11 here? I'm really having --
12 THE COURT: I'm going to allow this,
13 Mr. Slotchiver, not as an expert, but as to her
14 understanding as to the scope of the letters of
15 conservatorship.
16 MR. BOYD: I've not asked for her to
17 be designated as an expert. I'm asking for her
18 direct, firsthand knowledge and understanding.
19 THE COURT: Thank you.
20 BY MR. BOYD:
21 Q. So you reviewed the letter of
22 conservatorship. You had -- as I understand your
23 testimony, you didn't see limitations within that
24 would give you pause for concern.
25 Is it typical practice in California

1 to have a divorce proceeding where the issues of
2 child custody/visitation/property division would
3 not be addressed?
4 MR. DAN SLOTCHIVER: Your Honor, I
5 would object. Now he's asking her for a
6 conclusion of law, is it typical in California to
7 do this. That is absolutely an expert opinion.
8 She has been called as a witness, not an expert in
9 the case, and he's asking her to opine on the law.
10 MR. BOYD: Again, Your Honor, I'm
11 asking her for her experience as she applied it in
12 this case in evaluating her authority to undertake
13 the representation.
14 THE COURT: If you would like to
15 rephrase that with respect to her experience in
16 practicing, but not as an expert in the field of
17 family law.
18 MR. BOYD: I understand, Your Honor.
19 Thank you.
20 BY MR. BOYD:
21 Q. Ms. Meyer, just based on your
22 experience as a domestic practitioner, family law
23 practitioner, would you have expected to see such
24 a distinction within your authority based on the
25 way you typically handle family law cases in your

1 practice, in your own practice, personal?
2 A. No. My understanding was when I
3 reviewed the letters of conservatorship, and given
4 the fact that the parties had already been
5 divorced pursuant to a judgment of bifurcation,
6 that I was being retained to address the remaining
7 issues in the divorce, which included custody,
8 visitation, support, and property. And in fact,
9 there was a trial on the calendar on those issues
10 which we subsequently continued after I was
11 initially retained. So that was my understanding
12 of what my charge was at the time.
13 They were already divorced, so nobody
14 was saying that there's no issues remaining. All
15 the issues were remaining, save for the issue of
16 divorce, because they had been divorced, because
17 that's what Dan had filed a previous request to
18 do.
19 Q. Let me ask you this, Ms. Meyer: I'm
20 going to show you what has previously been marked
21 as Exhibit R-7. And do you recognize that
22 document, Ms. Meyer?
23 A. I do.
24 Q. Now, I understand you were not the
25 attorney who prepared that document, but can you

1 briefly identify it for the record?
2 A. Yes. It's a petition that is the --
3 one of the documents that initiates a divorce in
4 California, so you can file -- to start the
5 process, you file either a petition for
6 dissolution, legal separation, or nullity, and
7 that's on the first page, and the box is checked
8 next to dissolution of marriage.
9 Q. Looking at that exhibit, Ms. Meyer,
10 can you identify what's being asked for in the
11 petition in terms of child custody and visitation?
12 A. Yes. If you could go to Page 2 of the
13 petition, under 7A, this is the relief that you
14 have to check the box in terms of what you want,
15 so 7A, the request is that respondent be awarded
16 legal custody, and respondent would be Dan Dorn,
17 and legal custody means decisions regarding the
18 children's health, education, and welfare.
19 B is physical custody of children.
20 And the petitioner, who are the conservators, were
21 requesting that Dan also be awarded physical
22 custody, and physical custody means the actual
23 time the children spend with each parent. Child
24 visitation be granted to petitioner, and that
25 would be Abbie. So that's what the initial

1 request was for.
2 And then the only other box that
3 was -- I'm sorry. The next is attorneys fees and
4 costs, and the request is that respondent pay
5 petitioner's fees and costs, and then G and H are
6 also checked.
7 Q. And just to be clear, the petitioner
8 in the matter was Abbie Dorn, correct?
9 A. Yes, based upon my understanding that
10 Dan had wanted the Cohens to file a divorce
11 petition on behalf of Abbie.
12 Q. And the respondent in the proceeding
13 was Dan Dorn?
14 A. Yes.
15 Q. And throughout the proceeding, from
16 the filing of this document to the end of the
17 settlement, were there multiple case numbers
18 involved? Was it always adjudicated under the
19 same case number?
20 A. Yes.
21 Q. And again, to be clear, I think you
22 specified this, but is there any request for
23 custody of the children made on behalf of the
24 petitioner, Abbie Dorn, in this document?
25 A. No. The only thing that the

1 conservators requested on behalf of Abbie was
2 visitation.
3 Q. Visitation?
4 A. Yes, visitation only.
5 Q. And was it your understanding that
6 that was always a request?
7 MR. DAN SLOTCHIVER: Your Honor, I'm
8 going to object to the leading question.
9 MR. BOYD: I'll restate, Your Honor.
10 THE COURT: Thank you.
11 BY MR. BOYD:
12 Q. Are you aware of any request or demand
13 that was made throughout these proceedings for
14 legal custody of the children by the Cohens on
15 behalf of Abbie Dorn or by any other party?
16 A. Absolutely never.
17 Q. Ms. Meyer, next I'm going to show you
18 what's been marked as Exhibit R-8. If you could
19 just briefly identify that document if you're
20 familiar with it.
21 A. Yes. This is the response to the
22 petition for dissolution of the marriage. That
23 was filed by Dan. And also, it now refreshes my
24 recollection that he did have prior counsel, and
25 that person is identified on the first page, at

1 the top half of the page. Her name is Rachel S.
2 Silverman, who I don't know.
3 Q. Thank you, Ms. Meyer.
4 And can you briefly -- as you did with
5 the prior exhibit, can you just run through the
6 key substantive points of that response?
7 A. Yes. On Page 2, in terms of the
8 relief Dan was seeking, and that is on -- starting
9 at nine, he is requesting that he be awarded legal
10 and physical custody of the children, which was
11 what Abbie had also proposed.
12 Also, interestingly, under 9C, child
13 visitation be granted to petitioner. So in his
14 initial response to the petition, which was -- and
15 this was filed in January 2008, he was agreeable
16 to Abbie having visitation with the children, and
17 that was never modified, by the way. Let me
18 restate that. An amended response was never filed
19 with the court.
20 And then he -- the other things he
21 asked for are of a monetary nature.
22 Q. Thank you, Ms. Meyer.
23 So initially, based on your
24 understanding of the documents, Mr. Dorn was
25 agreeable to visitation from the Cohens?

1 A. Yes, and that's what I reviewed before
2 my initial conversation with Vicki.
3 Q. Let me ask you this: That initial
4 response that we just reviewed, I didn't hear you
5 say anything about child support.
6 A. If I could see it again. I don't
7 recall seeing anything.
8 Q. I'll be glad to let you look at it
9 again. I think you were --
10 MR. DAN SLOTCHIVER: Your Honor, I
11 would ask that you caution counsel about leading.
12 THE COURT: Mr. Boyd?
13 MR. BOYD: Yes, ma'am.
14 THE COURT: Be mindful of leading
15 questions with your witness.
16 MR. BOYD: Yes, ma'am. I apologize,
17 Your Honor.
18 THE WITNESS: There's no mention of
19 child support in his response.
20 BY MR. BOYD:
21 Q. Subsequently, Ms. Meyer, I believe in
22 January of 2009, did Mr. Dorn, in fact, file an
23 order to show cause requesting child support?
24 MR. DAN SLOTCHIVER: Your Honor, once
25 again, I object to the leading questions. I

1 believe he can ask her what happened next, what
2 she's aware of -- she's been called as a
3 witness -- but to put things into her head by
4 phrasing those questions, that's exactly what the
5 rules are designed to prevent.
6 THE COURT: Mr. Boyd?
7 MR. BOYD: I will rephrase, Your
8 Honor. My apologies.
9 BY MR. BOYD:
10 Q. Subsequently, based on your knowledge,
11 was there a demand that was made for child support
12 by Mr. --
13 MR. DAN SLOTCHIVER: Your Honor, the
14 same objection.
15 MR. BOYD: Your Honor, I'm not sure
16 how I can be -- I'm trying not to lead her down
17 the primrose path, Your Honor, but I am trying to
18 keep her testimony focused. She has a plane to
19 catch, and so I'm trying to move through it.
20 MR. DAN SLOTCHIVER: We don't want to
21 waive any rights because she has a plane to catch,
22 Your Honor. We would ask that he not lead her
23 down the road to what he wants when he asks her
24 questions.
25 THE COURT: Mr. Boyd?

1 BY MR. BOYD:
2 Q. Were you aware of any subsequent
3 efforts, Ms. Meyer, on the part of Daniel Dorn to
4 collect or receive child support in this case?
5 MR. DAN SLOTCHIVER: Same objection.
6 MR. BOYD: Your Honor, that's not a
7 leading question. I asked her if she was aware of
8 any efforts on --
9 MR. DAN SLOTCHIVER: It's a yes or no
10 response, Your Honor.
11 BY MR. BOYD:
12 Q. What happened next, Ms. Meyer?
13 A. What happened after the original
14 petition and response was filed was there was then
15 a request by Dan to terminate the marital status
16 before the other issues are resolved. In
17 California, it's called a bifurcation. So he was
18 seeking to bifurcate the marital status from all
19 the other issues, including custody and
20 visitation. That was granted I believe in 2008,
21 and then in 2009 --
22 Q. Let me just stop you there. Let me
23 just stop you there. In 2008, you mentioned the
24 bifurcation, and what has been marked as
25 Exhibit R-9, is that related to the bifurcation?

1 A. Yes. And also, the record should
2 reflect that by this date, Vicki Greene has
3 substituted in as Mr. Dorn's attorney, and this
4 was filed in, it looks like, May of 2008.
5 Q. Thank you. And Ms. Meyer, without --
6 was child support ever requested in the case?
7 MR. DAN SLOTCHIVER: Same objection,
8 Your Honor.
9 MR. BOYD: Your Honor, I'm asking the
10 witness --
11 THE WITNESS: I can tell you what
12 happened next.
13 BY MR. BOYD:
14 Q. What happened next, Ms. Meyer?
15 MR. DAN SLOTCHIVER: Your Honor, I
16 don't want to make this objection over and over as
17 the thing continues.
18 THE COURT: Mr. Boyd, if you would
19 just be very careful and do not ask any leading
20 questions. Anything other than just a simple
21 yes/no might be considered a leading question.
22 MR. BOYD: Thank you, Your Honor.
23 BY MR. BOYD:
24 Q. Ms. Meyer, what next, in your mind,
25 was a significant development in the case?

1 A. Yes. Next, Ms. Greene filed, on
2 behalf of Mr. Dorn, what's called an OSC, an order
3 to show cause, for child support under the theory
4 that --
5 MR. DAN SLOTCHIVER: Your Honor, I
6 object. This is hearsay. I do not believe that
7 this witness has the ability to give an opinion as
8 to what theories were followed. I don't believe
9 she can testify as to what Vicki Greene did or as
10 to what Dan Dorn did.
11 MR. BOYD: I'll show her the document,
12 Your Honor.
13 MR. DAN SLOTCHIVER: Your Honor, she
14 is limited to testifying as a witness in this
15 case. We've already addressed several issues
16 regarding this. I understand she can talk about
17 the documents that she's familiar with and what
18 she did, but I want to -- but I certainly want to
19 make sure that I've marked for objection that she,
20 in my opinion, should not be able to testify as to
21 opinions, legal conclusions, or hearsay testimony
22 about what Vicki Greene did or what Dan Dorn did.
23 She certainly can testify as to what she did,
24 assuming that doesn't violate the attorney-client
25 privilege, in which case we'll discuss that later.

1 MR. BOYD: Your Honor, she simply --
2 and I'm going to hand her the exhibit that's
3 already been admitted into evidence. She's simply
4 commenting on the theories raised in the
5 documents, which are in evidence.
6 THE COURT: I'll allow her to testify
7 as to the documents that were filed by Mr. Dorn in
8 the California proceeding, but she needs to limit
9 her testimony as to the reason for doing that or
10 any theories behind that as to their motives for
11 having filed that.
12 MR. BOYD: Understood.
13 THE WITNESS: So I'm not supposed to
14 answer the motives or -- okay. Got it.
15 MR. BOYD: But she can address the
16 theories of --
17 THE COURT: She can address the relief
18 requested and what was actually -- what is
19 actually in the pleadings.
20 BY MR. BOYD:
21 Q. And Ms. Meyer, what I've just handed
22 you has previously been marked as Exhibit R-10 in
23 this case. Is that the order to show cause that
24 you were just referring to?
25 A. Yes.

1 Q. And what happened in the proceedings
2 as a result of the filing of that document,
3 Ms. Meyer?
4 A. Fees escalated because what happened
5 was Abbie had to file a response to this OSC, and
6 this is not a garden variety OSC for support, so
7 this is not where somebody is a W-2 tax and wage
8 earner and works at a bank, and you exchange
9 information regarding income, and the court sets
10 support.
11 MR. DAN SLOTCHIVER: Your Honor, I
12 would object. She's now giving an opinion about
13 what is garden variety, what's not garden variety.
14 That's an opinion testimony that can only be given
15 by an expert, I believe, not one that can be given
16 by a witness.
17 MR. BOYD: She is explaining, Your
18 Honor, the nature of that OSC in her experience.
19 She just testified that the OSC was not ordinary,
20 in the normal course of her practice, and she was
21 explaining, in the ordinary course of her
22 practice, why it was not a normal OSC that she
23 typically receives. That's her firsthand
24 knowledge.
25 MR. DAN SLOTCHIVER: That's not

1 exactly what I heard her testify to. I have never
2 heard the limitations of her practice. I believe
3 it was more of a general practice.
4 THE COURT: Ma'am, if you can limit
5 your comments, then, with regards to this
6 particular case and your practice and your
7 experience.
8 THE WITNESS: I will. Thank you, Your
9 Honor.
10 THE COURT: Thank you.
11 THE WITNESS: So in terms of my
12 practice, and again, I practiced -- at the time I
13 practiced about twenty -- that was in 2010, so I
14 was practicing about 28 years at the time. This
15 was not a garden variety OSC for support, because
16 Dan was trying to get a special needs trust to pay
17 child support under the theory that part of the
18 funds in the --
19 MR. DAN SLOTCHIVER: Your Honor, I
20 object to her testimony as to what Dan was trying
21 to do and under what theory he was trying to do
22 it. I believe she can testify as to the document,
23 not as to what he was trying to do or what the
24 theory was as to what he was doing.
25 THE COURT: Thank you. If you'll

1 limit. Thank you.
2 THE WITNESS: Sure.
3 The document provides that child
4 support should be paid from the trust, because
5 part of the funds in the trust were as a result of
6 Abbie's lost earnings, so it wasn't that
7 distributions were being made from the trust, and
8 those distributions should be considered income,
9 but the lost wages that were part of the funds in
10 the trust should be considered, and that's set
11 forth in her points and authorities.
12 BY MR. BOYD:
13 Q. And the memo of points and authorities
14 is a part of that exhibit?
15 A. Yes.
16 Q. And what happened to that demand for
17 child support, Ms. Meyer?
18 A. What happened was that counsel for
19 Abbie at the time filed extensive points and
20 authorities, as well as responsive pleadings,
21 objecting to the payment of child support from any
22 portion of the funds in the trust, because to do
23 so would invalidate the terms of the trust.
24 MR. DAN SLOTCHIVER: Your Honor, now
25 she's giving an opinion about why the document was

1 filed. It was not filed by her.
2 THE WITNESS: That's what the
3 pleadings say.
4 MR. BOYD: She's just explaining, Your
5 Honor, exactly why they undertook the filings that
6 they undertook.
7 THE COURT: I'll allow it. It's in
8 her pleading is what she has testified to.
9 MR. DAN SLOTCHIVER: I would just ask
10 that if she's going to testify, that if she could
11 say the pleadings represent this is what happened,
12 as opposed to giving an opinion as to what had
13 happened and why it happened.
14 THE COURT: Thank you. That might
15 help clarify your testimony a little bit, ma'am.
16 THE WITNESS: Of course. Thank you,
17 Your Honor.
18 The pleadings, the responsive
19 pleadings, stated that there was an objection to
20 paying any monies from the trust, because to do so
21 would invalidate the special needs trust, and then
22 Abbie wouldn't receive any governmental benefits,
23 such as Medicaid, if that were to occur, and
24 that's -- so that was set forth in those
25 pleadings.

1 And then your question was whatever
2 happened. That issue never came to hearing and
3 continued to be continued through the time of
4 trial, and that was an issue that we only settled
5 after the hearing on custody and visitation, or I
6 should say on visitation.
7 BY MR. BOYD:
8 Q. In response to the objections to the
9 request for child support that were filed by your
10 firm on behalf of Abbie Dorn, was the request for
11 child support ever withdrawn by Mr. Dorn's
12 counsel?
13 A. No. Vicki refused to --
14 MR. DAN SLOTCHIVER: Objection,
15 hearsay, Your Honor.
16 THE WITNESS: The answer's no.
17 BY MR. BOYD:
18 Q. Thank you. And I believe you were
19 addressing this, Ms. Meyer, but when was the issue
20 of child support finally resolved?
21 A. It was not resolved until we entered
22 into the final judgment, which was after the
23 hearing on the issue -- the temporary hearing on
24 the issue of visitation, which was in March of
25 2010, and thereafter, we entered into the

1 judgment, so that would have been later in 2010,
2 and that's when it was finally resolved.
3 Q. Let me ask you this question on the
4 subject of visitation, Ms. Meyer: Did you file,
5 on Abbie's behalf, a --
6 MR. DAN SLOTCHIVER: Object to the
7 leading, Your Honor.
8 BY MR. BOYD:
9 Q. Did you ever pursue visitation?
10 A. Yes, we did. That was one of our
11 first charges when we came into the case. We
12 filed a request, an OSC for temporary visitation,
13 in I believe it was in March of 2009. Or 2010,
14 I'm sorry.
15 Q. What became of that request?
16 A. What became of that request was we
17 initially filed our OSC requesting visitation. I
18 contacted Vicki Greene to ask her whether she
19 would voluntarily agree on behalf of her client to
20 visitation. We then went to court on an ex parte
21 basis with respect to the issue of visitation and
22 the appointment of child custody evaluator to make
23 recommendations about what was in the children's
24 best interests.
25 That hearing -- and we also had to go

1 to court because we wanted to take Dan Dorn's
2 deposition, and there were objections to that.
3 The ex parte hearing was -- the court did order
4 that Dan Dorn's deposition proceed. And it's very
5 unusual in my practice for somebody not to agree
6 to a deposition, especially since questions had
7 never been asked of Mr. Dorn previously at his
8 earlier deposition. The court did order his
9 deposition proceed before the continued hearing
10 date.
11 So I took -- we took -- well, do you
12 want me to tell you about the deposition?
13 Q. Well, let's --
14 A. Visitation.
15 Q. -- stick to the visitation issue for a
16 moment if we can.
17 Was it necessary for -- did you
18 undertake subsequent filings on the visitation
19 issue?
20 A. There was a hearing that was set after
21 the deposition. We proceeded to that hearing.
22 And between the time we filed a request for
23 visitation and the hearing, Dan had filed a
24 motion --
25 MR. DAN SLOTCHIVER: Objection, Your

1 Honor, hearsay.
2 THE WITNESS: I'm talking about the
3 motion that was filed.
4 MR. DAN SLOTCHIVER: She's stating
5 that my client filed a document. I believe she
6 can testify -- based on your earlier ruling, that
7 she can testify as to what she's reviewed and what
8 she's done, but not as to what somebody else has
9 done or what somebody else has said to her.
10 THE COURT: I'm sorry. I believe she
11 can testify as to the documents of record in
12 California that have been admitted in this
13 proceeding.
14 MR. DAN SLOTCHIVER: Thank you.
15 THE COURT: Thank you.
16 THE WITNESS: A motion was filed on
17 behalf of Dan in which the motion argued that
18 Abbie had no standing to request visitation
19 because, essentially, she was a vegetable. That
20 was the essence of the motion.
21 BY MR. BOYD:
22 Q. Let me get you to pause. Is the
23 motion you referred to what has been marked in
24 this case as Exhibit R-11? Is that the motion
25 you're referring to?

1 A. Yes.
2 Q. Would you briefly identify that
3 document, if you would, please?
4 A. Yes. This was the motion that was
5 filed to stay visitation and to request for
6 attorneys fees, and the essence of the pleadings
7 were that Abbie had absolutely no standing to
8 request visitation because it was a personal right
9 of hers, or actually, the conservators didn't have
10 standing, because to request visitation is a
11 personal right and not something conservators
12 could do. So this was part of the hearing that
13 proceeded on April 20, along with our request for
14 visitation.
15 Q. So instead of --
16 MR. BOYD: I don't want to lead.
17 Excuse me, Your Honor.
18 THE WITNESS: So there were --
19 BY MR. BOYD:
20 Q. Did you litigate the standing issue?
21 A. We certainly did. On April 20th,
22 before Judge Diaz, we litigated the following
23 issues: The request for visitation, the motion
24 for stay, which actually went before the request
25 for visitation, a request for a child custody

1 evaluator or developmental specialist to be
2 appointed, as well as Dan Dorn's request that a
3 medical expert be appointed to examine Abbie.
4 So all those issues were before the
5 court on April 20th, and I believe we were there
6 at least an entire day, and there were numerous
7 pleadings filed, because there were competing
8 proceedings before the court. There were
9 competing motions. There was our request for
10 visitation and their request to stay visitation.
11 So in California, there's the initial
12 pleadings --
13 MR. DAN SLOTCHIVER: Objection, Your
14 Honor. She's going to testify as to the rules in
15 California.
16 MR. BOYD: She's just explaining, Your
17 Honor, what she was doing pursuant to the rules in
18 her experience as a practitioner.
19 THE COURT: I'll allow her to testify
20 to the pleadings in this case.
21 MR. DAN SLOTCHIVER: But not to the
22 rules, Your Honor? If she's going to testify as
23 to the rules based on her experience, she's
24 clearly testifying as an expert.
25 THE COURT: Just to the pleadings in

1 this case, what was filed in the responsive
2 pleadings.
3 THE WITNESS: There were at least six
4 pleadings filed by each side, including the
5 initial pleadings, responsive pleadings, and reply
6 pleadings, to the two separate motions, and then
7 in addition to that, we had filed initial ex parte
8 pleadings as well, so there were about seven, and
9 Dan had also filed a response to our initial
10 ex parte, so there was about eight pleadings in
11 this matter.
12 BY MR. BOYD:
13 Q. And what were the results of the
14 hearing? In particular, I'm interested about
15 standing issue, but --
16 A. Well, first of all, the most important
17 issue was the standing issue. Judge Diaz ruled
18 that the Dorns did have standing to pursue
19 visitation on behalf of Abbie, even though it was
20 a personal right. He stated it unequivocally that
21 day at the hearing.
22 And as a result of that ruling that
23 the Cohens had standing to assert visitation on
24 behalf of Abbie, the court then appointed a
25 developmental specialist, and Vicki and I

1 eventually agreed upon whom that person was. The
2 court also ordered that Abbie be examined by a
3 neurologist to opine as to how she was doing, and
4 there might have been some other ancillary orders,
5 and I can't remember those at the time, but that
6 was the thrust of what was ordered.
7 Q. So did that lay the issue of standing
8 to rest?
9 A. Unfortunately not.
10 Q. What subsequently happened?
11 A. Well, what subsequently happened and
12 procedurally what happened next was there was an
13 agreement on property rights, so we reached an
14 agreement with Vicki in terms of property. And I
15 can't remember if there was anything else, but we
16 still could not resolve child support.
17 We then agreed upon somebody by the
18 name of Angela Hays to evaluate Abbie, and that
19 was Vicki's proposed individual.
20 MR. DAN SLOTCHIVER: Objection, Your
21 Honor, hearsay.
22 THE COURT: Strike that.
23 THE WITNESS: And we also agreed on
24 Dr. Jane Shatz as the developmental specialist
25 to --

1 MR. DAN SLOTCHIVER: Objection, Your
2 Honor, hearsay.
3 MR. BOYD: Your Honor, references to
4 Shatz are in her affidavit. It's a matter of
5 reference.
6 MR. DAN SLOTCHIVER: She certainly can
7 testify that Dr. Shatz became involved.
8 THE WITNESS: Then I would adopt what
9 counsel said.
10 THE COURT: Thank you.
11 THE WITNESS: And then during the
12 summer of 2010, I believe Dr. Hays saw Abbie, as
13 well as Dr. Shatz did, which she needed to.
14 In October of 2010, after Dr. Hays
15 completed her work and after Dr. Shatz completed
16 her work, they each issued a report, and we all
17 participated in a voluntary settlement conference
18 with Judge Isabel Cohen, who was also the
19 discovery referee, because there were issues
20 involving discovery.
21 And then after that, Vicki -- there
22 was a trial date set on the bifurcated or
23 trifurcated issue of custody, and then before --
24 after we were assigned to a new judge for long
25 cause matters, Vicki then raised the standing

1 issue again.
2 BY MR. BOYD:
3 Q. And how did --
4 MR. DAN SLOTCHIVER: Objection to
5 hearsay.
6 THE WITNESS: A motion was filed by
7 Vicki to reconsider Judge Diaz's order.
8 THE COURT: Thank you.
9 BY MR. BOYD:
10 Q. And ultimately, how did the court rule
11 in the second hearing?
12 A. The court ruled the same as Judge Diaz
13 did. This was now Judge Shaller, who was the
14 judge that heard the temporary visitation hearing,
15 and he ruled exactly the same as Judge Diaz, that
16 the Cohens had standing to assert visitation on
17 behalf of Abbie.
18 Q. Did these multiple bites at the apple,
19 in your opinion, in your experience, did that
20 increase the complexity and cost of the litigation
21 in California?
22 A. Yes, tremendously.
23 Q. Let's talk about discovery in the
24 case. Did Mr. Dorn and Ms. Greene cooperate with
25 your efforts to conduct discovery in the case?

1 MR. DAN SLOTCHIVER: Objection, Your
2 Honor.
3 MR. BOYD: Your Honor, she's giving
4 her personal firsthand knowledge based on her
5 experience in the case.
6 MR. DAN SLOTCHIVER: Your Honor, this
7 goes back to the underlying argument we had
8 earlier this morning. Now she's going to testify
9 as to what was done, which is hearsay between her
10 and other counsel, without us having a proper
11 opportunity to examine the issues before the
12 court.
13 I believe Your Honor limited her
14 testimony to that as to what she did, to the
15 documents that she can opine from, the documents
16 that they presented, not to talk about other
17 issues outside of it, without having given us a
18 fair opportunity.
19 THE COURT: Mr. Boyd?
20 MR. BOYD: Your Honor, if Your Honor
21 will refer to the declaration Ms. Meyer has filed
22 in this matter with respect to Pages 13 and 14.
23 THE COURT: Can I have a copy of that,
24 please?
25 MR. BOYD: Yes, Your Honor.

1 THE COURT: What exhibit is this? Do
2 you have the exhibit?
3 THE WITNESS: It's five.
4 MR. BOYD: It's Exhibit 5, Your Honor.
5 THE WITNESS: And there's actually two
6 declarations, Your Honor, that were attached to --
7 MR. BOYD: Do you want this copy?
8 THE COURT: Well, does the court
9 reporter have the copy?
10 MR. BOYD: It's Exhibit 5, Your Honor,
11 beginning on Page 4.
12 THE WITNESS: Do you want to take
13 mine? That's okay.
14 THE COURT: I don't have a copy. I
15 don't know -- is that the court's copy?
16 MR. BOYD: This is the original copy,
17 Your Honor. Just a second, Your Honor, I'll get
18 another copy.
19 Your Honor, I would refer to the court
20 on -- refer to the court Page 13 of the affidavit
21 that's previously been marked as Exhibit R-5, and
22 you will see a series of -- Paragraphs 29, 30, 31,
23 32, 33, where the subject of Dan Dorn's
24 cooperation in discovery matters, or lack thereof,
25 is specifically addressed by the affidavit.

1 MR. DAN SLOTCHIVER: It is, Your
2 Honor, and we have agreed to the admissibility of
3 this document, subject to our objection, the
4 objection being the truth of the matter asserted.
5 If they want to submit it for the purposes of this
6 is an affidavit actually created by Ms. Meyer, we
7 have to stand on the court's ruling on that, but
8 as far as the hearsay element of it, we object.
9 MR. BOYD: And again, Your Honor,
10 she's speaking of her firsthand knowledge in the
11 case. The evidence I'm eliciting from the witness
12 is not hearsay.
13 MR. DAN SLOTCHIVER: I think, Your
14 Honor, he can easily ask her did discovery take a
15 long time, were there a lot of battles with
16 discovery. He can ask those questions without
17 giving -- without delving into particular matters
18 dealing with communications directly with someone
19 who is not here to respond.
20 THE COURT: So I will limit her
21 testimony.
22 MR. BOYD: Understood, Your Honor.
23 THE COURT: Thank you.
24 BY MR. BOYD:
25 Q. Ms. Meyer, you'd been practicing law,

1 you said, 28 years at the time of this case?
2 A. Yes.
3 Q. Are you capable of evaluating whether
4 opposing counsel is being cooperative with you in
5 your practice?
6 MR. DAN SLOTCHIVER: Objection, Your
7 Honor. There's no foundation that shows she's
8 capable. She's been listed as a witness, not as
9 an expert.
10 THE COURT: Sustained.
11 BY MR. BOYD:
12 Q. In your experience and your practice,
13 Ms. Meyer, did you observe cooperation on opposing
14 counsel in this proceeding?
15 A. Absolutely not.
16 MR. DAN SLOTCHIVER: And once again,
17 Your Honor, I object. I don't believe she has the
18 ability to opine on whether or not somebody else
19 cooperated with her.
20 THE WITNESS: I can describe the
21 discovery motions.
22 THE COURT: You can rephrase that.
23 BY MR. BOYD:
24 Q. Let me ask you this: Were there
25 multiple discovery motions filed in the case?

1 A. Yes.
2 Q. Would you briefly review with the
3 court what those were?
4 A. Yes. The initial discovery motion was
5 a motion to prevent us to take Dan Dorn's
6 deposition, which was granted. The deposition
7 lasted about two-and-a-half hours, and Mr. Dorn
8 and Ms. Greene exited the conference room after
9 that period of time.
10 We then had to -- we then filed a
11 motion for a discovery referee, and the judge
12 appoint -- which was granted, and the judge
13 appointed Judge Isabel Cohen, who is a retired
14 judge. The court ordered each party to pay half
15 the cost of Judge Cohen's fees.
16 A motion had to -- a motion was filed
17 to compel the depositions of Dan's parents, who
18 refused to sit for their deposition. The motion
19 was granted.
20 There were documents that were not
21 produced, and I believe a motion to compel was
22 filed and was granted.
23 And I believe that's what I can recall
24 at this time.
25 Q. Thank you, Ms. Meyer. Did these

1 discovery-related motions contribute to the cost
2 of the California proceeding?
3 A. Absolutely.
4 Q. Let me ask you this, Ms. Meyer: Did
5 Vicki Greene ever raise a First Amendment --
6 MR. DAN SLOTCHIVER: Objection to
7 hearsay, Your Honor. It's a leading question. I
8 believe he can ask her what happened next.
9 BY MR. BOYD:
10 Q. Were there any unusual issues in the
11 case, in your experience, that were raised by the
12 opposing party?
13 A. There was a motion by Ms. Greene to
14 seal the -- to close the courtroom, on the basis
15 of the children's privacy. The motion was
16 essentially denied by Judge Shaller, except that
17 consistent with California law --
18 MR. DAN SLOTCHIVER: Objection, Your
19 Honor, if she's going to testify as to California
20 law.
21 THE WITNESS: Let me just say except
22 that the court did seal any portion -- the court
23 sealed Dr. Shatz's report and any pleadings that
24 discussed her report, as well as closed the
25 courtroom when Dr. Shatz testified, and that was

1 very expensive.
2 BY MR. BOYD:
3 Q. So there was a lot of money spent in
4 California in this proceeding?
5 A. Yes. And we haven't even gotten to
6 the trial.
7 Q. But notwithstanding the amount of
8 money that has been spent, in your experience, was
9 the total amount of money spent in this case
10 unusual for Los Angeles, California, in your
11 personal experience in your practice?
12 A. No, and not in my practice either.
13 And if the court wants me to go into my experience
14 as a custody litigator, I could do that.
15 MR. DAN SLOTCHIVER: I don't know the
16 relevancy of it, Your Honor.
17 BY MR. BOYD:
18 Q. As a custody litigator, how typical
19 were the billings?
20 MR. DAN SLOTCHIVER: Your Honor, I
21 would object. Now she's being called to opine.
22 She's a witness in this case. She's not being
23 called as an expert.
24 THE COURT: Sustained.
25 BY MR. BOYD:

1 Q. Ms. Meyer, a claim has been made in
2 these proceedings and ultimately were also made in
3 the California proceedings that the case was one
4 of grandparent visitation. In your experience in
5 the case, is that what was being litigated?
6 A. Never once did the Cohens ever
7 request, in any pleadings that I'm aware of, nor
8 did Mrs. Cohen testify at the hearing on
9 visitation, as to any request for grandparent
10 visitation.
11 Q. In your experience as a domestic
12 family law practitioner, have you ever encountered
13 a case or do you understand grandparents to have
14 standing in California?
15 MR. DAN SLOTCHIVER: Objection, Your
16 Honor. Once again, this calls for legal opinions
17 from her, which would call for expert testimony.
18 THE COURT: Sustained.
19 BY MR. BOYD:
20 Q. Have you ever, Ms. Meyer, litigated on
21 behalf of grandparents seeking --
22 MR. DAN SLOTCHIVER: Objection to the
23 relevancy as to why this would be relevant to this
24 case at hand. Her litigation in other cases has
25 nothing to do with this particular case, Your

1 Honor.
2 MR. BOYD: Your Honor, the case at
3 hand has been alleged to have been a grandparent
4 visitation case, and I'm simply asking
5 Ms. Meyer -- I've asked her, and now I'm asking
6 her if she's ever encountered any other
7 grandparent visitation.
8 MR. DAN SLOTCHIVER: We are well aware
9 of what he's asking her, Your Honor. We do not
10 believe it an appropriate question.
11 THE COURT: Sustained.
12 BY MR. BOYD:
13 Q. Ms. Meyer, did you engage in efforts
14 to settle this case? Were there efforts to settle
15 the case prior to trial?
16 A. Multiple.
17 Q. Could you briefly describe your
18 efforts to settle the case?
19 MR. DAN SLOTCHIVER: Your Honor, under
20 South Carolina rules, settlement negotiations are
21 excluded. I would object to settlement
22 negotiations coming in, at least as to the
23 particulars, understanding that the court wants to
24 get an overall view of expenses that were incurred
25 and understanding that she can testify as to the

1 fact there were negotiations, but going into the
2 parameters of those negotiations I believe would
3 be inappropriate, especially in light of the fact
4 that there are numerous documents which we've
5 never had the privy to see. We don't know what
6 was going on. We don't know what transpired.
7 So if we're limited in not having that
8 information provided to us, in an effort to be
9 able to cross-examine or to examine either
10 Ms. Meyer or the Cohens, we certainly don't
11 believe it would be appropriate for her to opine
12 and to comment on things for which we cannot
13 judge.
14 MR. BOYD: Your Honor, I simply asked
15 her to indicate generally, without going into
16 specifics. And the privilege -- the offering
17 party owns the privilege in that regard, Your
18 Honor.
19 MR. DAN SLOTCHIVER: We agree, Your
20 Honor, but they haven't waived the privilege, and
21 now they're coming forward in court, and they're
22 saying we own the privilege, so we'll ask you some
23 limited things. This has been heard over and over
24 throughout the case, Your Honor.
25 THE COURT: Is there anything

1 regarding settlement in the declaration or in the
2 documents that were provided through discovery?
3 MR. BOYD: I don't believe the
4 affidavit addresses the issue of settlement, Your
5 Honor. I'll withdraw the question.
6 THE COURT: Thank you.
7 BY MR. BOYD:
8 Q. Ms. Meyer, in your work in the case
9 that we've been discussing, did you understand
10 that the work you were undertaking was for the
11 benefit of Abbie or for the benefit of the
12 trustees?
13 A. My understanding was it was for the
14 benefit of Abbie and that the conservators were
15 acting on her behalf. Never once in any pleadings
16 that I can recall did we ever argue the United
17 States Supreme Court case of Troxel, of which we
18 were aware, which says --
19 MR. DAN SLOTCHIVER: Your Honor, I
20 object to testimony about a case. That's not what
21 she's here for.
22 THE COURT: Thank you.
23 THE WITNESS: We didn't argue that in
24 our pleadings.
25 BY MR. BOYD:

1 Q. Ms. Meyer, is there anything that I
2 haven't asked you that you think's important for
3 the court to know about the California proceeding?
4 A. Yes. I think it was a very complex
5 case, that there was a lot of complex legal issues
6 in the case, starting off with the issue --
7 MR. DAN SLOTCHIVER: Your Honor, I
8 would object at this point. A complex case and
9 giving reference to that as the nature of the type
10 of case is giving an expert opinion on the case.
11 MR. BOYD: She's giving --
12 MR. DAN SLOTCHIVER: I believe she can
13 testify as a witness as to what she did, what she
14 saw, what she observed, if it's appropriate, but
15 not to give legal opinions.
16 MR. BOYD: She's giving her
17 observation, Your Honor, based on her experience
18 litigating the case.
19 MR. DAN SLOTCHIVER: I'm not really
20 sure what the difference is between giving an
21 opinion and giving your observations as an expert.
22 If you're an expert, you give an opinion. She's
23 not called as an expert.
24 THE WITNESS: I can say it without
25 saying the word complex.

1 MR. DAN SLOTCHIVER: Well, exactly.
2 We're attempting --
3 THE COURT: Thank you. Sustained.
4 BY MR. BOYD:
5 Q. And again, Ms. Meyer, I'd asked you is
6 there anything about the case that I haven't asked
7 you that you feel is important for the court to
8 understand?
9 A. There were a -- there were multiple
10 attorneys on the case. There was a -- there were
11 many motions that I haven't discussed this morning
12 that were either before the discovery referee or
13 just part of a certain hearing or motion, that
14 almost every issue had to be litigated not once,
15 but twice, the example of the standing issue, just
16 wrapped in a different package.
17 Nobody stipulated that reports be
18 received into evidence, so Dr. Shatz, her 100-plus
19 page report could not be received into evidence.
20 She had to come to court and actually testify.
21 There were multiple depositions, not
22 only of the parties. A request was made to depose
23 Abbie. Abbie's deposition was taken. The
24 grandparents' depositions were taken. Other third
25 party depositions were taken. There were --

1 Dr. Hays's deposition was taken. Dr. Shatz's
2 deposition was taken. Dr. Mamelak's deposition
3 was taken.
4 There were multiple -- without getting
5 into the settlement negotiations, there were
6 multiple settlement negotiations throughout the
7 process.
8 There was considerable time spent
9 preparing for trial, which, as I recall, lasted
10 approximately five days or so, with multiple
11 witnesses. No facts that I can recall were
12 stipulated to, so everything had to be put on
13 through witnesses or through documents at trial.
14 Because of the issue about sitting in
15 the courtroom, we would have to -- when Dr. Shatz
16 testified or any issue came up regarding
17 Dr. Shatz, we'd have to clear the courtroom,
18 because there was press in the courtroom.
19 So it was very, very involved.
20 Q. And all of these factors which made
21 the court -- which made the proceeding involved,
22 did they contribute to the expense of the
23 California proceeding?
24 A. Absolutely.
25 Q. Thank you, Ms. Meyer. I have no

1 further questions.
2 A. Thank you.
3 Q. Please answer any questions the other
4 attorneys have.
5 THE COURT: Mr. Slotchiver?
6 MR. DAN SLOTCHIVER: Do I go next?
7 THE COURT: Unless you would prefer
8 that Ms. Hedgepath or Ms. Moore --
9 MR. DAN SLOTCHIVER: I didn't know
10 what order we'd go. It doesn't matter to me.
11 Whatever you want.
12 THE COURT: I guess this is Mr. Boyd's
13 witness, so Ms. Hedgepath?
14 MS. HEDGEPATH: I have no questions of
15 this witness, Your Honor.
16 THE COURT: Thank you. Ms. Moore?
17 MS. MOORE: Yes, ma'am, I have a few
18 questions.
19 CROSS-EXAMINATION
20 BY MS. MOORE:
21 Q. Ms. Meyer, what percentage of your
22 practice is concentrated in the area of family
23 law?
24 A. 100 percent.
25 Q. And has that been throughout the

1 majority of your practice to have such a
2 percentage?
3 A. Since 1983.
4 Q. And just as far as an average number
5 of cases you might handle in a year?
6 A. I have 19 attorneys or so that work at
7 my office, so I would say easily 100 or more
8 cases, a lot.
9 Q. And then as far as your hourly rate is
10 concerned, do you recall what your hourly rate was
11 to handle this particular case?
12 A. It was at the time $700 an hour.
13 Q. Now, I just notice in your -- strike
14 that.
15 As far as the billing is concerned,
16 was there a point at which there may have been a
17 negotiation with Mrs. Cohen as to the final
18 payment on your bill?
19 THE WITNESS: Does that violate the
20 attorney-client privilege?
21 MR. BOYD: Mrs. Cohen has testified
22 with regard to that.
23 MR. DAN SLOTCHIVER: I'm not conceding
24 anything, Your Honor, on the attorney-client
25 privilege. It's been highlighted throughout the

1 whole trial.
2 MR. BOYD: Go ahead.
3 THE WITNESS: Yes.
4 BY MS. MOORE:
5 Q. And do you know how much you would
6 have received in terms of fees on this particular
7 file?
8 A. Had there not been that discount?
9 Q. Yes, ma'am.
10 A. No, not exactly.
11 Q. And with the discount, what would have
12 been the total fees?
13 A. It was approximately $780,000 with the
14 discount, I believe, without -- and then there
15 were costs of about another $80,000 or so.
16 Q. You don't have any paperwork with you
17 today that would confirm one way or the other what
18 the fees were?
19 A. No. I threw them out in my hotel room
20 before I came here.
21 Q. Now, as far as the billing is
22 concerned, would you submit the billing for
23 payment to Mr. and Mrs. Cohen?
24 A. Yes.
25 Q. And would they routinely pay based on

1 a cycle, or were they set up on some type of
2 payment plan?
3 A. Up until the time of the hearing, they
4 would pay a monthly basis. So our bills are sent
5 each month, and then they would routinely pay
6 within the 30-day period of time, and then after
7 that, we had worked out -- I recall some kind of
8 payment schedule.
9 Q. And did they make payments according
10 to whatever arrangement was entered into between
11 you and Mr. and Mrs. Cohen?
12 A. Absolutely.
13 Q. And has the bill now been paid in
14 full?
15 A. Yes.
16 Q. As far as the billing is concerned,
17 was the issue of the amount of bill, whether it be
18 a monthly bill or the totality of it, was that
19 issue ever questioned by the Cohens, any concern
20 over the level of the bill?
21 A. Not that I can recall right now. I
22 mean, there might have been comments from time to
23 time about the cost of the litigation and why it's
24 important to settle and not go through a trial,
25 but I can't recall anything specifically right

1 now.
2 Q. And I guess I didn't ask that very
3 artfully. Was there ever a point where Mr. or
4 Mrs. Cohen, either one, ever became concerned
5 about how much the California litigation, how much
6 it was costing?
7 A. Oh, absolutely.
8 MR. DAN SLOTCHIVER: Your Honor, if I
9 may, I want to make sure that if we're going to go
10 down this road, that I will have an opportunity to
11 cross-examine the witness on the breach of the
12 attorney-client privilege and all the documents
13 that come with it. I believe they're opening the
14 door with advice of counsel over here.
15 But before we go further, if I'm not
16 able to do it, then I would ask that you restrict
17 the questions at this time. If I am able to do
18 it, then I'd like to take it up with the court
19 before I proceed.
20 MR. BOYD: Your Honor, I would -- if
21 we may, can we take about a two-minute break to
22 confer with our clients?
23 THE COURT: Sure. Let's take about
24 five.
25 (A recess transpired from 12:18 PM to

1 12:29 PM.)
2 THE COURT: We are back on the record
3 in the Dorn matter.
4 I believe, Ms. Moore, you were
5 examining the witness.
6 MS. MOORE: Yes, but I would ask that
7 the court reporter please read back my last
8 question.
9 (The Court Reporter read the question
10 commencing on Page 1023, Line 2.)
11 MS. MOORE: Then there was some issue
12 with regard to whether or not there would be
13 attorney-client privilege or something.
14 THE COURT: Thank you.
15 MR. BOYD: Yes, Your Honor. Before
16 the witness answers that question, I would just
17 like to caution the witness. If it's matters
18 related to the filings she made, matters of public
19 record, matters of the documentation that's been
20 produced, but if it's a question -- I think that's
21 certainly fine. If it's a matter of personal
22 communications between client and attorney,
23 matters in a state of mind between client and
24 attorney, I think -- I would encourage that I
25 think we need to protect the privilege in that

1 limited regard.
2 THE COURT: Thank you.
3 MR. BOYD: Thank you.
4 BY MS. MOORE:
5 Q. And would that affect your response?
6 A. Yes.
7 Q. In what regard?
8 A. I'm asserting the attorney-client
9 privilege on behalf of the Cohens.
10 Q. Now, Ms. Meyer, were there any motions
11 filed in the California matter that would have
12 made a request for either attorneys fees to be
13 paid to Mr. Dorn or any type of fees to be paid to
14 minors' counsel?
15 A. There was to be paid to minors'
16 counsel.
17 Q. And who initiated that motion?
18 A. I think it actually was the judge,
19 because there was an outstanding order that each,
20 Abbie and Dan, pay 50 percent of minors' counsel's
21 fees, subject to reallocation, and Judge Shaller
22 set a hearing after our hearing in March on that
23 issue.
24 Q. And was there a hearing ultimately
25 held on that issue?

1 A. Yes.
2 Q. And what was the outcome of that
3 hearing?
4 A. The outcome was that Judge Shaller
5 ordered that the Cohens pay 100 percent, I
6 believe, of minors' counsel's outstanding fees.
7 Q. And as far as submissions either in
8 support or opposition of that hearing, did either
9 party have to submit an itemization of what fees
10 they had incurred relative to their own attorneys?
11 A. Yes.
12 Q. How much fees do you believe you
13 submitted as being incurred?
14 A. My recollection -- you know what, I
15 don't know, because I don't know from the discount
16 and everything else, I just know the total, so I'm
17 not entirely sure.
18 Q. And what would have been the
19 submission from opposing party as far as filings
20 with the court?
21 A. My recollection is it was over
22 $900,000, so it was more than our fees.
23 Q. Were there any other costs associated
24 with the litigation, other than attorneys fees,
25 that the Cohens were required to pay?

1 A. Yes.
2 Q. What type of costs were those?
3 A. They had to pay the cost -- a portion
4 of the cost for Dr. Shatz. I believe they went
5 50/50 with Dan on that. They had to pay costs
6 associated with Dr. Hays. They had to pay costs
7 associated with Judge Cohen. They had to pay
8 court costs for the court reporter. They had to
9 pay -- let's see if there's anything. That's all
10 I can recall now. Oh, they had to pay for expert
11 witness costs and things like that.
12 Q. Now, Ms. Meyer, as far as looking at
13 your practice as being a family court litigator
14 for some 30 years, was there anything unusual
15 about the cost of this litigation compared to the
16 cost of other litigation that you've handled in
17 your practice?
18 A. No.
19 Q. So was it in line with other cases
20 that you have handled?
21 A. Yes, with high-conflict custody cases.
22 Q. Now, I want to make sure I'm clear on
23 something. I may have simply misunderstood you.
24 In looking at what's been marked as
25 Exhibit R2-2, could you explain to the court what

1 that particular pleading is?
2 A. Okay. This is -- the first page of
3 this is a notice of entry of judgment, and the
4 next couple pages -- the next couple pages is the
5 face page to a judgment, and the last page is a
6 proof of service.
7 So what this is, this is the final
8 judgment that was rendered in connection with
9 Dan's motion for bifurcation. So if you look at
10 the first page of R2-2, under notice of entry
11 judgment, Box 2 is checked or -- and it says:
12 Dissolution status only. So the only thing the
13 court did was dissolve their marital status and
14 reserve all other issues.
15 And if you look at the next page --
16 MR. DAN SLOTCHIVER: Your Honor, I
17 would object to her opinion as to what the court
18 did. I don't believe that she's been called upon
19 as an expert, once again, and I would ask that
20 that be stricken.
21 THE WITNESS: I can explain it on the
22 next page.
23 MS. MOORE: She's testifying as to
24 what this document --
25 MR. DAN SLOTCHIVER: And Your Honor, I

1 believe all she's doing is reading a document.
2 The document speaks for itself. I believe that
3 Your Honor's ruling is that she can talk about
4 documents that she had action with, but not --
5 it's not her opportunity to explain what the
6 document means. And by explaining what it says --
7 I believe the court has seen reference to this
8 document repeatedly throughout this proceeding,
9 and the court can look at the document, read for
10 itself. The document does speak for itself.
11 THE COURT: Sustained.
12 BY MS. MOORE:
13 Q. Was there an appearance by an attorney
14 for Ms. Dorn at this proceeding?
15 MR. DAN SLOTCHIVER: Your Honor, I
16 don't believe there's a foundation that shows she
17 would know. She wasn't involved in the case at
18 that time. I would move to -- I would move to
19 strike the question.
20 THE COURT: Ms. Moore?
21 BY MS. MOORE:
22 Q. Did you appear at this hearing?
23 A. I didn't, but my predecessor did.
24 Q. And were you retained subsequent to
25 the dissolution in terms of status?

1 A. Yes.
2 Q. And so all of your activity would have
3 been related to those matters that would have been
4 contained within the reservation of jurisdiction?
5 A. Yes.
6 Q. And did those matters proceed to a
7 final hearing?
8 A. They proceeded -- they all proceeded
9 to settlement. There was no final hearing.
10 Q. And so as far as settlement's
11 concerned, that's a matter of an entry of a
12 pleading?
13 A. Yes.
14 Q. There would be no subsequent hearing
15 for the purpose of approving any type of such
16 entry?
17 A. Correct.
18 MS. MOORE: I believe that's all I
19 have, Your Honor.
20 THE COURT: Thank you.
21 Mr. Kachmarsky, maybe I'll ask you if
22 you'd like to go next.
23 MR. KACHMARSKY: Actually, if I may,
24 I'm going to sit down -- I just have two
25 questions -- so I can see.

1 THE COURT: All right.
2 CROSS-EXAMINATION
3 BY MR. KACHMARSKY:
4 Q. Ms. Meyer, you testified that you were
5 concerned about the child support potential
6 payments being paid from the trust and
7 disqualifying the trust. Is that correct?
8 A. That was my understanding.
9 Q. Did you ever have any concern about
10 the trust paying your fees?
11 A. Yes, I think I did. I think I did
12 about the amount, not the fact that the trust was
13 paying the fees.
14 Q. Well, you're aware of the fact that
15 all of the fees that were paid to the MOLM firm
16 were paid by Susan Cohen personally. Is that
17 correct?
18 MR. BOYD: Objection, Your Honor. I
19 believe he's asking --
20 Could you repeat the question?
21 MR. KACHMARSKY: I asked her if she
22 was aware of the fact that Susan Cohen personally
23 paid all of the fees.
24 THE WITNESS: No, I'm not aware of
25 that.

1 BY MR. KACHMARSKY:
2 Q. Did you ever hire a publicist to
3 represent you in the California proceedings or
4 matters related thereto?
5 A. No.
6 Q. Did you ever give any press hearings
7 related to the case?
8 A. Along with Vicki Greene, I did.
9 Q. Did you ever take the position that
10 Abbie was merely disabled and not in a vegetative
11 state?
12 MR. BOYD: I'm going to object to that
13 question, Your Honor. He's getting into questions
14 about the attorney's state of mind. I'm not
15 sure --
16 MR. KACHMARSKY: Just asking her if
17 she ever took that opinion in public.
18 THE WITNESS: Well, first of all, it's
19 compound, so the first part of the question is I
20 don't recall taking the position that she's merely
21 disabled, and the second part of the question
22 is -- what was your second part, that she was in a
23 vegetative state?
24 BY MR. KACHMARSKY:
25 Q. That she was in a vegetative state,

1 not merely disabled, but in a vegetative state.
2 A. No. That's not what your -- I thought
3 your question --
4 Q. Your position was that she was merely
5 disabled. Is that correct?
6 A. No.
7 MR. BOYD: Your Honor, I think we need
8 more clarity on when. He's asking the witness
9 blanket statements on positions that she's taken.
10 There's been a very specific declaration that
11 she's filed, if he can ask her about a specific
12 document, but just to say did you ever take a
13 position, that could apply to any -- an endless
14 variety of venues, some of which she's not
15 prepared to go into.
16 MR. KACHMARSKY: I think it's a very
17 simple question, Judge. I'm just asking her if
18 that was her position in the litigation, that
19 Abbie was merely disabled, very simple question.
20 MR. BOYD: And I think, Your Honor, he
21 needs to ask her what specific reference -- he's
22 got to give her a frame of reference. He can't
23 just say did you ever take a position.
24 THE COURT: Mr. Kachmarsky?
25 MR. KACHMARSKY: I disagree with that.

1 I'm just asking a simple question. She can just
2 answer it.
3 THE COURT: I'm going to sustain the
4 objection.
5 MR. KACHMARSKY: I have nothing
6 further.
7 THE COURT: Thank you.
8 Mr. Slotchiver?
9 MR. DAN SLOTCHIVER: I'm just going to
10 grab one document, Your Honor, if I may.
11 THE COURT: Sure. I'm not sure if
12 this is the court's --
13 MR. BOYD: I believe that's the
14 original R-5, Your Honor.
15 CROSS-EXAMINATION
16 BY MR. DAN SLOTCHIVER:
17 Q. Ms. Meyer, who have you spoken with in
18 preparation for coming to South Carolina to
19 testify?
20 A. I have spoken to Mr. Boyd, and I have
21 spoken to Mr. Davis and -- before I came here?
22 Q. In preparation.
23 A. I've spoken to my assistant, I've
24 spoken to my husband, and I have spoken to various
25 attorneys in my office.

1 Q. Have you had the opportunity to review
2 your billing records in preparation to coming
3 here?
4 A. No.
5 Q. I will represent to you that I've gone
6 through redacted billing records, and I've seen
7 perhaps 100 entries referencing communications/
8 emails/memos between yourself and Mr. Boyd or
9 Mr. Davis, one or the other. Does that sound
10 about accurate to you?
11 A. I don't know.
12 MR. BOYD: Your Honor, I'm going to
13 just object again. He's getting beyond the
14 matters which she's testified to and the matters
15 which are the subject of her declaration.
16 MR. DAN SLOTCHIVER: I'm not limited
17 to what they asked her, Your Honor. This isn't
18 redirect or recross. She's a witness testifying.
19 I believe I have a right to ask her these
20 questions.
21 THE COURT: I think you're limited,
22 Mr. Slotchiver, to her declaration, the documents
23 that were filed with the court, admitted as
24 exhibits, provided to you through discovery.
25 MR. DAN SLOTCHIVER: And I cannot ask

1 her about any communications she had with other
2 parties?
3 THE COURT: I think you can ask her
4 about communications that may relate to those
5 documents, but not breach the attorney-client
6 privilege. She will exert that privilege if
7 necessary, I assume.
8 MR. DAN SLOTCHIVER: And I wasn't
9 trying to breach the attorney-client privilege. I
10 was trying to examine with her the communications
11 she had with counsel leading up to asking if those
12 communications were, in fact -- I can ask her, if
13 that's okay.
14 BY MR. DAN SLOTCHIVER:
15 Q. Did you consider all the
16 communications between yourself and Mr. Davis or
17 Mr. Boyd to be cloaked with the attorney-client
18 privilege?
19 A. Absolutely.
20 Q. And would it be fair to say that in
21 connection with that -- and I reviewed the
22 billings, what limited information there was --
23 that you actually interacted with them in creating
24 documents and looking at documents and advising in
25 the South Carolina case, along with the California

1 case, so they were, to some extent, commingled?
2 MR. BOYD: Again, Your Honor, I'm
3 going to object. He's getting into areas of what
4 was done by the attorney, and it's really beyond
5 the scope of --
6 MR. DAN SLOTCHIVER: I'm not asking
7 specifically what was done. I'm asking about her
8 relationship with the South Carolina counsel.
9 That's it.
10 MR. BOYD: Your Honor's already
11 considered that matter and ruled upon it, Your
12 Honor.
13 MR. DAN SLOTCHIVER: Actually, Your
14 Honor considered a smaller portion, but I believe
15 that I have the right reserved to go into this
16 questioning, and that's all I want to do. I'm not
17 going to ask her about any communication, about
18 the particulars of the communications, I'm not
19 trying to breach the attorney-client privilege,
20 but I don't believe that her relationship with the
21 South Carolina lawyers is a privilege, and I'm
22 trying to understand what the relationship was.
23 That's it.
24 THE COURT: I'm going to allow a
25 limited amount of questioning in this regards, but

1 I have made my ruling --
2 MR. DAN SLOTCHIVER: I understand.
3 THE COURT: -- as to whether --
4 MR. DAN SLOTCHIVER: I understand.
5 THE COURT: Based on your objection to
6 her testimony today.
7 MR. DAN SLOTCHIVER: I understand,
8 Your Honor.
9 THE COURT: Thank you.
10 MR. DAN SLOTCHIVER: If you could read
11 back the question, please.
12 (The Court Reporter read the question
13 commencing on Page 1036, Line 20.)
14 THE WITNESS: I'm not sure what the
15 question is. There's multiple questions within
16 that question.
17 BY MR. DAN SLOTCHIVER:
18 Q. Be happy to rephrase.
19 A. Thank you.
20 Q. Would you agree with me that you
21 provided counsel -- you provided guidance to the
22 South Carolina lawyers with regard to the South
23 Carolina action?
24 A. No. I'm not licensed to practice law
25 in the state of South Carolina.

1 Q. I understand that you're not licensed
2 to practice law in the state of South Carolina. I
3 also understand the right to have lawyers admitted
4 pro hac vice in certain situations, but I'm asking
5 did you give them any -- let me rephrase the
6 question.
7 Did you have a written, signed joint
8 agreement with them that provided privilege, like
9 a joint defense agreement? I know the cases are
10 different.
11 A. I can't recall.
12 Q. You testified that you believe that
13 your communications with them was attorney-client
14 privileged. Without such an agreement, how do you
15 understand those communications to be privileged?
16 A. Because we were both working on behalf
17 of the same client.
18 Q. And was it important for you to be
19 aware of what was going on in the South Carolina
20 case?
21 MR. BOYD: Your Honor, again, he's
22 getting into the mindset of the counsel. He's
23 going beyond the scope of what Your Honor has
24 ruled upon.
25 MR. DAN SLOTCHIVER: Your Honor, if I

1 add the billings, and just from a rough estimate
2 of 100 billings, and she's charging $700 an hour,
3 and the billings range from an hour-and-a-half,
4 two hours, ten minutes, we're talking about not
5 $500 or $1,000, we're talking maybe multiples of
6 tens, if not a hundred thousand dollars. I think
7 I'm entitled to ask the question.
8 MR. BOYD: Your Honor, if he gets into
9 the mindset of Ms. Meyer and her -- he's going
10 really beyond the scope of what Your Honor has
11 authorized in his questioning.
12 THE COURT: I'm going to limit your
13 questioning here, Mr. Slotchiver.
14 MR. DAN SLOTCHIVER: Thank you, Your
15 Honor.
16 BY MR. DAN SLOTCHIVER:
17 Q. Have you been remunerated for travel
18 to South Carolina?
19 A. I'm sorry. Have I --
20 Q. Are you billing to be here?
21 A. No. I'm paying all my own costs,
22 including plane fare, hotel, everything.
23 Q. Now, would you agree with me that the
24 total billing that your firm submitted to the
25 Cohens before the discount reached approximately

1 $1 million?
2 A. That's sounds right.
3 Q. My understanding is that all of your
4 bills at the MOLM firm were paid directly by Susan
5 Cohen, and then she received reimbursement from
6 the trust. Is that your understanding?
7 A. That's my general understanding.
8 Q. And is that because there was a
9 question that came up as to whether or not the
10 trustee was even authorized to pay for this part
11 of the litigation?
12 MR. BOYD: I'll object again. He's
13 going to the ultimate issue in the case, and he's
14 certainly beyond what the court has authorized.
15 MR. DAN SLOTCHIVER: She can assert
16 the attorney-client privilege issue if she so
17 wishes, Your Honor. I'm just asking the question.
18 MR. BOYD: Your Honor, his question --
19 the court has ordered what the proper scope of
20 questioning would be for this proceeding for
21 purposes of today's questioning. He's going
22 beyond the scope of it.
23 MR. DAN SLOTCHIVER: It was asked by
24 Mr. Kachmarsky. I'm just following up on the
25 question, Your Honor. There was no objection when

1 he asked it.
2 MR. BOYD: Your Honor, the court has
3 ruled what the proper scope of questioning is
4 today, and Mr. Slotchiver's going beyond what the
5 court has ruled.
6 THE COURT: I'm going to sustain the
7 objection.
8 BY MR. DAN SLOTCHIVER:
9 Q. Did you ever receive your instructions
10 as to what you were to do or what you were being
11 requested to do directly from Abbie?
12 MR. BOYD: Objection, Your Honor.
13 Again, this is not within the scope of what the
14 court's authorized Mr. Slotchiver to question
15 about.
16 MR. DAN SLOTCHIVER: Your Honor, they
17 asked repeatedly who she met with, who she talked
18 to, what about Susan Cohen, what were you asked to
19 do, and I'm just trying to -- she testified
20 earlier that --
21 THE COURT: Overruled.
22 MR. DAN SLOTCHIVER: Thank you, Your
23 Honor.
24 THE WITNESS: Your Honor, I believe
25 this would violate the attorney-client privilege,

1 so I would have to assert the privilege on behalf
2 of --
3 MR. DAN SLOTCHIVER: She testified
4 earlier, Your Honor, about Susan Cohen and her
5 talking about it. I'm trying to understand it.
6 She said Abbie told her to do things, but that was
7 not an attorney-client privilege, and I'm asking
8 whether or not Abbie ever had a communication with
9 her, not what the communication was about.
10 THE WITNESS: I can answer that. Last
11 night, I believe I had a communication with her.
12 BY MR. DAN SLOTCHIVER:
13 Q. Have you ever spoken with her about
14 being engaged in this case? Have you ever spoken
15 directly with Abbie where you were able to have an
16 exchange of communication, and she advised you
17 what she wanted you to do?
18 A. I think that would violate the
19 attorney-client privilege, so I can't answer that.
20 Q. Fair enough. At the time that you
21 were engaged by the Cohens in their capacity as
22 conservators, the dissolution of marriage
23 bifurcation had already taken place. Is that
24 correct?
25 A. Yes.

1 Q. And what was left over for the court
2 to consider would have been the other matters. Is
3 that what your testimony was before?
4 A. All other matters, yes.
5 Q. All other matters other than the
6 dissolution of marriage?
7 A. Correct.
8 Q. In your practice in California, would
9 it be fair to say that your obligation is to
10 respond to the client?
11 MR. BOYD: Objection, Your Honor.
12 He's asking, again, a general question that goes
13 beyond the scope of this case.
14 MR. DAN SLOTCHIVER: If I could have a
15 little bit of latitude, Your Honor.
16 THE COURT: I'll give you a little bit
17 of latitude.
18 THE WITNESS: In part, yes.
19 BY MR. DAN SLOTCHIVER:
20 Q. Following your ethical rules also?
21 A. Yes.
22 Q. That would be the other part, I
23 assume?
24 A. Yes, and providing clients with
25 guidance.

1 Q. I'm assuming you can't tell me what
2 discussions you had with the Cohens about their
3 authority to bring this action?
4 A. Correct.
5 Q. If your engagement had been for the
6 sole purpose of resolving the property issue and
7 resolving the support issue, would you agree with
8 me that your bills, instead of being around a
9 million dollars, would be around $50,000?
10 A. I would agree that they would be less.
11 Custody is very -- custody and visitation issues
12 are very expensive.
13 Q. And I believe that you testified in
14 your statement that a substantial portion of the
15 fees incurred in the California case relate to the
16 efforts to establish the visitation?
17 A. Yes.
18 Q. Ms. Meyer, was there anything that you
19 did, in your opinion, relative to the California
20 case, which was inappropriate?
21 MR. BOYD: Objection, Your Honor.
22 He's asking exactly the kind of question that he
23 repeatedly objected to when I asked it.
24 MR. DAN SLOTCHIVER: I'm asking about
25 her practice. They've repeatedly wanted to ask

1 her about her experience, and I'm asking about her
2 experience. I'll be happy to rephrase it, Your
3 Honor.
4 THE COURT: All right. If you'd like
5 to rephrase it, Mr. Slotchiver.
6 BY MR. DAN SLOTCHIVER:
7 Q. In your experience, was there anything
8 that you did relative to your representation of
9 the Cohens in their capacity as conservators and
10 trustees of Abbie which was wrong?
11 A. No.
12 Q. Having been a litigator for quite some
13 time, I believe you'll agree with the statement
14 that all cases aren't won?
15 A. That's true.
16 Q. This case, though, never went to
17 conclusion, did it?
18 A. No.
19 Q. In fact, there was a settlement
20 entered between the Cohens, in their capacity as
21 conservators/trustees of Abbie, and my client,
22 Daniel Dorn?
23 A. Correct.
24 Q. And in the settlement agreement, there
25 was language set forth in the order, correct?

1 A. Yes.
2 Q. And you would have an opportunity to
3 advise your clients, if you were so inclined, as
4 to the appropriateness of agreeing to that
5 language?
6 A. Yes.
7 Q. Let me just read through a few
8 portions of the order. I'll give you a copy of
9 it.
10 MR. DAN SLOTCHIVER: If I could have
11 one moment, Your Honor.
12 THE COURT: Sure. Do you have an
13 exhibit number?
14 MR. DAN SLOTCHIVER: I do. This is
15 our Plaintiff's Exhibit 86.
16 THE COURT: Thank you.
17 BY MR. DAN SLOTCHIVER:
18 Q. I will represent to you, Ms. Meyer,
19 that this document's already been admitted into
20 evidence, labeled as Exhibit 86.
21 Do you agree that that is a true and
22 accurate copy of the final statement of decision
23 in this case?
24 A. I believe so. There were actually
25 two: One was partially redacted with respect to

1 Dr. Shatz, and the other one was unredacted.
2 Q. Well, let's look at this one that's
3 already been introduced into evidence, and I want
4 to see if you agree that this is the language that
5 your clients would have had an opportunity to see
6 and be counseled on prior to this being finally
7 invoked.
8 On Page 3, the last paragraph reads:
9 Dan additionally argues that this really is a case
10 of disguised grandparent visitation because
11 Susan's ulterior motive in this case is to gain
12 visitation for herself and not for Abbie. On that
13 latter argument, Dan has a point. Susan has
14 clearly and repeatedly articulated her desire to
15 have visitation with Esti, Reuvi, and Yosse. She
16 has, in fact, appeared uninvited at Dan's home and
17 temple to see the children. By her demeanor and
18 action, Susan demonstrates a degree of
19 preoccupation with achieving visitation with the
20 children.
21 MR. BOYD: Your Honor, I'm going to
22 object. Mr. Slotchiver repeatedly objected to me
23 leading the witness. The document is in the
24 record.
25 MR. DAN SLOTCHIVER: I can lead, Your

1 Honor. It's my cross-examination.
2 MR. BOYD: The document speaks for
3 itself, Your Honor. There's no need for
4 Mr. Slotchiver to read the entirety of the
5 document into the record.
6 MR. DAN SLOTCHIVER: I want to make
7 sure -- I'm not reading the entire document. I
8 want to make sure that we're looking at the same
9 document.
10 THE COURT: Overruled.
11 MR. BOYD: Thank you.
12 BY MR. DAN SLOTCHIVER:
13 Q. Susan demonstrates a degree of
14 preoccupation with achieving visitation with the
15 children, regardless of Dan's preferences. Susan
16 has shown that she does not consider any objection
17 that Dan may have to this concept as being valid.
18 That is appropriate language in the
19 document. That is the correct language. Do you
20 agree?
21 A. I agree that that's the language in
22 this document, not that I agree with it. I don't.
23 Q. Did you have an opportunity, in
24 preparing your case, to submit all evidence, based
25 on your experience as counsel, that you thought

1 needed to be presented?
2 A. Yes.
3 Q. Let's look at Page 5. At the end of
4 the page, it states: The court also viewed the
5 videotape of Abbie's deposition taken by Paul.
6 The deposition revealed that Abbie does move
7 around on her own in bed, blinks her eyes, smiles
8 at times, and changes the direction of her head.
9 Dan testified that the condition on --
10 moving to Page 6 -- the video is the same
11 condition as the date of the visit with Abbie, and
12 this was the same condition Abbie was in on each
13 of the prior visits with the children.
14 As such, the court concludes that the
15 children's visitation with their mother has been
16 very limited, with no interaction by Abbie, but
17 with Abbie's countenance and demeanor being
18 nonthreatening and, at times of her smiles,
19 engaging.
20 That is also language, right?
21 A. That's the correct language. That's
22 the language in the document.
23 Q. This is the document that your clients
24 consented to, correct?
25 A. No. This is the statement of

1 decision.
2 Q. This is the end of the case, correct?
3 A. No, no. This is the court's statement
4 of decision from April 7, 2011. This is not the
5 judgment. This was drafted by the court. This
6 was not even --
7 Q. This was drafted by the court, not by
8 you or opposing counsel?
9 A. No, no.
10 Q. Let's move to Page 7, very last line:
11 There is no compelling evidence that the
12 visitations by the children will have any benefit
13 to Abbie.
14 Is that a correct statement?
15 A. As contained in this document, yes,
16 but I don't agree with that.
17 Q. Based on the court's -- based on the
18 ultimate -- let me rephrase that.
19 You agree with the statement that this
20 was filed as part of the final decision, do you
21 not?
22 A. No. This is not the judgment.
23 Q. This was filed together with it, as
24 part of it?
25 A. I don't recall that. I don't believe

1 that there can be attachments to judgments in
2 California.
3 MR. DAN SLOTCHIVER: Your Honor, she's
4 now giving an opinion of authority.
5 THE COURT: I'll strike that.
6 THE WITNESS: You'd have to show --
7 MR. DAN SLOTCHIVER: Thank you, Your
8 Honor.
9 BY MR. DAN SLOTCHIVER:
10 Q. Let's look at Page 9, top paragraph:
11 The court does not agree with Susan that the
12 visitation should be without father being present.
13 The court finds that Dan must be present to
14 protect the children from any unwanted
15 socialization, contacts, or input that may be
16 instilled that is contrary to his belief system.
17 You understand that's been one of the
18 issues that was raised is that Susan would try to
19 interact with the kids in order to bestow her own
20 beliefs. Is that a fair statement?
21 A. That was Dan's belief, yes.
22 Q. And ultimately, when the court -- when
23 this case was ended and concluded, would you agree
24 with me that Susan was not provided any visitation
25 with the grandchildren?

1 A. Correct.
2 Q. In fact, to go a step further, the
3 court determined that the children -- the
4 children, not Abbie, but the children would
5 benefit from some interaction with their mother.
6 Would you agree with that?
7 A. Definitely.
8 Q. And that Paul Cohen would be afforded
9 some interaction rights with reference to the
10 children by way of Skype?
11 A. Correct.
12 Q. But not to Susan Cohen?
13 A. Correct.
14 Q. Within your practice, would you agree
15 that oftentimes, causes of actions are filed --
16 numerous causes of actions can be filed in a
17 particular complaint. Would you agree with that?
18 A. Yes.
19 Q. And sometimes those causes of actions
20 make it the distance, and some of them they don't?
21 A. Right.
22 MR. BOYD: Your Honor, he's asking her
23 to testify beyond the scope of this matter to
24 general matters within the scope of her practice.
25 MR. DAN SLOTCHIVER: That's exactly

1 what they've done, Your Honor.
2 THE COURT: I think you did that, too,
3 Mr. Boyd. I'm going to allow it.
4 MR. BOYD: Thank you.
5 BY MR. DAN SLOTCHIVER:
6 Q. And among the reasons that an action
7 might not make it to the end, would you agree with
8 me, based on your experience, that it would
9 include the court striking an action?
10 A. Not typically in family law, but
11 that's my understanding in civil law.
12 Q. Or a party dismissing an action?
13 A. Not as much in family law, but I
14 understand what you're saying.
15 Q. But if a party does allege numerous
16 causes of action, would it be your experience that
17 there are cases where a cause of action, whether
18 you brought it or somebody brought it in a case
19 with you, would be dismissed by that party?
20 A. I guess that could happen, yes.
21 Q. So drawing a parallel from that
22 scenario to this case -- I'm going to strike it.
23 MR. DAN SLOTCHIVER: I've got nothing
24 further, Your Honor. Thank you.
25 THE WITNESS: Thank you.

1 MR. DAN SLOTCHIVER: Should I return
2 the exhibit or leave it with the witness?
3 THE COURT: If you'd give it to the
4 court reporter, that would be good.
5 MR. BOYD: Actually, Your Honor, I've
6 just got one or two quick redirect on that
7 exhibit.
8 THE COURT: Mr. Boyd?
9 REDIRECT EXAMINATION
10 BY MR. BOYD:
11 Q. Ms. Meyer, just briefly, quickly, on
12 the document that you've just been reviewing with
13 Mr. Slotchiver, I'm going to ask you to turn to
14 Page 8. Subsection 3 of the document is near the
15 middle of the page, Subparagraph B. I'm just
16 going to read the first section of that paragraph:
17 Abbie --
18 MR. DAN SLOTCHIVER: Your Honor, this
19 would be leading. I'm not sure what the question
20 is, but this would be leading. If it's your
21 witness, you cannot lead the witness.
22 MR. BOYD: I'm just going to ask her,
23 Your Honor --
24 MR. DAN SLOTCHIVER: And Your Honor, I
25 don't believe this is an area that I went into in

1 my examination, so not only is it a leading
2 question, but it's gone beyond the parameters of
3 what's allowed in recross.
4 THE COURT: Well, let me hear the --
5 MR. BOYD: Your Honor, he asked a
6 question --
7 THE COURT: Excuse me, Mr. Boyd.
8 MR. BOYD: I'm sorry.
9 THE COURT: Thank you. Let me hear
10 the question, and I may have to look at the
11 document -- I'm not sure -- to determine whether
12 it was something you covered during your cross.
13 MR. BOYD: He asked very specific
14 questions, Your Honor, about the visitation terms
15 provided in this order, and my question to the
16 witness is did this document grant visitation to
17 Abbie.
18 MR. DAN SLOTCHIVER: And Your Honor,
19 that is a legal opinion, number one. Number two
20 is I marked every portion of what I was going to
21 ask questions about, and I would assure you, Your
22 Honor, that particular page is not marked. If
23 you'd like me to hand it up, I'm happy to do that,
24 Your Honor.
25 THE COURT: If I could see --

1 MR. DAN SLOTCHIVER: It's also a
2 leading question.
3 MR. BOYD: Your Honor, he specifically
4 asked about the terms of the visitation and --
5 MR. DAN SLOTCHIVER: Actually, I did
6 not ask. I asked her to agree that this
7 particular language was included in that document.
8 MR. BOYD: He asked if the order -- if
9 the document provided for visitation for Paul
10 Cohen via Skype. He asked very specific questions
11 about that.
12 THE COURT: I'll allow this, but
13 without it being a leading question.
14 MR. BOYD: Yes, ma'am.
15 THE COURT: And I do believe he's
16 allowed a little bit more latitude on redirect,
17 based upon your cross.
18 MR. DAN SLOTCHIVER: Thank you, Your
19 Honor.
20 BY MR. BOYD:
21 Q. Did this document award visitation to
22 Abbie?
23 A. Yes.
24 Q. And did you say this document was not
25 the final end of the case?

1 A. Yes.
2 Q. What was the final end of the case?
3 A. The judgment.
4 MR. DAN SLOTCHIVER: Objection, Your
5 Honor.
6 MR. BOYD: Your Honor, I'm clarifying
7 exactly what Mr. Slotchiver asked her.
8 MR. DAN SLOTCHIVER: But now she's
9 giving a legal conclusion. This is a conclusion
10 different and separate from what the clients
11 testified to in their testimony.
12 THE COURT: I'll allow it.
13 BY MR. BOYD:
14 Q. What was the final end of the
15 California proceeding, Ms. Meyer?
16 A. The further judgment on reserved
17 issues, which was entered at the end of 2010.
18 Q. Thank you.
19 A. Thank you.
20 MR. BOYD: No further questions, Your
21 Honor.
22 THE COURT: Let me ask Ms. Moore,
23 anything?
24 RECROSS-EXAMINATION
25 BY MS. MOORE:

1 Q. Just a couple things. And quite
2 frankly, Ms. Meyer, I may have misunderstood what
3 you said.
4 You were retained after the order was
5 issued that changed the status as to dissolution
6 of marriage, correct?
7 A. Correct.
8 Q. But did the action that was entitled
9 dissolution of marriage, was that continued under
10 the reservation order?
11 A. Yes, of course.
12 Q. If the Cohens had simply decided to
13 drop the issue of visitation, would the case have
14 just ended right then?
15 A. No.
16 Q. Why not?
17 A. Because there were other outstanding
18 issues.
19 MR. DAN SLOTCHIVER: Your Honor, that
20 calls for a legal conclusion.
21 THE COURT: Ms. Moore?
22 MS. MOORE: Your Honor, she would be
23 aware of what other matters were contained within
24 the pleadings that would be required to go to
25 conclusion if the visitation should be dropped.

1 MR. DAN SLOTCHIVER: This was
2 particularly addressing the Cohens in this
3 particular action, and I believe that is calling
4 for an expert opinion.
5 THE COURT: I'll allow it with respect
6 to what was still pending at that time, that she
7 could address that.
8 THE WITNESS: What was still pending
9 at the time that we were retained, in addition to
10 custody and visitation, was support, property, and
11 attorneys fees and costs.
12 BY MS. MOORE:
13 Q. Now, as far as the decision to reach
14 settlement, was any factor or consideration given
15 to the level of attorneys fees that were being
16 incurred?
17 A. Yes.
18 MR. DAN SLOTCHIVER: Your Honor, I
19 would object. Now we're going into settlement
20 negotiations, which I understood were barred. The
21 fact that they were involved in settlement
22 negotiations is different, but now the question is
23 directly about the settlement negotiations and
24 about what factors were considered, and if she
25 wants to go there, once again, I believe it opens

1 the door, and it waives the attorney-client
2 privilege.
3 THE COURT: Ms. Moore?
4 MR. BOYD: Again, Your Honor, I'd
5 caution the witness not to get into areas of
6 mental thought and mindset with respect to
7 decision-making.
8 MS. MOORE: I'll rephrase.
9 BY MS. MOORE:
10 Q. Were there any discussions with
11 opposing counsel as to possible bases for
12 settlement?
13 MR. DAN SLOTCHIVER: Objection to
14 hearsay.
15 THE COURT: I'm sorry?
16 MS. MOORE: Discussions from her to
17 opposing counsel.
18 THE COURT: I'll allow that.
19 THE WITNESS: Yes.
20 BY MS. MOORE:
21 Q. And were those discussions that you
22 would have had as far as your conversation with
23 opposing counsel having to do with the escalation
24 of fees?
25 A. Yes.

1 MS. MOORE: That's all I have, Your
2 Honor.
3 THE COURT: Mr. Kachmarsky?
4 MR. KACHMARSKY: Nothing, Your Honor.
5 THE COURT: Thank you.
6 Mr. Slotchiver?
7 MR. DAN SLOTCHIVER: I've got nothing
8 further, Your Honor.
9 THE COURT: Anything else for this
10 witness?
11 MR. BOYD: Nothing further, Your
12 Honor.
13 THE COURT: Can we excuse the witness?
14 MR. BOYD: Yes, ma'am.
15 MR. DAVIS: She's going back to
16 California.
17 THE WITNESS: Yes.
18 THE COURT: Thank you. We appreciate
19 you coming, Ms. Meyer.
20 THE WITNESS: Thank you very much,
21 Your Honor.
22 THE COURT: Your first trip to Horry
23 County?
24 THE WITNESS: Yes, it is. I've been
25 to South Carolina, but not here.

1 THE COURT: I hope you got a chance to
2 see our beach.
3 THE WITNESS: I did. It was
4 beautiful.
5 THE COURT: Good. Thank you. Have a
6 safe trip home.
7 THE WITNESS: Thank you very much.
8 THE COURT: Thank you, Ms. Meyer.
9 Any proposal that we break for lunch?
10 MS. MOORE: Yes.
11 THE COURT: I assume. It is almost
12 1:15. We'll be back at 2:30, all right. Thank
13 you.
14 THE WITNESS: And thank you for taking
15 me out of order. I appreciate it.
16 THE COURT: Certainly, absolutely.
17 (A luncheon recess transpired from
18 1:12 PM to 2:42 PM.)
19 THE COURT: We're back on the record
20 in the matter of Abbie Dorn. And I hope everyone
21 had a nice lunch, a little bit of a break.
22 I believe we are back with
23 Mr. Slotchiver, Mrs. Cohen.
24 MR. DAN SLOTCHIVER: It's my redirect,
25 Your Honor.

1 THE COURT: Mrs. Cohen?
2 Yes, sir, I'm ready.
3 MR. DAN SLOTCHIVER: Thank you, Your
4 Honor.
5 THE COURT: Thank you.
6 SUSAN COHEN
7 having first duly affirmed, testified further as
8 follows:
9 REDIRECT EXAMINATION
10 BY MR. DAN SLOTCHIVER:
11 Q. Mrs. Cohen, I do not believe I'm going
12 to take anywhere near as long as I took the last
13 time, but I've got a few questions to go over with
14 you.
15 A. Okay.
16 Q. First, would you agree with me that
17 there is substantial discord between you and
18 Daniel Dorn?
19 A. No, generally, there is not, but I was
20 very upset that he would consider putting my
21 daughter in a nursing home. That was very
22 hurtful.
23 Q. Yesterday you referred to him as not
24 being a decent human being, today you talked about
25 him being evil, but your testimony is there's not

1 discord between you and he?
2 MR. BOYD: Your Honor, I think he's
3 being a little bit harsh with the witness.
4 MR. DAN SLOTCHIVER: I'm using her
5 language, Your Honor, and it is relevant.
6 THE COURT: I will allow it.
7 THE WITNESS: First of all --
8 MR. BOYD: Is counsel referring to
9 statements made in court on the record or
10 statements made out of court?
11 MR. DAN SLOTCHIVER: The statements
12 about -- the statement about not being a decent
13 human being was made in court. The statement
14 about -- the other statement was not made in
15 court. It was made by her, but it wasn't made in
16 court. I'm just curious if she would agree that
17 there is discord between she and him.
18 MR. BOYD: And Your Honor, I would
19 just object on the record to out-of-court
20 statements. I think that's improper.
21 THE COURT: I'll allow it.
22 THE WITNESS: First of all, I want to
23 say that I believe every human being is made of
24 the image of the HaShem, of God.
25 MR. DAN SLOTCHIVER: Your Honor, I

1 would ask that she just be instructed to answer
2 the question.
3 THE WITNESS: Okay. No, I wouldn't
4 say that. I invited him to Shabbos last week
5 right here in the courtroom.
6 BY MR. DAN SLOTCHIVER:
7 Q. Do you agree that you did, in fact,
8 pay part of Dan's attorneys fees in California,
9 based on a court order? If you could just answer
10 yes or no, please.
11 A. No.
12 Q. Mrs. Cohen, before we continue, I want
13 to confirm, between the time the testimony started
14 and today, you haven't spoken about this testimony
15 with any persons. Is that correct?
16 A. No.
17 But I may have misunderstood your
18 question. Could you clarify? I did not pay it --
19 did you say because of a court order? I didn't
20 pay it for that reason, no.
21 Q. You stated yesterday that -- well, let
22 me ask you this: Would you agree with me that you
23 do receive -- you individually do receive
24 reimbursement from Abbie's trust funds for items
25 such as utilities, taxes, that type of stuff in

1 the household?
2 A. For half of the things that she
3 directly uses, but as you know, we don't charge
4 her any rent.
5 Q. Yesterday you talked about a lot of
6 doctors, you were questioned by Ms. Moore about a
7 lot of doctors, and I believe that all of those
8 doctors you talked about would have been engaged
9 by the trust somewhere between the time it was
10 formed and 2010. Is that correct?
11 A. Probably most, but definitely not all.
12 Q. So you had the opportunity to provide
13 your counsel in California with the names of all
14 those doctors in preparation of the case, if you
15 so chose?
16 A. Yes.
17 Q. And I take it there's no action filed
18 against anybody in California, the law firm in
19 California, for not having done their job
20 correctly. Is that a fair statement?
21 A. What do you mean?
22 Q. You haven't sued them for malpractice?
23 A. Certainly not.
24 Q. Mrs. Cohen, would you agree with the
25 statement that you are not cloaked in immunity for

1 your actions as a trustee?
2 A. I don't even know what you mean by
3 cloaked in immunity. What are you talking about?
4 Q. Well, over and over again during your
5 testimony, you talked about the fact that every
6 dollar you spent was for Abbie?
7 A. It was.
8 Q. And that as long as you were spending
9 it for Abbie, it was justified?
10 A. I believe that that is justified, that
11 my goal is to get Abbie as high functioning as
12 she's capable of becoming, and I believe that she
13 has improved dramatically.
14 MR. DAN SLOTCHIVER: Your Honor, could
15 she be instructed to answer the question, please.
16 MR. BOYD: Your Honor, I think that's
17 what she was doing was answering Dan's question.
18 MR. DAN SLOTCHIVER: She actually went
19 beyond the question.
20 BY MR. DAN SLOTCHIVER:
21 Q. Mrs. Cohen, do you understand or do
22 you agree with the statement that not only must
23 your expenses be for Abbie, but they also must be
24 reasonable?
25 A. I believe that anything that's going

1 to improve Abbie's health is reasonable and
2 necessary.
3 Q. And I take it it is your opinion that
4 by spending $900,000 in California related to the
5 visitation issue, that was to benefit Abbie's
6 health? If you can answer yes or no, please.
7 A. Yes, it was.
8 Q. You testified in cross-examination
9 that you had no choice. I'm not sure what the
10 wordage was, but something like: I was in a box,
11 I had nowhere to go. But then you heard today
12 testimony from Lisa Meyer that actually you could
13 have dismissed that action. Does that change your
14 opinion?
15 A. No, it doesn't change my opinion. She
16 would have lost her Medicaid.
17 Q. If you had dismissed the visitation
18 issue, do you believe she would have lost her
19 Medicaid? Yes or no, please.
20 A. I have no idea. You know, obviously,
21 she needed to see her children, so what are you
22 even asking me? You don't make sense.
23 Q. Do you have any basis to support the
24 position that if the visitation issue was
25 dismissed, she would have lost her Medicaid? If

1 you can answer yes or no, please.
2 A. I don't know. What are talking about?
3 MR. DAN SLOTCHIVER: Your Honor, if I
4 could have a little assistance.
5 THE COURT: She said: I don't know.
6 MR. DAN SLOTCHIVER: A moment ago she
7 said that if she didn't bring the action, that she
8 would lose visitation, and then when I asked her a
9 little more succinctly about the visitation
10 action, then said: I don't know. So I'm trying
11 to understand which part of it she knows versus
12 what part she doesn't know. Maybe I can rephrase
13 it.
14 THE COURT: Maybe you can.
15 BY MR. DAN SLOTCHIVER:
16 Q. So is it my understanding, then, that
17 you believed that if you didn't bring the
18 visitation action and the child support action,
19 you would have lost Medicaid. Is that correct?
20 A. Yes. I had to bring those things.
21 Q. But separately, if you only brought
22 the support action and not the visitation action,
23 you don't know whether you would have lost it or
24 not?
25 MR. BOYD: Objection, Your Honor.

1 She's repeatedly testified --
2 THE WITNESS: I don't know. How are
3 you separating -- I don't understand how you're --
4 MR. DAN SLOTCHIVER: I'll be happy to
5 take my time and go through it again.
6 THE WITNESS: It doesn't make sense.
7 THE COURT: Mr. Slotchiver, she didn't
8 bring the support action, did she?
9 MR. DAN SLOTCHIVER: No.
10 THE COURT: I thought you said she
11 brought the support action.
12 BY MR. DAN SLOTCHIVER:
13 Q. Well, said differently, if you
14 continued with the support action, without having
15 brought the visitation action, do you understand
16 that that -- if you had --
17 MR. DAN SLOTCHIVER: Let me rephrase
18 the whole thing, please.
19 THE COURT: Okay.
20 BY MR. DAN SLOTCHIVER:
21 Q. Do you agree with me that you could
22 have fought the support action -- fought, not
23 brought -- fought the support action and dismissed
24 the visitation action without having any impact
25 whatsoever on Medicaid?

1 A. Well, the judge set the agenda, so I
2 don't understand what you're talking about.
3 MR. DAN SLOTCHIVER: I object, Your
4 Honor. Now she's --
5 THE WITNESS: How could I drop one --
6 MR. DAN SLOTCHIVER: It's hearsay. I
7 don't know how she can tell us what a court said.
8 BY MR. DAN SLOTCHIVER:
9 Q. I'm asking your opinion. Do you
10 believe --
11 A. But you --
12 MR. DAN SLOTCHIVER: Your Honor, I'm
13 going to ask once again that she be instructed to
14 answer the question. This is what's happened
15 throughout my examination.
16 THE WITNESS: Your Honor, I'm
17 answering, and I don't know. I don't understand
18 how I can set the agenda.
19 THE COURT: Ma'am, give me just one
20 second. Mr. Boyd is standing up.
21 MR. BOYD: Your Honor, again, I
22 object. She testified at length on this subject.
23 She testified with respect to her inability to set
24 the agenda in the court proceedings, and
25 Mr. Slotchiver's trying to twist her testimony.

1 MR. DAN SLOTCHIVER: Actually, she did
2 testify on cross-examination, and I'm asking her
3 on redirect.
4 MR. BOYD: But Your Honor, he's asking
5 her a question that -- it's a faulty premise
6 that's not supported by what she said previously
7 about --
8 MR. DAN SLOTCHIVER: I'm not sure what
9 it's supportive of. I'm trying to find the answer
10 to that.
11 THE COURT: If you could maybe try to
12 rephrase the question a little bit.
13 MR. DAN SLOTCHIVER: Be happy to, Your
14 Honor.
15 BY MR. DAN SLOTCHIVER:
16 Q. What prudence did you undertake, if
17 any, in order to determine that you -- that the
18 risk of losing Medicaid was -- let me rephrase it.
19 What prudence did you take, if any, to
20 determine if you had to fight for visitation in
21 order to protect the trust from losing Medicaid
22 benefits?
23 A. What the judge said.
24 MR. DAN SLOTCHIVER: Objection.
25 THE WITNESS: Well, then I don't know.

1 MR. DAN SLOTCHIVER: I'd ask to strike
2 that, Your Honor.
3 THE WITNESS: I don't know. I don't
4 understand how I could have separated it. I just
5 don't get it. I'm sorry. I'm not --
6 BY MR. DAN SLOTCHIVER:
7 Q. Well, you heard Ms. Meyer testify
8 today that you could have dismissed that action.
9 Actions are dismissed -- parts of actions are
10 dismissed all the time. Did you hear that?
11 A. Yes, but the judge said we had to do
12 the first part first.
13 Q. Understanding that you heard that,
14 what prudence did you do to determine if you were
15 going to continue to spend the money on the
16 visitation action?
17 A. We set it before a judge.
18 MR. DAN SLOTCHIVER: Objection, Your
19 Honor.
20 THE WITNESS: You asked me what
21 prudence.
22 BY MR. DAN SLOTCHIVER:
23 Q. After spending $100,000 in legal fees
24 related to the visitation action, did you undergo
25 any new prudence or any prudence to determine: Do

1 I have to continue to do this? If you can answer
2 yes or no, please.
3 A. I don't know.
4 Q. After spending $200,000 in the
5 visitation, you don't know? If you don't know,
6 just say you don't know. It's perfectly fine.
7 I'm just trying to understand.
8 A. I don't know. I had this issue of
9 standing both times. I don't understand.
10 Q. After $5,000 related to the
11 visitation action?
12 A. But at that point we were still
13 fighting about standing. I don't -- you're not
14 making sense to me. I'm sorry. I had all those
15 issues of standing.
16 Q. At that point you were still fighting
17 about what?
18 A. Standing. We had two issues of
19 standing. I don't -- and then the judge --
20 Q. Did the standing issue have anything
21 to do with bringing your visitation action?
22 A. Well, it had to do with both of them.
23 Q. If you had dismissed the visitation
24 action, would you agree that the standing action
25 related to it would have likewise been dismissed?

1 A. No.
2 Q. Did you ever make any effort to
3 determine whether or not you could dismiss the
4 standing action or dismiss the visitation action,
5 thereby saving the trust hundreds and hundreds of
6 thousands of dollars?
7 A. No, that's not correct.
8 Q. Did you ever make any inquiry to find
9 out the answer to that issue?
10 MR. BOYD: Your Honor, he's badgering
11 the witness.
12 MR. DAN SLOTCHIVER: I'm not
13 badgering. I'm trying to get an answer, Your
14 Honor.
15 MR. BOYD: He's asked this question a
16 dozen times, Your Honor. She's answered to the
17 best of her ability.
18 THE COURT: And I think, Mr. Boyd, I'm
19 going to overrule your objection. I think he's
20 trying to get answers, and she hasn't understood
21 his question well enough, and I'll allow him to
22 continue.
23 Do you want to ask that last question?
24 MR. DAN SLOTCHIVER: If the court
25 reporter could read it back, please?

1 (The Court Reporter read the question
2 commencing on Page 1076, Line 8.)
3 THE WITNESS: Well, I did inquire if
4 we could move the issue about the child support
5 up.
6 BY MR. DAN SLOTCHIVER:
7 Q. Did you ever inquire --
8 A. That's the inquiry.
9 Q. -- into whether or not you could
10 dismiss the standing issue and/or the visitation
11 issue without impacting your rights to protect the
12 trust from Medicaid losses?
13 MR. BOYD: Your Honor, again, I have
14 to object. He's asking a question that's a faulty
15 premise. Her -- Mrs. Cohen's efforts did not
16 raise the standing issue. It wasn't her issue to
17 drop.
18 THE WITNESS: I didn't bring it up.
19 MR. DAN SLOTCHIVER: As a fiduciary,
20 Your Honor, she can -- she's looking at money
21 going out like a sieve in this case, $50,000,
22 $150,000, $300,000, $500,000, $700,000, $800,000,
23 $900,000 related to visitation. I believe -- I'm
24 trying to understand if at any time she exercised
25 prudence to determine can I dismiss this action,

1 and I believe the answer's no, but I'm just trying
2 to confirm.
3 MR. BOYD: He's asking the witness why
4 she didn't drop an issue that she didn't raise.
5 It's a faulty question.
6 MR. DAN SLOTCHIVER: She brought the
7 visitation issue.
8 THE WITNESS: I didn't bring the
9 standing.
10 BY MR. DAN SLOTCHIVER:
11 Q. The visitation issue.
12 A. But he had checked in the beginning
13 that she could have visitation, so what are you --
14 how are you -- you're just twisting everything
15 around. It's not logical. I don't get it.
16 Q. Mrs. Cohen, I'm not trying to mix
17 everything around.
18 A. You are. He's the one --
19 MR. DAN SLOTCHIVER: Your Honor, I
20 don't want to argue with the witness.
21 THE COURT: Ma'am --
22 THE WITNESS: Okay. I'm sorry. I'm
23 sorry.
24 BY MR. DAN SLOTCHIVER:
25 Q. Do you have a basis to disagree with

1 the statement by Lisa Meyer that you could have
2 dropped the visitation issue?
3 A. Do I have a basis?
4 Q. Yes. Do you have any authority, any
5 document, anything you've relied on to understand
6 that she's wrong?
7 A. I don't know.
8 Q. Is the reason that the checks to the
9 MOLM firm were written personally by you and then
10 reimbursed to you from the trust because the MOLM
11 firm was unwilling to accept payments from the
12 trust due to concerns?
13 A. Never, never. That was my suggestion.
14 Q. You heard the testimony of Ms. Meyer
15 earlier wherein she stated that there were some
16 concerns not about payment, but the amounts of the
17 payments. Do you know what she's talking about?
18 A. Yeah. I was trying to settle. I
19 tried to settle continuously. That's why there
20 was 60 emails to Dan Dorn.
21 Q. That's not --
22 A. But that is what I tried to do. I
23 tried to settle.
24 Q. Under your terms?
25 A. Under reasonable terms. He wouldn't

1 listen to me. He wouldn't even let her see her
2 children on Skype. We asked to let --
3 Q. Under your determination of what the
4 word reasonable is, correct?
5 A. All I wanted --
6 Q. Mrs. Cohen --
7 A. All I'm asking for -- please let me
8 finish.
9 MR. DAN SLOTCHIVER: Your Honor, I
10 believe she's gone far astray from the question
11 that I asked her. And once again, this is another
12 opportunity she's used -- when I asked a question,
13 she used it as a pulpit to give her statement that
14 she wants to address. This is my opportunity to
15 recross.
16 THE COURT: Ma'am, if you will be so
17 kind as to answer his questions.
18 THE WITNESS: I'm sorry. I don't
19 remember the question. Oh, you asked me about
20 that I advanced the money and then --
21 BY MR. DAN SLOTCHIVER:
22 Q. I believe the question was: Do you
23 disagree with the statement, then, of Ms. Meyer
24 that it was that she had received payment from you
25 because there was concern not about payment of

1 legal fees, but the amount of legal fees?
2 A. Yes. We wanted to stop it. We did
3 want to stop it.
4 Q. Do you disagree with her statement?
5 Yes or no, please.
6 A. That we wanted to reduce it?
7 Q. No, that wasn't her statement. That
8 the payments were received from you personally, as
9 opposed to from the trust, because there was
10 concern about the amounts of payments?
11 A. No, that was not what we were
12 referring to.
13 MR. BOYD: I don't believe Ms. Meyer
14 testified to that fact, Your Honor.
15 THE WITNESS: No, that was not what we
16 were referring to. That's not what we were
17 referring to. I'm sorry, Reese.
18 MR. BOYD: I have to object. He's
19 asking her a question that --
20 MR. DAN SLOTCHIVER: I believe that is
21 what Ms. Meyer testified to, and the record will
22 support it, but I'll move along.
23 THE COURT: Thank you.
24 THE WITNESS: Would you like me to
25 explain it?

1 BY MR. DAN SLOTCHIVER:
2 Q. I'd like to move along.
3 A. That's fine.
4 Q. Do you understand, Mrs. Cohen, that in
5 your capacity as a conservator, you are standing
6 in the shoes of Abbie to do for her what she
7 cannot do for herself?
8 A. Yes.
9 Q. And do you understand that when you
10 take an action in your capacity as a conservator,
11 that that action is binding on Abbie as if she had
12 done it herself?
13 A. Yes. That's why I've always done what
14 Abbie wants, what's good for Abbie.
15 MR. DAN SLOTCHIVER: I would move to
16 strike that portion of it, Your Honor. There's no
17 foundation. That wasn't the question I asked.
18 THE COURT: I'll allow what's good for
19 Abbie.
20 BY MR. DAN SLOTCHIVER:
21 Q. In your opinion, correct?
22 Mrs. Cohen, did anything stop you --
23 would you agree with me that nobody stopped you
24 from coming to the court in South Carolina and
25 filing to clarify any issues that you could have

1 related to your ability to pay monies from the
2 proceeds for attorneys fees?
3 A. The court had already given me
4 permission and told me I didn't need to ask.
5 Q. That wasn't the question, Mrs. Cohen.
6 Did anybody stop you?
7 A. In terms of physically holding me
8 back, the order just told me that.
9 Q. Mrs. Cohen, after we went to the --
10 after we filed the temporary restraining order in
11 this court, came to the court, addressed the issue
12 of -- or addressed the allegations that we had
13 presented to the court, and after the court
14 admonished you that you need to know you could
15 have personal liability for your actions, did
16 anybody -- or did you take any prudence in
17 determining that you had the right to pay for the
18 attorneys fees related to this action directly out
19 of the trust funds?
20 MS. HEDGEPATH: Your Honor, she's
21 answered that. She said she had a court order.
22 MR. BOYD: And objection, Your Honor.
23 I'm not sure what he's -- I'm sorry.
24 MR. DAN SLOTCHIVER: I've objected to
25 the court order because I don't know what that

1 court order is, and that's not before evidence.
2 She has referred to a court order that doesn't
3 exist.
4 THE WITNESS: Yes, it is.
5 MR. DAN SLOTCHIVER: It's not in
6 evidence. We don't know anything about this
7 alleged court order.
8 THE WITNESS: Yes, you do. It's in
9 evidence.
10 MR. DAN SLOTCHIVER: So I don't know
11 what she's referring to. I'm asking her yes or no
12 questions on purpose so I can try to avoid her
13 dissertations.
14 THE WITNESS: Do you want me to get it
15 out of my bag? Should I get it out of my bag?
16 MR. DAN SLOTCHIVER: Sure.
17 MR. BOYD: Your Honor, I'm not sure
18 what counsel -- what action counsel is referring
19 to.
20 BY MR. DAN SLOTCHIVER:
21 Q. Well, Mrs. Cohen, before you get it
22 out of your bag, is it the same court order that
23 you talked about in testimony the other day?
24 A. Yes, that gave me the permission to do
25 this.

1 MR. BOYD: Are you talking about the
2 order of transfer of jurisdiction?
3 MR. DAN SLOTCHIVER: One moment, Your
4 Honor, please.
5 THE COURT: Sure.
6 MR. DAN SLOTCHIVER: Nothing further,
7 Your Honor.
8 THE COURT: Thank you.
9 Mr. Boyd, anything from you, sir?
10 MR. BOYD: I don't believe I have
11 anything further for Mrs. Cohen, Your Honor.
12 THE COURT: Thank you. Ms. Hedgepath?
13 RECROSS-EXAMINATION
14 BY MS. HEDGEPATH:
15 Q. Mrs. Cohen, I just want to clear up
16 one thing briefly.
17 Mr. Dorn kept on and on asking you --
18 excuse me. It's been a long month.
19 Mr. Slotchiver kept on and on with you
20 about you could dismiss the action for visitation,
21 that part of the court action you could have
22 dismissed and not sought visitation. That's what
23 he kept asking you --
24 A. Uh-huh.
25 Q. -- and trying to get you to tell him

1 why you wouldn't do it, but would Abbie have
2 gotten visitation had you not fought for it?
3 A. Absolutely not. He wouldn't even let
4 her see her children on Skype. That's what we
5 initially -- we asked if she could see that her
6 children were in good health, just see them one
7 way, and he said no, it would invade his privacy
8 if he just put in a Skype camera.
9 Q. So in a nutshell, you had to carry on
10 the action for visitation and fight in order to
11 get Abbie visitation?
12 A. That's correct.
13 Q. Is visitation a benefit, in your
14 opinion, for Abbie?
15 A. Absolutely, 100 percent.
16 MR. DAN SLOTCHIVER: Objection, Your
17 Honor. I don't believe she is -- she has the
18 ability to give an opinion about what benefits
19 Abbie. She can give an opinion about what she
20 believes.
21 THE COURT: I think she said in her
22 opinion.
23 MS. HEDGEPATH: Yes, ma'am.
24 Thank you, Mrs. Cohen.
25 THE WITNESS: Thank you very much.

1 THE COURT: Ms. Moore, anything?
2 MS. MOORE: Nothing further, Your
3 Honor.
4 THE COURT: Mr. Kachmarsky?
5 MR. KACHMARSKY: Nothing further.
6 THE COURT: Are we finished with
7 Mrs. Cohen at this point?
8 THE WITNESS: Thank you, Judge.
9 You've been very kind. Thank you.
10 THE COURT: Mr. Slotchiver?
11 MR. DAN SLOTCHIVER: If I can have one
12 moment, Your Honor, and we're going to call
13 Dr. Paul Cohen.
14 THE COURT: Shall he come up now?
15 MR. DAN SLOTCHIVER: That would be --
16 if I could have one moment, please, literally just
17 a moment.
18 THE COURT: Sure.
19 MR. DAVIS: Your Honor, while
20 Mr. Slotchiver is asking Dr. Cohen questions, I
21 will be the one most likely making objections.
22 MR. DAN SLOTCHIVER: Your Honor, if we
23 can agree as to who will make the objections, Your
24 Honor, in advance, that would be great.
25 THE COURT: I think Mr. Davis

1 indicated he would be raising any objections.
2 MR. DAN SLOTCHIVER: Most likely, but
3 yes.
4 May it please the court?
5 THE COURT: Yes, sir.
6 PAUL COHEN
7 having first duly affirmed, testified as follows:
8 DIRECT EXAMINATION
9 BY MR. DAN SLOTCHIVER:
10 Q. Dr. Cohen, if history repeats itself,
11 I think we'll be a lot quicker with your
12 examination than with your wife's, but I do have a
13 few things I need to cover with you.
14 A. If you collapse like Mr. Boyd did the
15 other day, it'll be a lot quicker that way, too,
16 but hopefully that won't happen.
17 Q. If you feel that coming on, let me
18 know.
19 A. Okay. Well, you let me know.
20 Q. Let's go back. Let's go through a
21 little bit of procedural background first.
22 You were appointed as co-trustee with
23 your wife. Is that correct?
24 A. Correct.
25 Q. And you were also appointed as

1 co-conservator with your wife?
2 A. Correct.
3 Q. And guardian with your wife?
4 A. Correct.
5 Q. And would you agree with me that all
6 of this was done without objection by Daniel Dorn?
7 A. Pretty much so, yes.
8 Q. A lot of documents have been
9 introduced into evidence so far throughout this
10 case. Is there anything in particular that you
11 object to or you disagree with?
12 MR. DAVIS: Your Honor, I object.
13 That's too broad. How can he possibly know that?
14 He asked if there's any document he objects to.
15 What do we have, 100-and-something documents? I
16 think that's --
17 MR. DAN SLOTCHIVER: Your Honor, if he
18 says I don't know, he doesn't know. I'm just
19 asking the question. Can he at least have an
20 opportunity to respond before we have the
21 objection?
22 THE WITNESS: There's so many
23 documents, I really have lost track of them.
24 THE COURT: Thank you.
25 BY MR. DAN SLOTCHIVER:

1 Q. Have you, in your role as trustee,
2 reviewed all the documents that were provided to
3 us through discovery?
4 A. No.
5 Q. Have you reviewed a copy of all the
6 checks that were paid to attorneys or medical
7 providers?
8 A. Oh, I've seen the billings.
9 Q. Have you reviewed the bank statements?
10 A. No.
11 Q. Have you reviewed the ledgers?
12 A. I don't know how to read a ledger.
13 Q. Have you reviewed the accountings?
14 A. No.
15 May I clarify a question? I depend on
16 my wife for that.
17 Q. Are you familiar with the deposition
18 of Adam Mamelak?
19 A. I know it exists, yes. I've read a
20 little bit of it.
21 MS. HEDGEPATH: I'm sorry. I didn't
22 hear, Your Honor. Deposition of whom?
23 MR. DAN SLOTCHIVER: Dr. Mamelak.
24 MS. HEDGEPATH: Okay. Excuse me.
25 THE WITNESS: I know some of it.

1 BY MR. DAN SLOTCHIVER:
2 Q. And would you agree with me that
3 Dr. Mamelak gave his deposition in the California
4 action?
5 A. That's correct.
6 Q. And in that capacity, you and your
7 wife had counsel present at the deposition?
8 A. Yes.
9 Q. And your counsel had the opportunity,
10 if so inclined, to question Dr. Mamelak as much or
11 as little as they wanted to?
12 MR. DAVIS: Your Honor, I believe we
13 went over this attorney-client privilege stuff
14 they did in California. I don't know how far he's
15 going with this. Communications with counsel,
16 what they did in depositions, if they were there,
17 that was certainly something that was --
18 MR. DAN SLOTCHIVER: Your Honor, I'm
19 just trying to confirm that they had counsel
20 present at the deposition, and they could have
21 asked questions if they wanted to.
22 THE COURT: I'll overrule it.
23 BY MR. DAN SLOTCHIVER:
24 Q. Would you agree with that?
25 A. Read the question again, please.

1 Q. Would you agree that your California
2 counsel, if they desired, had the ability and were
3 present to ask any question they wanted to of
4 Dr. Mamelak at his deposition?
5 A. Yes.
6 Q. Or to cross-examine him, if so
7 desired?
8 A. I don't know the difference between
9 one or the other, so I can't answer that exact.
10 Q. And would you agree with me that the
11 purpose of Dr. Mamelak's deposition was to get his
12 opinion about the cognitive ability/the mental
13 capacity of Abbie?
14 MR. DAVIS: I object, Your Honor. I
15 don't believe that he took the deposition of
16 Dr. Mamelak and is unaware, I believe. If I'm not
17 mistaken, that was taken by Vicki Greene, attorney
18 for Dan Dorn. How could he possibly say why the
19 deposition was taken?
20 MR. DAN SLOTCHIVER: Your Honor, he
21 stated that he's familiar with it, he's read a
22 little bit of it, he stated that his counsel would
23 have been there, and I'm just trying to understand
24 the scenario. I'm just asking background
25 questions right now.

1 THE COURT: I'm going to sustain the
2 objection. I don't know if he can say why it was
3 taken or not.
4 MR. DAN SLOTCHIVER: I don't either.
5 I wanted him to tell me.
6 BY MR. DAN SLOTCHIVER:
7 Q. Is it your understanding, Dr. Cohen,
8 that from what records you've reviewed in the
9 Mamelak deposition, that he opined as to the
10 cognitive abilities of Abbie?
11 A. To some extent, although he had not
12 examined her in four years before that.
13 Q. Understanding that.
14 MR. DAN SLOTCHIVER: Your Honor, I
15 would move that we introduce the deposition of
16 Adam Mamelak.
17 MR. DAVIS: Your Honor, we object.
18 It's a deposition taken in another hearing,
19 another trial. I don't think he said -- he said
20 he's generally familiar with it. He hasn't read
21 it and not sure why it was taken. It was taken by
22 their attorney in California. I don't think he's
23 laid a proper foundation, Your Honor.
24 MR. DAN SLOTCHIVER: And I believe I
25 have, Your Honor. There is case law to support

1 it -- I'll be happy to hand a memorandum to the
2 court -- that a deposition taken in another matter
3 where you have the same parties and the same
4 essential issue, and on this issue, it went to
5 cognitive ability, there is certainly precedence
6 where within Your Honor's discretion, you can
7 allow the Mamelak deposition to come in.
8 MR. DAVIS: Your Honor, I would just
9 remind the court that we had this very same issue
10 when Mrs. Cohen was on the stand, and this court
11 ruled that it was not to be admitted, and he
12 withdrew it, and it was not admitted at that time.
13 MR. DAN SLOTCHIVER: I tried to put it
14 in with Mrs. Cohen, and she had no familiarity
15 with it, and she could not confirm, Your Honor --
16 I apologize. I didn't bring you
17 copies, and it's my fault completely.
18 MS. MOORE: That's all right.
19 MR. DAN SLOTCHIVER: But with
20 Mrs. Cohen, she wasn't familiar with Dr. Mamelak's
21 testimony. She said she knew nothing about it.
22 She didn't read it. Dr. Cohen does have
23 familiarity with it, and he's confirmed the
24 requisite requirements, that it was taken, he did
25 have counsel, it was in -- although it was in a

1 different matter, it dealt with the same issue,
2 not that this matter in South Carolina deals with
3 the same issue as the matter in California, but
4 that the issue for which Dr. Mamelak's deposition
5 was taken is being offered for the same purpose
6 that it was taken in California, dealing with the
7 cognitive ability, and he's confirmed that it was
8 referenced. He said he hadn't seen it in several
9 years, I agree with him, but I believe that it
10 should come in, and I would move to introduce it
11 on that basis.
12 MR. DAVIS: Your Honor -- and I
13 appreciate Mr. Slotchiver's arguments. We do not
14 have a copy of that deposition and have not had an
15 opportunity to look at it, I don't believe there's
16 a sealed copy that we've been provided with, so
17 how can we respond intelligently to something we
18 don't have a copy of and have been unable to
19 receive?
20 MR. DAN SLOTCHIVER: They were
21 provided with a copy of the deposition in the
22 deposition of John Freeman. Attached to his
23 exhibits was a copy of the Mamelak deposition.
24 Dr. Freeman testified he relied on it to some
25 extent, and he attached a copy of it in his

1 deposition.
2 MR. DAVIS: Again, Your Honor, that
3 was an unsealed copy.
4 MR. DAN SLOTCHIVER: I think we've
5 already given copies of that, Your Honor, to
6 counsel earlier in this proceeding, last week.
7 MR. DAVIS: I'm searching to recall
8 that, and I don't recall that. I'm not saying you
9 didn't, but I don't recall that happening.
10 MR. DAN SLOTCHIVER: For the record,
11 Your Honor, Vicki Greene, who testified here
12 today, was counsel in the Mamelak deposition.
13 THE COURT: Vicki Greene?
14 MR. DAN SLOTCHIVER: Excuse me, Lisa
15 Meyer, the MOLM firm, was present.
16 THE COURT: And can you tell me,
17 Mr. Slotchiver, the purpose of introducing his
18 deposition?
19 MR. DAN SLOTCHIVER: Well, Your Honor,
20 Dr. Mamelak made -- I believe that as a fiduciary,
21 you've got a duty to familiarize yourself with all
22 the different articles, all the different
23 commentaries, all the different evidence out there
24 in making your decisions.
25 Dr. Mamelak did, in fact, opine -- and

1 the testimony of Mrs. Cohen was: I didn't even
2 look at it. I refused to look at it. We disagree
3 that that's complying with the requirements of a
4 fiduciary. Dr. Cohen looked at it to some extent.
5 I want to ask him what he knows, and I want to ask
6 him what his opinion is on the findings of
7 Dr. Mamelak. Dr. Mamelak gave a full deposition
8 about his opinion about Abbie's cognitive
9 abilities.
10 MR. DAVIS: Your Honor, I want to
11 remind everyone that Dr. Mamelak last evaluated
12 Abbie in 2006. His deposition was taken in 2010.
13 He had not examined her since 2006, so we believe
14 it to be irrelevant to this matter. We're going
15 to show that she's made absolute improvement
16 through the testimony and through the evidence
17 that's going to be presented, and he's
18 counteracting that with a document from a
19 deposition from someone who last examined Abbie in
20 2006. How could that be relevant to her current
21 condition and the benefit she receives from
22 visitation?
23 MR. DAN SLOTCHIVER: Your Honor,
24 Mrs. Cohen testified that she does not have an
25 action, nor will she bring an action, against Lisa

1 Meyer for malpractice. Lisa Meyer testified that
2 she did everything that she was told to do and
3 everything she could do in the California case.
4 She did it all.
5 Now, this action is to asking that
6 they be removed and asking that the trust be
7 refunded with the monies that were wrongfully
8 spent, and what's important to know is what was
9 the condition, even if -- there's no evidence,
10 we've been provided with nothing to show us that
11 Abbie is better. But even if she were better, it
12 would not exonerate them from their
13 responsibility.
14 As Your Honor is aware, the
15 requirement to have prudence is on every single
16 measure. Every single action you do, you must
17 have prudence. So our position is we've got a
18 doctor who's given testimony in a case for which
19 they were the fiduciaries. Dr. Cohen's read part
20 of it; Mrs. Cohen's read none of it. Seems to me
21 like I should be able to ask them about would this
22 affect your opinion, would you have done something
23 different if you knew about this, and why didn't
24 you do anything different. I think it has to come
25 in, because it's certainly relevant to the issue.

1 Any evidence about future repair,
2 which we don't know of, we haven't been advised of
3 that until just now. This is the first time I've
4 heard that they're going to try to present
5 evidence that she's better.
6 But certainly, at the time that the
7 court issued its order in 2012, at the time that
8 it issued its order, Mrs. Cohen's testified that
9 every doctor that she responded to Lee Moore about
10 had already been engaged, except for maybe one.
11 Lisa Meyer testified there was nothing that she
12 couldn't do that she would do, that she hadn't
13 done in this case.
14 So I'm not really sure why it is that
15 this deposition wouldn't come into evidence and
16 why they wouldn't be willing to discuss it and why
17 it isn't appropriately placed into evidence.
18 THE COURT: And his deposition was in
19 the California visitation?
20 MR. DAN SLOTCHIVER: The deposition
21 was in the California case, Your Honor, and we're
22 presenting a copy of the deposition to the court.
23 THE COURT: Anything from
24 Ms. Hedgepath? Moore? Kachmarsky?
25 MR. KACHMARSKY: Nothing from me,

1 Judge.
2 THE COURT: I'm sorry. Who said that?
3 Mr. Kachmarsky, was that you?
4 MR. KACHMARSKY: Yes. I said nothing.
5 THE COURT: Thank you.
6 Ms. Moore?
7 MS. MOORE: I hadn't had a chance to
8 look at it completely, his memo, but just my
9 concern would be, obviously, we weren't privy to
10 the deposition, didn't have an opportunity to
11 participate in the deposition, and certainly
12 didn't have an opportunity to cross-examine the
13 person for whom it's being presented in the
14 deposition to be admitted today. That would be my
15 primary concern.
16 Secondary concern would be is I don't
17 believe the issues are exactly the same, and so I
18 think part of the case law that deals with the
19 admission of depositions from other cases, there
20 has to be a very close similarity of the issues at
21 hand. No question but that the parties may be the
22 same, or some of the parties may be the same, but
23 also, the issues have to be the same.
24 Obviously, in that case, the issues
25 were whether or not Abbie should have visitation.

1 The issue here is whether or not the trustees have
2 acted reasonably in the expenditure of various
3 expenses, part of which are the attorneys fees
4 that were incurred in California.
5 So I certainly would object to the
6 introduction of the deposition. Certainly nothing
7 to preclude Mr. Slotchiver from asking Dr. Cohen
8 as to his understanding of what the opinion was of
9 Dr. Mamelak and whether that impacted their
10 decision-making in proceeding forward, but I don't
11 think it's proper to have the deposition itself
12 admitted into evidence.
13 MR. DAN SLOTCHIVER: Your Honor, for
14 the record, all the parties were represented. Not
15 only were the Cohens represented, but also there
16 was counsel for the minor, who is referenced in
17 the deposition.
18 THE COURT: For the minors?
19 MR. DAN SLOTCHIVER: For the minor,
20 yes, for the minor children, Ruth Estep.
21 Your Honor, as to the argument that
22 the issues aren't the same, they really are. Part
23 of the argument in California has been she is
24 disabled, and she should be able to see her
25 children, and our position is that it was more

1 than disabled, it was in a vegetative state and
2 would have no benefit in seeing her children.
3 And the question then became for the
4 court -- and you'll see in their analysis the
5 statement of -- whatever terminology they use.
6 But in the statement, they reference that they see
7 no compelling evidence that Abbie would have any
8 benefit, but they see the children having a
9 benefit.
10 So part of the argument, obviously, is
11 that you've got to see where Abbie is cognitively,
12 because it's part of the deal. It's part of where
13 we are. And even the reference made -- Dr. Hays
14 referred to the same thing.
15 So when we look at this, the issue
16 that we're here for, Your Honor, is if Abbie had
17 no benefit, and we had evidence that she had no
18 benefit -- they had an opportunity to plead the
19 whole case. But if there's evidence of it, if
20 they listened to that evidence, they could have
21 stopped the case much earlier, but it comes down
22 to their refusal to read it or to listen to it or
23 to pay attention to it, and I think that's
24 pertinent as to their obligations as fiduciaries.
25 THE COURT: Mr. Davis?

1 MR. DAVIS: Thank you, Your Honor.
2 Again, I appreciate his arguments. I completely
3 disagree with them.
4 Again, his last examination was in
5 2006. If we recall from testimony, the marital
6 action in California began in 2008, okay, and his
7 deposition was done in 2010. It was done during
8 the pendency. But his last examination of Abbie
9 was done in 2006, so how can we say that from an
10 examination in 2006, he can use that to determine
11 that Abbie does not receive a benefit from
12 visitation? It's stale, it's old, and it's
13 irrelevant, Your Honor.
14 THE COURT: I'm going to allow the
15 deposition to come in. I think those are matters
16 that you can bring out in your examination of
17 Dr. Cohen, if you would like, Mr. Davis.
18 MR. DAN SLOTCHIVER: If I could mark
19 this document as an exhibit, Your Honor.
20 THE COURT: Yes, please.
21 (PLF. EXH. 109, Deposition of Adam
22 Mamelak, was marked for identification and
23 admitted into evidence.)
24 THE COURT: Petitioner's 109, with
25 objection, so noted.

1 And Mr. Slotchiver, I don't know, did
2 you provide everybody else with a copy?
3 MR. DAN SLOTCHIVER: Your Honor, I
4 provided a copy to counsel. I did not provide a
5 copy to everybody, but we could take a moment and
6 provide copies to them.
7 THE COURT: When we take a break, if
8 that's okay.
9 MR. DAVIS: Your Honor, I would also
10 ask the court's indulgence for us to have a moment
11 to take a look at the deposition. And also, I
12 believe Dr. Cohen said he's familiar with parts of
13 the deposition, so be able to instruct him that
14 any parts that he's familiar with and certainly
15 talk about that he hasn't -- he's just testified,
16 I'm not putting words in his mouth, he's not privy
17 to the whole deposition. We need to have an
18 opportunity --
19 MR. DAN SLOTCHIVER: They can object
20 when I ask questions, I believe, Your Honor.
21 THE COURT: When we finish his direct
22 examination, I'll be happy to take a few minutes
23 to allow you an opportunity to review the
24 deposition so you can go forward with your
25 examination of Dr. Cohen.

1 MR. DAVIS: Okay, Your Honor.
2 THE COURT: And then at that point,
3 I'll make a copy of this.
4 Has his deposition been marked,
5 Mr. Slotchiver?
6 MR. DAN SLOTCHIVER: No, it has not,
7 Your Honor.
8 THE COURT: Is that it?
9 MR. DAN SLOTCHIVER: Yes. I've got a
10 copy. I was going to ask him questions. If I
11 needed to mark it, I would.
12 THE COURT: Well, aren't we
13 introducing it?
14 MR. DAN SLOTCHIVER: Oh, I'm sorry. I
15 introduced Dr. Mamelak's deposition a moment ago.
16 THE COURT: I'm sorry.
17 MR. DAN SLOTCHIVER: I'm not ready to
18 go there yet, but --
19 THE COURT: That's what I was talking
20 about.
21 MR. DAN SLOTCHIVER: That's been
22 marked, yes, Your Honor. I apologize.
23 BY MR. DAN SLOTCHIVER:
24 Q. Dr. Cohen, do you remember telling me
25 that you are not aware of the court advising you,

1 as a trustee, that you were either unable or able
2 to make payments for attorneys fees without court
3 approval?
4 A. Could you repeat that question again,
5 please?
6 Q. Yes.
7 MR. DAVIS: Can he also express the
8 context? Is he talking about in a deposition?
9 MR. DAN SLOTCHIVER: I don't believe I
10 have to go to the context of anything, Your Honor.
11 I believe I have the right to ask him a question.
12 MR. DAVIS: I just want to make sure
13 there was no improper communications between
14 attorney and client. I'd like to know where he's
15 talking about this information.
16 MR. DAN SLOTCHIVER: Your Honor, I
17 would ask that the record particularly note, in
18 light of all of the disparaging comments made by
19 Mr. Davis throughout this entire proceeding, not
20 only at this point, over the last couple days, but
21 also over the entire proceeding, that the
22 commentary about comments made. There's no
23 evidence to support this. It's a continued
24 harassment of making allegations and insinuations
25 without any support whatsoever. I believe his

1 client would have very clearly told him if he and
2 I had spoken outside of the bar about some type of
3 a matter. We clearly haven't.
4 MR. DAVIS: Thank you, Your Honor.
5 And I would also like to make sure the
6 record is clear that I made zero accusations
7 against Mr. Slotchiver. He's taken a large leap
8 here, and it's unfounded, and I'm a little
9 disappointed he did that. I'm not claiming
10 anything. I simply asked for the context of the
11 communication. That's it, Your Honor. He's gone
12 far beyond that. I'm not accusing him of anything
13 and have not and am not now.
14 MR. DAN SLOTCHIVER: I've stopped
15 keeping track of the words that have been used.
16 Maybe it's between Mr. Davis and Mr. Boyd
17 together. But I know I've heard about trickery
18 last week by Mr. Davis, I've heard about
19 nonsensical arguments, absurd arguments, and now
20 I'm hearing more comments. Your Honor, we have an
21 obligation to follow the rules of civility, and I
22 would ask that Mr. Davis be cautioned again.
23 THE COURT: Mr. Davis, if you don't
24 mind, I believe you made some comment about some
25 kind of improper communication with your client,

1 so if you will be mindful of the need to be civil
2 in the court proceeding, to follow proper
3 courtroom decorum.
4 MR. DAVIS: Your Honor, I'll be more
5 than happy to receive any admonishment that you
6 have. I don't believe -- and I'm more than happy
7 to. I don't believe one's warranted here. I have
8 not -- he can ask me to do whatever. I have
9 not -- I've been very careful not to accuse him of
10 anything, and he stands up and mentions to me to
11 be civil and has done it before. I'm very mindful
12 of that, and I have not done anything in this
13 instance to indicate otherwise, Your Honor. I
14 just want to make sure the record's clear, because
15 I'm being careful not to. Thank you.
16 THE COURT: Thank you.
17 Mr. Slotchiver, can you ask Dr. Cohen
18 that question?
19 MR. DAN SLOTCHIVER: I will, Your
20 Honor.
21 THE COURT: If you could clarify, for
22 my benefit, as to when you were talking about when
23 you asked him that.
24 MR. DAN SLOTCHIVER: How about if I
25 just ask another question.

1 THE COURT: I didn't know if it was in
2 the course of this cross-examination or at a prior
3 hearing.
4 MR. DAN SLOTCHIVER: I'll just ask him
5 the question.
6 BY MR. DAN SLOTCHIVER:
7 Q. Dr. Cohen, are you familiar with any
8 time where the court advised you, as a trustee of
9 a special needs trust, that you were unable to
10 make payments to attorneys or for attorneys fees
11 without court approval?
12 A. What kind of attorneys fees, and whose
13 attorneys fees?
14 Q. Attorneys fees from the trust.
15 A. I believe the document said we could
16 hire all sorts of professionals, attorneys, as
17 Abbie's attorneys, or for the benefit of Abbie,
18 and we can make payments to them for their
19 services.
20 Q. Let me show you a copy of your
21 deposition, if I may.
22 MR. DAN SLOTCHIVER: May I open the
23 sealed copy, Your Honor?
24 THE COURT: Yes.
25 THE WITNESS: Where am I supposed to

1 be looking at this?
2 BY MR. DAN SLOTCHIVER:
3 Q. Dr. Cohen, if you would please turn to
4 Page 11.
5 MR. DAN SLOTCHIVER: Your Honor, would
6 you like a copy?
7 THE COURT: Do you have an extra copy?
8 MR. DAN SLOTCHIVER: I've got
9 original -- well, not the original, but I have an
10 extra copy.
11 THE COURT: Do you have a copy?
12 MR. DAN SLOTCHIVER: I'd like to get
13 it back, but if you'd like to follow along, I'd be
14 happy to provide it to you.
15 BY MR. DAN SLOTCHIVER:
16 Q. Dr. Cohen, if you'll look at Page 11.
17 A. Yes.
18 Q. Line 13. And I'm going to read it,
19 and tell me -- if you'd please read the response.
20 Are you familiar with any time wherein
21 the court advised you, as a trustee of the special
22 needs trust, that you were unable to make payments
23 to attorneys fees without court approval? Your
24 response at that time?
25 A. Do you want me to read it?

1 Q. Yes, please, if you'll read Line 18
2 and 19.
3 A. I don't recall either yes or no. I
4 don't know.
5 Q. So your answer today was different?
6 A. Maybe I know more now than I did then.
7 Q. And this is when your deposition was
8 taken back in May of 2011, correct?
9 A. Yes.
10 Q. Let me ask you some more questions,
11 Dr. Cohen. Let me know when you're ready.
12 A. I'm ready.
13 MR. DAVIS: Are you on a certain page,
14 Dan?
15 MR. DAN SLOTCHIVER: No, I'm not.
16 BY MR. DAN SLOTCHIVER:
17 Q. Dr. Cohen, did the issue of -- let me
18 rephrase that.
19 Did the issue of paying legal fees
20 without court approval concern you?
21 A. We had authorization to do that,
22 according to the documents, as far as my
23 understanding of it, for Abbie's -- anything for
24 the benefit of Abbie's --
25 Q. Would you please turn to Page 12?

1 A. What?
2 Q. Would you please turn to Page 12 of
3 your deposition? If you'll read responsively.
4 I'll start with Line 16: Did the issue of paying
5 legal fees without court approval ever concern
6 you? Your response, I believe, is: I was under
7 the impression that we had the permission to do
8 so. My question: What was the basis for that
9 impression? Your response was: My wife told me
10 we could, and she learned it from her lawyer,
11 apparently.
12 Dr. Cohen, did you at this point
13 reference to me any provisions under any document
14 that gave you that authority?
15 A. I believe the trust documents said
16 that we could do that.
17 Q. If you would respond to the document.
18 At this point, in May of 2011, did you at any
19 point reference a trust document or any other
20 document that gave you that ability?
21 A. I said maybe I have a different
22 knowledge base now than I did then.
23 Q. But at that time, did you reference
24 this document?
25 MR. DAVIS: Your Honor, I object. I

1 don't think that was the question that was asked
2 in the deposition.
3 MR. DAN SLOTCHIVER: Actually, I read
4 it verbatim, Your Honor.
5 MR. DAVIS: Did you?
6 MR. DAN SLOTCHIVER: Yes, I did.
7 MR. DAVIS: Going back to the issue of
8 paying legal fees.
9 MR. DAN SLOTCHIVER: Your Honor, I
10 would ask that he -- that if he has an objection,
11 he place it. Otherwise, move on.
12 MR. DAVIS: Did he ask him in the
13 deposition for a document, or did he ask if he
14 had --
15 THE COURT: No, sir. I think he read
16 the question in his deposition, and now he's
17 asking him about the document.
18 MR. DAVIS: Okay.
19 BY MR. DAN SLOTCHIVER:
20 Q. Do you recall or would you agree with
21 me from your perspective that all of the bills
22 generated by the Meyer Olson firm, the MOLM firm,
23 were for the issue of visitation?
24 MR. BOYD: Your Honor, I object. I
25 don't know how he would have --

1 MR. DAN SLOTCHIVER: Your Honor, I am
2 asking questions on this matter on my examination,
3 which I haven't had an objection to yet. I'm just
4 asking questions. I don't have to tell him where
5 my questions come from. I'm allowed to ask
6 questions.
7 THE COURT: Mr. Davis?
8 MR. DAVIS: I will withdraw.
9 MS. MOORE: Your Honor, at this point,
10 I'm going to make an objection. I've allowed some
11 leeway to Mr. Slotchiver at this point, but this
12 is his witness, he's called this witness, and he
13 is leading the witness. I think it would be
14 appropriate for him to question him by direct.
15 MR. DAN SLOTCHIVER: I would move to
16 consider Dr. Cohen a hostile witness, Your Honor.
17 I believe if this isn't a hostile witness, I don't
18 know what circumstance would be a hostile witness,
19 and that would allow me to ask a leading question.
20 MR. DAVIS: I appreciate
21 Mr. Slotchiver's comments. Again, I disagree. I
22 don't think he's done anything to exhibit any
23 hostility. He's very calm, relaxed, responded
24 appropriately to every question. I'm searching
25 for grounds, Your Honor. I don't see how he could

1 be considered a hostile witness.
2 MR. DAN SLOTCHIVER: I don't believe
3 that a definition of a hostile witness pertains to
4 his showing hostility towards me, and I believe he
5 is a hostile witness, and I would ask the
6 opportunity to ask him these questions.
7 THE COURT: Ms. Moore?
8 MS. MOORE: Your Honor, the mere fact
9 that it is an opposing party does not that, in and
10 of itself, make the person a hostile witness.
11 There has to be some indication through the
12 testimony that they are not responding to the
13 questions that are being posed to them to then
14 give him the ability to turn him or ask the court
15 to establish him to be a hostile witness.
16 MR. DAN SLOTCHIVER: How about the
17 responses I've received so far, Your Honor? I've
18 tried to ask questions. What I'm told is: I
19 might not have looked at that. Well, maybe my
20 mind's changed since that point. Every answer
21 that I've been given has had an addition to it, an
22 explanation to change it.
23 I'm just trying -- I'm not asking
24 any -- I'm asking questions I generally haven't
25 asked before. I'm just seeing if the answers are

1 the same as before, and they're not, and I believe
2 that certainly is indicative of a hostile witness.
3 THE COURT: Mr. Davis?
4 MR. DAVIS: Thank you, Your Honor.
5 As we all can tell, the witness is not
6 being argumentative. He's not trying to evade
7 questions. He's answering them to the best of his
8 ability. He's been honest and truthful each time.
9 He's doing the best that he knows how to do, Your
10 Honor. He's done nothing to indicate he's being
11 hostile.
12 THE COURT: I'm going to deny your
13 request, ask you to consider this your witness on
14 direct examination, not ask leading questions.
15 MR. DAN SLOTCHIVER: Fair enough, Your
16 Honor.
17 THE COURT: I'll be happy to hear that
18 motion again if you so desire at some point.
19 BY MR. DAN SLOTCHIVER:
20 Q. What issues were the bills from the
21 Meyer firm for? They sent you bills. What were
22 the issues they were being paid for?
23 A. Well, it was the totality of the
24 divorce action in California when they took over
25 for us in the early 2010 period, and it started

1 after we switched attorneys to their firm.
2 THE COURT: Your Honor, I'm just
3 asking what the issues were.
4 THE WITNESS: I'm getting to it.
5 THE COURT: He's getting there.
6 THE WITNESS: And first it was the
7 issue of getting into the case to get Mr. Dorn
8 redeposed when there were apparently questions
9 that had not been answered. It was a question of
10 developing whether we had even standing to do that
11 through a series of court hearings. The judge
12 finally said we do have --
13 MR. DAN SLOTCHIVER: Objection to what
14 the judge said, Your Honor, hearsay.
15 THE WITNESS: We were --
16 THE COURT: I'll strike that. I'm
17 sorry.
18 THE WITNESS: We were trying to
19 develop various things which I can't go into
20 because I don't have enough legal knowledge to
21 develop that, but the issues included standing,
22 whether we had the right to do that, to ask for
23 child visitation, and also, at some point in time,
24 Mr. Dorn had referenced the -- checked off the box
25 for child support, which could have seriously

1 impacted Abbie's ability to stay on Medicaid.
2 MR. DAN SLOTCHIVER: Your Honor, now
3 we're getting way off stray from the question that
4 was asked. The question is what are the issues
5 before the court.
6 THE COURT: And I think with --
7 MR. DAN SLOTCHIVER: The latest thing
8 with Mr. Dorn was -- the issues, I'm not opposed
9 to him stating what they are.
10 THE COURT: I think you said the bills
11 from the Meyer firm, what were they about.
12 MR. DAN SLOTCHIVER: What were the
13 issues that they covered, what was the issues.
14 THE COURT: With respect to her bills.
15 Is that correct?
16 MR. DAN SLOTCHIVER: Yes.
17 BY MR. DAN SLOTCHIVER:
18 Q. Well, Dr. Cohen, do you remember
19 saying something different in your deposition?
20 A. I don't really know.
21 Q. Well, why don't we take a look at it.
22 Page 20. We'll start with Line 18: Did you
23 recall when your wife testified a few hours ago
24 that the bills generated by the Meyer Olson
25 firm --

1 MS. MOORE: Your Honor, that's an
2 improper use of the deposition for impeachment
3 purposes of this witness. He did not ask the
4 exact same question of this witness.
5 MR. DAN SLOTCHIVER: Well, Your Honor,
6 I've asked a question going to the same issue. If
7 you will not allow me to lead the witness, then
8 I'm attempting to address the fact that his
9 response to the same issue, although phrased a
10 slight bit differently, was the same question. I
11 believe the answer would be appropriate to bring
12 into the deposition.
13 If the purpose of the court, from an
14 equitable principle, is to hear the testimony and
15 to hear what was testified to before to test the
16 truthfulness of what it's being tested for now, I
17 believe that the submission of the deposition for
18 that purpose should be allowed.
19 MR. DAVIS: I agree with -- thank you,
20 Your Honor. I agree with Ms. Moore. He needs to
21 ask the question as it was asked in the
22 deposition, the same argument I had earlier.
23 Thank you.
24 MR. DAN SLOTCHIVER: I'm trying to ask
25 the question that was asked at the deposition.

1 That's exactly what I was doing.
2 THE COURT: Maybe you want to rephrase
3 that. I'm going to sustain the objection.
4 MR. DAN SLOTCHIVER: Rephrase which
5 one?
6 THE COURT: If you want to ask the
7 question that was asked in the deposition.
8 MR. DAN SLOTCHIVER: Can I ask the
9 direct question from the deposition or rephrase
10 the question from the deposition?
11 THE COURT: I would rephrase it so
12 it's not a leading question.
13 BY MR. DAN SLOTCHIVER:
14 Q. Have you had the opportunity to chat
15 with your wife, the co-trustee/co-conservator,
16 about what opinions she has as to the bills that
17 were generated by the Meyer firm?
18 MR. DAVIS: Your Honor, earlier, I'd
19 just remind the court that Mr. Slotchiver made a
20 big deal out of questions that elicited a yes or
21 no response as leading questions, if I recall
22 correctly, and I believe he's asking the same type
23 of questions to Dr. Cohen. And we did object to
24 form in the deposition when the deposition was
25 taken.

1 THE COURT: I'll allow it.
2 THE WITNESS: What was the question
3 again?
4 MR. DAN SLOTCHIVER: If you could read
5 it back, please.
6 (The Court Reporter read the question
7 commencing on Page 1120, Line 14.)
8 THE WITNESS: Yes.
9 BY MR. DAN SLOTCHIVER:
10 Q. And what was your understanding?
11 A. We didn't like all the monies being
12 spent, but we didn't know what else to do about
13 it.
14 Q. Do you have an opinion as to whether
15 or not the bills from the Meyer firm were always
16 about visitation?
17 A. I believe I just mentioned that it was
18 visitation, it was all the other admissions that
19 went, it was standing, it was multiple issues
20 relating to the First Amendment, it was related to
21 child support. All these things were always on
22 the table that always had -- it was multiple
23 things going back and forth, depositions. You
24 name it, everything happened. It was the totality
25 of the bill, rather than each individual issue.

1 Q. Thank you, Dr. Cohen.
2 Now, do you recall giving a different
3 answer in your deposition?
4 A. No. I said the same thing on Page 21,
5 22, just what I just said here now.
6 Q. Well, let's look at Page 20.
7 A. All right. I'm on Page 21, but that's
8 okay.
9 Q. The question was: Do you recall, when
10 your wife testified a few hours ago -- question in
11 the deposition, not the question I asked -- that
12 the bills generated by the Meyer Olson firm were
13 for the issue of visitation?
14 Your response, sir, at that time?
15 A. It was always about visitation.
16 MR. DAVIS: Your Honor, I believe that
17 was, again, a leading question. We did object to
18 the form.
19 MR. DAN SLOTCHIVER: At this point
20 we're reading from the deposition for impeachment
21 purposes.
22 THE COURT: Yes, sir.
23 BY MR. DAN SLOTCHIVER:
24 Q. Likewise, if you'll please look at
25 Page 21. You testified a moment ago that the

1 issues dealt with things including child support.
2 Is that correct, Dr. Cohen?
3 A. Which line are we on now?
4 Q. Well, I would ask that you would --
5 instead of reading, try to determine what I'm
6 asking about. I'm asking that you would just tell
7 me --
8 A. I thought you were still reading from
9 this.
10 Q. No, I'm not. Well, we can go right to
11 it. You testified a moment ago that child support
12 was one of the issues that the fees were being
13 paid for to the MOLM firm. Do you recall
14 testifying differently in your deposition?
15 A. I don't remember anything about the
16 deposition, other than what I see in front of me.
17 Q. Well, let's look at Page 21, Line 3:
18 And that those bills did not include monies paid
19 for any claim by Dan Dorn for child support? And
20 your response, sir, I believe, is: No, but child
21 support was always on the table, since it was
22 never taken off.
23 Does that refresh your recollection?
24 A. Yes. I can see that.
25 MS. MOORE: Your Honor, I realize that

1 Mr. Slotchiver has latitude as far as using a
2 deposition transcript for purposes of impeachment,
3 but I don't believe he's allowed to simply recite
4 into the record a portion of a response, and
5 that's what he just did when he ended with the:
6 No, but child support was taken off the table,
7 since it was never taken off.
8 MR. DAN SLOTCHIVER: I'll be happy to
9 submit the entire deposition into the record, if
10 you wish, Your Honor. I'm reading in the portions
11 that I wanted to address with Dr. Cohen.
12 Certainly, in cross-examination, they have the
13 right to do whatever they want to.
14 THE COURT: Thank you. Be happy to
15 let you proffer that on your examination.
16 BY MR. DAN SLOTCHIVER:
17 Q. Dr. Cohen, do you have any familiarity
18 with -- I'll say it differently.
19 What were your concerns about your
20 ability to pay the legal fees for the litigation
21 in California from the trust funds?
22 A. Well, that we would -- it was just --
23 it seemed to be a never-ending cycling of back and
24 forth, and although the attorneys fees seemed
25 excessive, we felt that we were on a

1 merry-go-round that was going around and
2 around and around real fast, and we didn't know
3 how to get off.
4 Q. How about your concerns about the
5 authority to pay?
6 A. Oh, I knew we had the authority to pay
7 anything that was to do with Abbie. We were given
8 that by the court.
9 Q. When?
10 A. When we got the custodianship and
11 conservatorship in California, and we transferred
12 it to South Carolina.
13 Q. Do you remember testifying in your
14 deposition about concerns you had which resulted
15 in an email being sent by counsel for you to the
16 judge?
17 A. I have no idea what you're talking
18 about.
19 Q. Well, why don't we go to your
20 deposition, Page 35. If we can start, please --
21 and in order to have a full text, I'll do it
22 however you want, but I'll read the whole question
23 starting on Line 16.
24 A. You said my counsel. You didn't say
25 which counsel. We've had 15 different lawyers

1 since we left California, and I'm not sure which
2 counselor you were talking about.
3 MR. DAVIS: Your Honor, I would just
4 ask that it be put --
5 MR. DAN SLOTCHIVER: Bret Davis.
6 MR. DAVIS: I'm sorry, Your Honor. My
7 objection is to just ask he put the question in
8 the form of a direct examination-type question and
9 take it out of the form he's got in the
10 deposition.
11 MR. DAN SLOTCHIVER: Well, I believe I
12 did, Your Honor, but when he responded differently
13 from his deposition, I now have the right to go
14 back and review the deposition with him.
15 THE COURT: If you'll make sure
16 they're not initially leading questions, then if
17 you need to go back and draw out the deposition,
18 you may do so.
19 BY MR. DAN SLOTCHIVER:
20 Q. In your deposition on Page 35, I'll
21 read this to you to refresh your recollection:
22 Were you familiar -- I have referenced a document
23 earlier in the deposition, Plaintiff's Exhibit 3
24 in the deposition of Susan Cohen, which is a copy
25 of an email sent from Bret Davis to Judge Edmonds,

1 where he referenced that the parents of Abbie have
2 asked me to petition the court for an order which
3 specifically allows them to use the funds from the
4 special needs trust to pay the attorneys fees in
5 California and South Carolina through defending
6 the trust. Page 35. Do you remember making that
7 request to your counsel? Response: Yes, but I've
8 never seen this letter or this email.
9 Does that refresh your recollection?
10 A. I'm reading it, yes.
11 Q. Why did you make that request to your
12 counsel?
13 A. We were going --
14 MR. DAVIS: Objection, Your Honor. I
15 don't think that it was established in here that
16 he made that.
17 MR. DAN SLOTCHIVER: Well, Line 6 we
18 just read: Yes, but I've never seen the letter or
19 this email. But he confirmed that he made the
20 request. The question before: Do you remember
21 making this request to your counsel? Answer:
22 Yes. Page 36.
23 MR. DAVIS: I would say that you're
24 limited to that and not the whole terms of the
25 email, because he certainly didn't see that and

1 didn't write that.
2 THE COURT: Thank you. So noted.
3 BY MR. DAN SLOTCHIVER:
4 Q. I believe I had asked why you made the
5 request.
6 A. What's the question?
7 Q. Why did you make that request to
8 counsel?
9 A. To change the trust to add some
10 conformity to the language of some minimal
11 differences in wording and to basically head off
12 any litigation that could be coming away from
13 California.
14 Q. In May of 2011, what concerns, if any,
15 did you have over whether you could or could not
16 pay the fees?
17 A. I don't -- what date was this you're
18 talking about?
19 Q. The date the deposition was given, in
20 May of 2011.
21 A. I can't recall a specific -- my
22 specific mindset at that day about paying fees at
23 the moment in time that you were doing a
24 deposition at 2:30 in the afternoon. I just don't
25 remember what my mindset was that day.

1 Q. You testified a moment ago about
2 wanting to get an accord between the different
3 documents. Is that correct?
4 A. I believe I used the word conformity
5 of language.
6 Q. But you don't remember why?
7 A. Because that's what it was about, but
8 I can't tell you the exact -- I'm not legal eagle
9 enough to determine what exact words needed to be
10 changed.
11 Q. But you believed that you had the
12 authority based on the paperwork you had at that
13 point?
14 A. We thought that we did, yes.
15 Q. Can we look at Page 37, Line 11? Or
16 excuse me, Line 8. Question was: When you say
17 conflicting language between the documents, which
18 documents are you referring to? And the response
19 is: The various trusts that we have. I'm not
20 sure what we have, whether we could or could not
21 pay, who we had to go through, et cetera,
22 et cetera.
23 Does that refresh your recollection as
24 to your mindset in your fiduciary capacity when
25 the deposition was taken back in May of 2011?

1 A. I believe my mindset -- you asked me
2 about mindset about paying the bills that was
3 ongoing at that time. This doesn't reflect that.
4 It reflects an answer about the language.
5 Q. Dr. Cohen, why would you ask your
6 counsel to write this letter to the court if you
7 had no concerns?
8 A. I believe this is something he --
9 MR. DAVIS: Your Honor, I object. I
10 don't think that there's been testimony that he
11 told me to write a letter to the court. I think
12 we established there was an email to the court.
13 BY MR. DAN SLOTCHIVER:
14 Q. An email to the court. Why would you
15 ask your counsel to write correspondence to the
16 court seeking permission and clarity if you had no
17 concerns?
18 THE WITNESS: I believe -- did you
19 have an objection?
20 MR. DAVIS: I'd like to, if you can,
21 Your Honor, just go back to that part of the
22 deposition where he says that he instructed me --
23 what exactly he instructed me --
24 MR. DAN SLOTCHIVER: Your Honor, could
25 Mr. Davis please reserve his cross-examination

1 until later on?
2 MR. DAVIS: Just ask that he be clear
3 in the questions, Your Honor. Thank you.
4 THE COURT: Thank you.
5 MR. DAVIS: And I don't believe
6 there's a foundation.
7 MR. DAN SLOTCHIVER: I'll rephrase it.
8 BY MR. DAN SLOTCHIVER:
9 Q. Dr. Cohen, why would you ask your
10 counsel to make that request or why would you
11 request your counsel to contact the court to get
12 the authority if you believed that you already had
13 it?
14 A. I didn't ask him to do anything. We
15 just -- we were talking about having the language
16 changed, what he had to do to get it changed, and
17 it's not -- I don't know the exact procedure.
18 That's what he gets paid for.
19 Q. So earlier, when you testified a few
20 moments ago in your deposition, and I asked you on
21 Page 36, do you remember making that request to
22 your counsel, you said yes. Now are you
23 testifying that you did not make that request to
24 counsel?
25 A. What line are we talking about?

1 Q. Let's go back to Page 36.
2 A. I know that. What line on 36?
3 Q. Line 3.
4 A. I remember making the request --
5 Q. Thank you.
6 A. -- for the document change, but not
7 about -- I never told him to send an email to the
8 judge or anything like that. I have no idea how
9 you do that, how you change a document. I said
10 that's how -- that's what you guys get paid for.
11 Q. Well, then if we go back to Page 35
12 that we discussed a few moments ago, and 35, I
13 showed you -- the testimony was: Were you
14 familiar -- I have referenced a document earlier
15 in the deposition of -- in the deposition,
16 Plaintiff's Exhibit 3 in the deposition of Susan
17 Cohen, which is a copy of an email sent from Bret
18 Davis to Judge Edmonds where he referenced that:
19 The parents of Abbie had asked me to petition the
20 court for an order which specifically allows them
21 to use funds from the special needs trust to pay
22 for the attorneys fees in California and South
23 Carolina through defending the trust.
24 Are you now stating that you -- then I
25 asked you, following that statement: Do you

1 remember making that request to your counsel, and
2 you said yes.
3 A. Yes, I did. I was in the room, but I
4 didn't know anything about a letter or an email to
5 the judge.
6 Q. And the question that led to it, Your
7 Honor, was: Dr. Cohen, do you -- why would you
8 ask counsel to contact the court? Why would you
9 ask counsel to make contact with the court to seek
10 permission from the court if, in fact, you
11 believed that you already had that authority?
12 MR. DAVIS: Your Honor, he's already
13 asked that question, and it's already been
14 answered.
15 MR. DAN SLOTCHIVER: I did ask the
16 question, Your Honor, and when I asked the
17 question, he said he did not do that, so then we
18 went back to Page 36, wherein he looked at it
19 again and confirmed that he did, in fact, based on
20 that language in that deposition, but he denied --
21 he said he did make the request, but not for the
22 email, and then we looked at the email, and then
23 we went back to the request, and he said: Yes, I
24 did make the request. So now I'm coming back to
25 the original question, now that we've clarified

1 that and I believe refreshed his recollection and
2 asked him the exact same question I asked before,
3 for which I never received an answer.
4 MR. DAVIS: Thank you. Your Honor, I
5 believe he testified that he did not instruct me
6 to write or email the court. He answered the
7 question. That's what his testimony is.
8 MR. DAN SLOTCHIVER: He made the
9 request.
10 MR. DAVIS: I believe that that is
11 what the question was, and that's what the answer
12 was.
13 MR. DAN SLOTCHIVER: Your Honor, I'm
14 trying to understand why he would make a request,
15 and I believe I properly asked the question. I've
16 shown the foundation for it. He didn't answer it,
17 so we went back. We showed the foundation as to
18 what he did. He confirmed that he did, in fact,
19 make the request that the correspondence be made
20 to the court, and now I'm asking him -- it's not
21 asked and answered. I'm asking him why he did
22 that if he thought he had the authority. That's
23 all.
24 THE COURT: I thought you asked that
25 before, and he answered that.

1 MR. DAN SLOTCHIVER: If we go back,
2 Your Honor, he did. What he did was he said: I
3 didn't make the request. So then I said: Well,
4 then are you disagreeing with what you told me
5 earlier? So went back to Page 36 and went through
6 the whole thing again in order to confirm that he
7 did, in fact, agree that he asked Bret Davis to do
8 this, which he did. So then bringing it right
9 back around full circle, I'm asking the same
10 question, now that he has refreshed his
11 recollection as to the fact that he did, in fact,
12 ask Bret to communicate with the court.
13 THE COURT: Mr. Davis?
14 MR. DAVIS: Thank you, Your Honor.
15 And again, my mind is going in circles, just like
16 he has reiterated there with his question. The
17 witness says in his testimony that he asked to
18 reform -- asked the attorney, me, to reform the
19 trust. He did not ask me to write an email or
20 letter to the court. That's what his testimony
21 was, and that was where the questions -- that was
22 in response to the questions that Mr. Slotchiver
23 asked.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 object. That's not what the testimony shows. We

1 read it twice. He's taking it out of context. I
2 can show -- you have the document.
3 THE COURT: Let's have the court
4 reporter read back, so that we're all clear as to
5 the questions and the response from Dr. Cohen so
6 we can see.
7 If you could go back, ma'am, maybe to
8 where -- I hate for you to read it all, but so
9 that we could all be clear as to the testimony
10 from when Mr. Slotchiver first asked about the
11 email to the court, was he aware, I believe --
12 when he referred him, I think, to Page 37. No,
13 I'm sorry, Page 36, when he first asked him about
14 the email to the court. Do you have that?
15 (The Court Reporter read several lines
16 of testimony beginning on Page 1131, Line 19.)
17 THE COURT: I'm going to overrule the
18 objection and let Mr. Slotchiver ask the question.
19 MR. DAVIS: I've got one other --
20 Thank you, Your Honor.
21 I've got one other -- we know the memo
22 has been offered into evidence. I believe we all
23 are aware of that.
24 MR. DAN SLOTCHIVER: Your Honor, this
25 has gone beyond the question I asked. This is my

1 opportunity to ask questions.
2 MR. DAVIS: I have an objection, Your
3 Honor.
4 THE COURT: Yes, sir.
5 MR. DAVIS: I want to make sure that
6 we don't go into areas that are protected by
7 attorney-client privilege. He's asking --
8 MR. DAN SLOTCHIVER: I believe they
9 can object to anything that I ask that violates
10 the attorney-client privilege.
11 MR. DAVIS: I just want to make sure
12 that there's a veil over this, because he's
13 getting kind of intimate in those questions about
14 your communications with your attorney, why did
15 you do that, and I just want to make sure we know,
16 heading into that, that's very delicate.
17 THE COURT: Thank you.
18 Go ahead, Mr. Slotchiver.
19 BY MR. DAN SLOTCHIVER:
20 Q. Dr. Cohen, why did you ask your
21 counsel to contact the court if you had no
22 concerns about your authority to make payments?
23 A. I didn't ask him to contact the court.
24 We just went there to have the trust modified a
25 little bit, as I mentioned, about conformity of

1 language.
2 Q. I just want to make sure I got this
3 right, then, Dr. Cohen. Your testimony earlier
4 today twice -- we've gone back to it two times on
5 Page 36 -- you disagree with the testimony you
6 gave back in May of 11 wherein you stated that you
7 did make the request to counsel to contact the
8 court. Is that correct?
9 A. Yes, at request of your counsel.
10 Well, it says: Do you remember making that
11 request to your counsel? I'm talking -- I thought
12 you meant to reform the trust. That's what we
13 did. But I don't know anything about how you do
14 this. That's why these guys go to law school.
15 Q. Dr. Cohen, the reference that we have
16 discussed in this action -- and I want to make
17 sure I understand this. Let's read it together,
18 and I'm curious how it is that you thought we were
19 talking about a reformation action in the context
20 of the questions that were being asked.
21 Actually, I'm not going to ask it. I
22 think I've asked it enough. I'll leave it alone.
23 THE COURT: Thank you.
24 BY MR. DAN SLOTCHIVER:
25 Q. What concern did you have, Dr. Cohen,

1 about the fact that even after your counsel wrote
2 the letter to the judge, you continued to
3 authorize the expenditure of over $500,000 in
4 legal fees?
5 A. Because we had the authority to do so.
6 Q. Without the authority, would you have
7 done it?
8 A. Without the authority, we couldn't
9 have done it.
10 May I change -- may I say something
11 different before you ask me another question?
12 Q. Sure.
13 A. The fact that we didn't have -- that
14 we didn't have authority never really crossed our
15 mind, because we knew that we did.
16 Q. Do you agree that you were aware that
17 there were issues as to whether or not you could
18 make payment without court approval?
19 A. We could not make payment to an
20 outside party that didn't have anything to do with
21 Abbie without a court approval, but that always
22 had to be for Abbie's benefit.
23 Q. I'm going to ask you -- was it more
24 about Abbie's benefit or more about the children,
25 seeing the children?

1 A. What is it?
2 Q. Your goal.
3 A. It was -- who seeing the children, us
4 or Abbie? Are you talking about visitation or
5 grandparent visitation?
6 Q. I'll rephrase the question.
7 Did you consider the financial
8 hardship that it would do to Abbie through her
9 special needs trust if you litigated and continued
10 to litigate the issue of visitation and spend
11 money?
12 A. Finances were always a concern, but
13 Abbie was the most important thing, and getting
14 her to see her children was the most important
15 thing.
16 Q. But seeing the children was more
17 important than the money?
18 A. With parental visitation, that's Abbie
19 getting visitation, was always important to us,
20 yes.
21 Q. Regardless of the authority?
22 A. We had authority to do all this.
23 Q. Would you agree with me that at no
24 time during your deposition did you state as to
25 what the authority was that you had, other than

1 your wife told you you had it?
2 MR. DAVIS: Your Honor, I object.
3 That's a blanket question. I don't know how he
4 can answer that. He'd have to go back and
5 memorize his entire deposition.
6 THE COURT: Sustained.
7 BY MR. DAN SLOTCHIVER:
8 Q. Did you, Dr. Cohen, weigh the right of
9 Abbie to have visitation with the children against
10 her need to have funds to support her?
11 A. This is the same thing you just asked
12 me a few minutes ago in a different form, right?
13 Q. I'm sorry?
14 A. You just asked me the same question in
15 a different form, didn't you?
16 Q. I don't believe so.
17 A. Could you read the question again?
18 Q. Did you weigh -- as the fiduciary, did
19 you weigh the right for Abbie to visit with her
20 children against her need to have funds to support
21 her?
22 A. We believed that the right of Abbie to
23 have child visitation was always important,
24 but the -- to us because we felt that we had
25 authority to spend the money for her benefit.

1 Q. How far were you willing to go with
2 reference to spending her money?
3 A. We never got there. I wouldn't know.
4 Q. Would you have spent every dollar?
5 A. I can't answer that. It's a
6 hypothetical question.
7 Q. Let's take a look at your deposition,
8 please, Page 51, Line 25: Did you weigh the right
9 for her to -- go on to Page 52 -- visit with her
10 children against the need to have funds to support
11 her? Your response at that time was: She has
12 funds to support a month-to-month basis from her
13 annuity, and that's not going to go away, and if
14 we lose all the money, we lose all the money.
15 Do you remember making that statement?
16 A. Yes.
17 Q. We still can maintain. We still can
18 help her out, as long as she doesn't lose
19 Medicaid. The money was not an object. Her
20 children were.
21 Do you remember making that statement?
22 A. Yes.
23 Q. So the money, if you lost it all, that
24 was okay?
25 A. As I said, we didn't lose it all. She

1 still has money coming in every month. She has
2 money in her deposit -- her account right now, but
3 I can't tell you how much.
4 Q. You spent almost a $1,200,000 relative
5 to this litigation. Would you agree with that?
6 A. I don't know how much it was.
7 MR. DAN SLOTCHIVER: If I can have
8 just a moment, Your Honor.
9 THE WITNESS: Are you finished with
10 this?
11 MR. DAN SLOTCHIVER: Maybe.
12 BY MR. DAN SLOTCHIVER:
13 Q. You testified that you're familiar to
14 some extent with Dr. Mamelak and his opinion?
15 A. Yes.
16 Q. What can you tell me, your knowledge,
17 of his opinion?
18 A. Well, I read his -- it's quite some
19 time ago, so I can't tell you word for word what
20 he said. It was quite -- he gave the deposition
21 in 2010.
22 Q. Would it surprise you if I told you
23 there was testimony that he opined it would be
24 exceptionally unlikely, if not essentially
25 impossible, for her to regain consciousness,

1 conscious function? Is that generally consistent?
2 A. Exceptionally unlikely doesn't mean
3 impossible.
4 MR. DAVIS: Your Honor, may I --
5 BY MR. DAN SLOTCHIVER:
6 Q. The language that I read to you or the
7 question I asked of you is: It would be
8 exceptionally unlikely, if not essentially
9 impossible, for her to regain conscious function.
10 Is that consistent with what you understood from
11 the deposition or from his testimony?
12 A. You just read two different things to
13 me.
14 Q. Actually, I read one thing to you, but
15 I'm asking you if that's consistent with the
16 understanding you have from his testimony?
17 A. Well, that's what he said.
18 MR. DAVIS: Your Honor, may I make a
19 simple request?
20 THE COURT: Yes, sir.
21 MR. DAVIS: If we're going to be
22 reviewing that deposition, I would just ask that
23 while he goes through that, if he could point out
24 what page he is on, so we can respond to it.
25 THE COURT: If you could do that, sir.

1 MR. DAN SLOTCHIVER: Your Honor, I
2 will, but I was just going to look through it and
3 ask some random questions.
4 THE COURT: If you could just --
5 MR. DAN SLOTCHIVER: Right now, I'm
6 not impeaching him on anything. I'm just asking
7 him what he knew, what was consistent, what was
8 not consistent with it, but if you'd like me to do
9 it, I'll be happy to do it.
10 THE COURT: Mr. Davis just asked for a
11 page reference when you ask him based on the
12 deposition. I think that would be helpful.
13 MR. DAVIS: The last page I would like
14 to know, he just asked about.
15 THE COURT: Do you have that last
16 page, sir?
17 MR. DAN SLOTCHIVER: I can't tell you
18 right now, Your Honor. I can pull up -- certainly
19 Page 21. I can find the other page if you want to
20 give me a moment.
21 THE COURT: All right.
22 MR. DAN SLOTCHIVER: Can I do it from
23 this point forward, Your Honor?
24 THE COURT: Yes, sir, please.
25 MR. DAN SLOTCHIVER: I would reference

1 that it must have been before Page 18.
2 THE COURT: All right, prior to
3 Page 18. Thank you.
4 BY MR. DAN SLOTCHIVER:
5 Q. Are you familiar with his opinion that
6 the difference between a coma and a vegetative
7 state is simply whether the eyes are open or not?
8 Page 19.
9 A. I'm not familiar with exactly what he
10 said, because as I said, I briefly reviewed it,
11 and I just skimmed through a lot of everything.
12 Q. Did you find it important to -- or did
13 you not find it important to review what the
14 doctor had to say about the ward with whom you
15 have been entrusted to manage, to manage her
16 funds?
17 A. He hadn't seen her in four years. How
18 can he make any kind of testimony in 2010 when he
19 last saw her September 2006?
20 Q. Did you not find it important to see
21 what he had to say?
22 A. I read -- I told you I skimmed through
23 it, but I didn't read -- I was skimming various
24 things, but I didn't go through every single
25 question or every single answer.

1 Q. I understand that the first attorney
2 you had, you switched, and you got a second
3 attorney, correct?
4 A. Yes. What did it have to do with
5 Dr. Mamelak's report?
6 Q. Sorry. It's my turn to ask questions.
7 And that you weren't happy with where
8 the case was going in the first case, so you went
9 to the second case? Or excuse me. You weren't
10 happy with where the case was going with your
11 first attorney, so you got a second attorney?
12 MR. DAVIS: Your Honor, I object. I
13 don't think that's what the testimony was.
14 MR. DAN SLOTCHIVER: I'm asking a
15 question, Your Honor.
16 And I would ask again at this point to
17 be able to treat Dr. Cohen as a hostile witness.
18 The responses I'm getting are generally
19 argumentative. He has an agenda that he wants to
20 accomplish and state, and I understand that, but I
21 think we can move forward a lot quicker if I can
22 ask -- otherwise, I'll rephrase them differently,
23 but I think I should be entitled to at this point
24 ask some leading questions.
25 MR. DAVIS: Thank you. Your Honor, I

1 believe that was a leading question, and I believe
2 that they have already responded through testimony
3 that it wasn't until Mr. Dorn hired Vicki Greene
4 that they sought separate counsel. He's couching
5 it in a totally different way, which is not
6 accurate based on previous testimony.
7 THE COURT: If you'd like to rephrase
8 that question, Mr. Slotchiver. I sustain the
9 objection.
10 BY MR. DAN SLOTCHIVER:
11 Q. Dr. Cohen, you had counsel that you
12 hired as a trustee/conservator in this action
13 before the MOLM firm was hired, correct?
14 A. Yes.
15 Q. And they were released from their
16 responsibility and replaced with the MOLM firm.
17 Is that correct?
18 A. Yes.
19 Q. And is it fair to say the reason they
20 were released and replaced is because you weren't
21 happy with where the case was going?
22 A. The case didn't seem to be going
23 anywhere.
24 Q. And the Meyer firm got involved and
25 agreed to accept the case and to pursue the case

1 going after visitation?
2 A. Yes.
3 MR. DAVIS: I object, just for the
4 record. Just want to make sure we don't go any
5 further into the attorney-client privileged
6 information.
7 MR. DAN SLOTCHIVER: I don't believe
8 I've touched on the attorney-client privilege.
9 BY MR. DAN SLOTCHIVER:
10 Q. Now, down the road, you got a doctor
11 who opines things that you don't like about
12 Dr. Mamelak. Is that fair statement?
13 A. I didn't say I didn't like it or -- I
14 didn't say how I liked it or I didn't like it. I
15 said I didn't -- I just skimmed it.
16 Q. Are you familiar with his findings as
17 they relate to Abbie's ability to sense things:
18 Pain, hearing, sight?
19 A. Yes. I remember him saying that.
20 Q. And is your understanding that his
21 testimony is that she has no ability to sense
22 those things?
23 A. I believe he may have said that, but
24 my exact recollection of that is unclear.
25 Q. Do you recall, in your review of his

1 testimony, his opining that the state she's in
2 would have certain physical reactions, such as
3 smiling or grimacing or opening your eyes, that
4 are more brainstem function than they are -- or
5 that would be the result of brainstem function, as
6 opposed to cognitive ability? Do you remember
7 that?
8 A. I believe so, yes.
9 MR. DAVIS: Page numbers again, Your
10 Honor?
11 MR. DAN SLOTCHIVER: I don't even have
12 one. I'm talking off my memory.
13 MS. HEDGEPATH: Your Honor, if he's
14 going to quote from the deposition, he needs to
15 quote from the deposition and not just from
16 memory, and we need to know from where he's
17 getting this from the deposition so we can go back
18 and read.
19 MR. DAN SLOTCHIVER: I've provided the
20 deposition. I've read the deposition. They had
21 the deposition when Dr. Freeman used it. And I'm
22 using it from memory. I have it, I'm skimming it,
23 but I'm not using that for what I read right now,
24 Your Honor.
25 THE COURT: Mr. Slotchiver, if you

1 certainly refer to a certain page in the
2 deposition --
3 MR. DAN SLOTCHIVER: I'll be happy to
4 do it.
5 THE COURT: Thank you.
6 BY MR. DAN SLOTCHIVER:
7 Q. Has there been a CT scan or an MRI
8 done of Abbie in the last four years?
9 A. Yes.
10 Q. When's the last time it was done?
11 A. I believe she was in the hospital in
12 2010 following a problem with her Baclofen pump,
13 and at that time, we were having a nursing service
14 come out and fill it and reregulate it. And they
15 may have made a mistake, we're not sure, and she
16 wound up in the hospital, and while we were there,
17 she had a CAT scan. We were never really sure if
18 it was a mistake or not or what exactly happened,
19 but she recovered and went home.
20 Q. Do you know of the resume of
21 Dr. Mamelak?
22 A. He's a neurosurgeon.
23 Q. Is he a well-regarded neurosurgeon?
24 A. I really don't know anything about
25 neurosurgeons. I can't tell you, sir.

1 Q. Do you have any reason to believe that
2 he would not testify correctly?
3 A. You mean testify in his deposition or
4 testify where I'm sitting right now?
5 Q. Do you have any reason to believe that
6 he would not -- that, in giving a deposition, he
7 would lie?
8 A. No, but again, he hadn't seen Abbie in
9 four years.
10 Q. Are you, in fact, a neurosurgeon?
11 A. No.
12 Q. Do you understand that there are
13 opinions that assert that someone who receives the
14 injuries like Abbie received, if they don't
15 recover certainly within a year, they don't
16 recover?
17 A. That, I believe, is true. Apparently,
18 there are some cases that -- where people did
19 improve from PVS to minimal conscious state.
20 Rare, but if it happens to you, it's 100 percent
21 for you.
22 Q. In your capacity as a fiduciary, did
23 you ever -- let me rephrase that.
24 In your capacity as a fiduciary, what
25 prudence, if any, did you undertake in determining

1 that it was reasonable to continue -- or to spend
2 money over the visitation issue?
3 A. How do you define prudence?
4 Q. What did you do? What, if anything,
5 did you consider in making your decision?
6 A. We considered that it was important
7 for Abbie to see her children, and we wanted to --
8 we thought that would be good for her benefit.
9 Q. Do you agree that under the testimony,
10 for example, of Dr. Mamelak, that there would be
11 no benefit to Abbie?
12 A. I'm not sure I read that portion that
13 he had, but the trial was under way already, so --
14 Q. And would you agree that under the
15 finding of the court in their reliance on
16 Dr. Hays, as referenced in the order, that they
17 found no compelling evidence that Abbie would have
18 any benefit from seeing the children?
19 A. That's what the court said there.
20 Different courts have different opinions on the
21 same subject. Look at the supreme court.
22 Q. Did you consent to the issuing of the
23 final decision in the California case?
24 A. You mean the judge's order that you
25 read this morning or -- I don't know what you mean

1 by the final consent.
2 Q. Well, let's talk about this. As I
3 understand, the case in California ended because
4 the parties agreed to end it. Is that correct?
5 A. Yes.
6 Q. And in the ending of the case, it was
7 determined that there was no compelling evidence
8 that Abbie would benefit from seeing the children,
9 but there was evidence that the children would
10 benefit from seeing Abbie?
11 A. I know the judge said that, but I
12 don't know if that appeared in the final agreement
13 between the parties. I can't tell you that. Can
14 you show it to me?
15 Q. I'm just asking what your
16 understanding is right now.
17 A. Okay.
18 Q. Dr. Cohen, was the CAT scan done in
19 2010 a CAT scan of her brain?
20 A. I believe, yes. I don't know 2010.
21 Q. You stated that's the last time there
22 was a CAT scan.
23 A. I think it may have been 2009. No, it
24 was probably -- it had to be 2010, because we had
25 the -- we had the thing put in 2009, so therefore,

1 it'd have to be 2010.
2 MR. DAN SLOTCHIVER: Page 32 of the
3 Mamelak deposition.
4 THE COURT: I don't have that one.
5 MR. DAN SLOTCHIVER: I was giving the
6 reference.
7 THE COURT: Thank you.
8 BY MR. DAN SLOTCHIVER:
9 Q. Do you recall Dr. Mamelak opining that
10 in his opinion, the likelihood of Abbie regaining
11 a conscious state is not just improbable, but
12 essentially impossible?
13 A. I believe he made a statement to that,
14 but again, there are cases where he -- there are
15 case reports where people have improved from PVS
16 to MCS. He quotes it himself on Page 58.
17 Q. Dr. Cohen, in making decisions as to
18 what you would do as a fiduciary in your capacity
19 as a co-trustee/co-conservator, is it my
20 understanding that generally, your wife undertook
21 that role and had the responsibility of making
22 decisions?
23 A. We discussed things, but many things
24 happened during the day, and she took care of it.
25 I would come home, I'd ask her what happened, she

1 told me, I said agree with her, and that was it.
2 Q. For the times that you were involved
3 in the decision-making, can you tell me the
4 process you followed?
5 A. I can't recall off the top of my head.
6 Q. Do you know what process, if any, your
7 wife followed in rendering or making decisions?
8 A. Ask her.
9 Q. I'm asking you.
10 A. I don't know what her process was. I
11 can't get inside her brain.
12 Q. So as a trustee, you don't recall what
13 your process was, and you don't know what, if any,
14 process she had. Is that correct?
15 A. Can you repeat that question again?
16 Q. So in your capacity as a fiduciary,
17 you don't know what process you undertook, and you
18 don't know if she had a process, or if she did,
19 what process she undertook?
20 A. I can't think of anything right now.
21 I might add -- can I add that --
22 Q. Well, I was going to ask you,
23 Dr. Cohen, you said on Page 56 --
24 A. 58.
25 Q. Of the Mamelak deposition?

1 A. Yes.
2 Q. The one that -- I believe you -- do
3 you have a copy of that in front of you?
4 A. No. I just remembered from the top of
5 my head, because I put a bookmark on it, and I
6 remember it. I made a little notation to myself.
7 That's what it was.
8 Q. When was the last time you would have
9 looked at this document?
10 A. A while ago.
11 Q. But you remember that particular page.
12 What was the quote that you referenced?
13 A. It's on the top of the page. Do you
14 want me to show it to you?
15 Q. I'll look for it. Thank you.
16 A. I believe it's 58. Are there any case
17 reports? As I was reading before, I saw a couple
18 sentences go past. I just made that notation of
19 them.
20 MR. DAN SLOTCHIVER: Nothing further.
21 THE COURT: Mr. Davis?
22 MR. DAVIS: Thank you, Your Honor. If
23 I'm next, I believe you've given us an opportunity
24 to take a few minutes to review the Mamelak
25 deposition, and we'll come back. I'm assuming I'm

1 next in order?
2 THE COURT: Yes, sir.
3 MR. DAVIS: So give us -- how long
4 would you like to give us?
5 THE COURT: 15 minutes.
6 Dr. Cohen, I'll caution you not to
7 talk with anyone about your testimony.
8 Thank you. We'll take 15 minutes.
9 (A recess transpired from 4:34 PM to
10 5:04 PM.)
11 MR. DAVIS: Are we okay until 7:00 or
12 so tonight?
13 THE COURT: I'm good until about 8:30,
14 if we need to.
15 MR. DAN SLOTCHIVER: Your Honor, I'd
16 prefer, if we can, to work late in an effort to
17 finish Dr. Cohen, but then to start a little bit
18 later tomorrow, as Professor Freeman is coming
19 from Columbia, if that works, gives us a little
20 bit of a reprieve, if that's acceptable to you.
21 THE COURT: Ms. Moore?
22 MS. MOORE: Judge, I didn't
23 contemplate that we would work past as late as,
24 say, 8:00. I coach a volleyball team. I have not
25 made arrangements. My practice is at 8:30. It

1 didn't occur to me that we would not get finished
2 in time for me to make an 8:30 practice.
3 THE COURT: Is Dr. Cohen the last
4 witness we anticipate examining today?
5 MR. DAN SLOTCHIVER: He is, Your
6 Honor.
7 THE COURT: So we've got
8 three-and-a-half hours if -- I'm sorry. You
9 wanted to try to quit by 8:00, if possible?
10 MS. MOORE: Yes, ma'am.
11 THE COURT: So we've got three hours,
12 so we'll see if we can finish by then. We'll see
13 how far we can get.
14 MR. DAN SLOTCHIVER: And if not, we
15 can finish in the morning. I would just ask that
16 we start a little later tomorrow.
17 THE COURT: What time do you expect
18 Dr. Freeman?
19 MR. DAN SLOTCHIVER: Whatever time you
20 tell us. I would certainly like to have it start
21 at 9:30, if that would be something agreeable with
22 the court.
23 THE COURT: For him to start at 9:30?
24 MR. DAN SLOTCHIVER: Yes, Your Honor.
25 We'll start back at 9:30 with him.

1 THE COURT: But if we need to finish
2 up Dr. Cohen --
3 MR. DAN SLOTCHIVER: Then we'll come
4 earlier for Dr. Cohen, yes.
5 THE COURT: Okay. Maybe we can do
6 that. So we'll try to be finished tonight by
7 8:00.
8 MR. DAVIS: Your Honor, one other
9 thing, we've got other witnesses as well, so I
10 wondered -- I guess at the conclusion of today,
11 we'll talk about witnesses for tomorrow other than
12 Mr. Freeman, how we can arrange that, because
13 we've got schedules to kind of coordinate. We can
14 do it now, or we can do it after we --
15 THE COURT: Well, let's go forward
16 now, and maybe we can finish with Dr. Cohen this
17 evening. If not, we'll finish him up in the
18 morning. Maybe if we could have Professor Freeman
19 available by 9:30.
20 MR. DAN SLOTCHIVER: That will be
21 great, Your Honor. Thank you.
22 THE COURT: And then we'll go from
23 there.
24 Mr. Davis?
25 MR. DAVIS: May it please the court?

1 THE COURT: Yes, sir.
2 MR. DAVIS: And I will say I'm going
3 to address some things that may have already been
4 addressed, but I think it's important to build a
5 foundation that I need to lay.
6 CROSS-EXAMINATION
7 BY MR. DAVIS:
8 Q. Dr. Cohen, would you please state your
9 full name for the record?
10 A. Paul Cohen.
11 Q. What is your relationship to Abbie
12 Dorn?
13 A. I'm her father.
14 Q. What is your profession?
15 A. I'm a physician.
16 Q. And where did you attend undergraduate
17 and medical school?
18 A. You mean the city, or the name of the
19 college, or what?
20 Q. Name of the college.
21 A. Franklin & Marshall College in
22 Lancaster, Pennsylvania.
23 Q. And where did you attend medical
24 school?
25 A. Jefferson Medical College in

1 Philadelphia, Pennsylvania.
2 Q. What are your professional
3 designations and licenses?
4 A. I have a license in South Carolina,
5 and I work as a primary care doctor, mostly doing
6 senior citizen medicine, but other people, as
7 well, in Little River Medical Center, in Little
8 River.
9 Q. Are you an internal medicine doctor,
10 or is there some other kind of specialty?
11 A. I'm board certified in internal
12 medicine, board certified in pulmonary medicine,
13 critical care.
14 Q. You're board certified in critical
15 care?
16 A. Well, strike that. That was only a
17 ten-year -- that lapsed, and I retired it, and I
18 never took any recert, but the pulmonary boards
19 and the internal medicine boards are granted in
20 perpetuity once you take the exam.
21 Q. Do you have particular previous
22 education in critical care?
23 A. Well, part of your training, yes.
24 Q. On occasion, do you medically treat
25 your daughter Abbie?

1 A. Very rarely, very rarely. I'm not
2 really her doctor.
3 Q. Is it safe to say that you do, in
4 fact, on occasion, treat Abbie?
5 A. Well, the only thing I can think of,
6 recently, she had an ear infection. I gave her
7 some prescription ear drops. That's about it.
8 Q. Can you briefly -- I emphasize
9 briefly, because this court has heard it a number
10 of times, but briefly explain -- and you may not
11 be able to. Briefly explain to the court what
12 happened to your daughter Abbie in her accident.
13 A. Well, I was not there, and all the
14 stuff that I got was from her husband Dan.
15 Recently reviewed her malpractice lawyer's
16 Website, which is still up, even though he's now a
17 judge, to refresh some of the times involved. And
18 I don't know how far back you want me to go.
19 Anyway, she delivered triplets. I
20 think the last baby came out about 10:00 at night,
21 and there was a problem and required extra
22 delivery efforts. I think they used forceps.
23 They used a suction device on the top of his head,
24 and finally came out. The shoulder got stuck,
25 apparently -- it's called shoulder dystocia -- and

1 finally got him out.
2 And I believe that she went to -- they
3 recovered her in the delivery suite 'til about
4 midnight, and then she went to postpartum floor,
5 and then she subsequently -- I don't know how much
6 detail you want me to go into.
7 Q. A little less detail than that,
8 Dr. Cohen.
9 A. Well, she was attended by a part-time
10 nurse who wasn't a hospital employee, which is
11 important to the malpractice case, because she
12 obviously didn't know what she was doing.
13 Anyways, Abbie dropped her blood
14 pressure at 2:30 in the morning, very low. She
15 was noted to be -- her skin was cold and clammy,
16 means she was cold and kind of sweaty. Means
17 different things, but most often, biggest
18 complication after delivery, especially after this
19 kind of delivery, would be hemorrhage. Blood
20 pressure was really low. Nurse called the intern,
21 first-year resident, same thing, and I think two
22 of them may have come.
23 MR. DAN SLOTCHIVER: Your Honor, I
24 want to allow Dr. Cohen to continue with the
25 testimony, and I don't want to object to it, but I

1 want to make sure that by not objecting to him
2 testifying as to some hearsay evidence, that I'm
3 not, by any manner, waiving that right to object
4 to it in the future.
5 At other points in the trial, I've
6 been told that my failure should be an excuse, and
7 I want to make sure I'm not waiving it. If I am
8 waiving that in some capacity, then I would place
9 an objection on the record, but if not, I think
10 the purposes of talking about his understanding of
11 it, I certainly have no objection.
12 THE COURT: Thank you.
13 MR. DAN SLOTCHIVER: Is that fair
14 enough, Judge?
15 THE COURT: I have no objections to
16 that.
17 Anyone else have an objection?
18 MS. MOORE: No.
19 THE COURT: Thank you.
20 BY MR. DAVIS:
21 Q. Dr. Cohen --
22 A. Anyway, she dropped her blood
23 pressure, and the doctor came to see her, brought
24 her some IV fluids. Blood pressure went up a
25 little bit, and really nothing was done after

1 that. Doctor never came back. The lab test was
2 ordered. Apparently, the lab tech didn't come, or
3 came very late, even though the order was stat,
4 which means immediate emergency, and she -- about
5 6:00 in the morning, another doctor came in and
6 found Abbie not breathing, and she rapidly had a
7 cardiac arrest after that. There's more.
8 Q. I believe that's enough for what I was
9 trying to accomplish, Dr. Cohen.
10 Where was she located when the
11 accident happened?
12 A. Cedars-Sinai Hospital, in Beverly
13 Hills, California.
14 Q. Was there a medical malpractice action
15 that followed?
16 A. Yes.
17 Q. And who brought that action?
18 A. Dan and Abbie.
19 Q. As a result of that action, was an
20 award obtained?
21 A. Yes.
22 Q. Was part of that award given or
23 granted to Dan Dorn individually?
24 A. Yes.
25 Q. And do you have an idea of how much of

1 that award went to Dan Dorn?
2 A. I think he got around 6- or $700,000,
3 but I'm not exactly sure. It was in that range.
4 Q. So Dan Dorn personally received 6- or
5 $700,000?
6 A. I really don't know exactly.
7 MR. DAN SLOTCHIVER: Your Honor, I
8 don't understand the relevancy as to what amount,
9 if any, my client received from it. I'm not sure
10 how it pertains to this hearing.
11 MR. DAVIS: Your Honor, I'm trying to
12 lay a foundation of how we got where we are.
13 MR. DAN SLOTCHIVER: Well, your Honor,
14 the foundation as far as how Abbie received -- how
15 the monies were received on behalf of Abbie and
16 flowed into the trust, I have no objection to
17 that, but the foundation to where else other
18 monies would have gone, it's not relevant. It's
19 not any more relevant how much money he would have
20 received, how much money his children received,
21 how much money the lawyers would have received.
22 What's relevant is that money came into the trust,
23 and I would object to any other testimony separate
24 from that.
25 MR. DAVIS: Thank you, Your Honor.

1 And I will again remind the court this is a
2 terrible case. The thing with -- the situation
3 with Abbie has been very litigious. We've got all
4 kind of actions in California and all kind of
5 actions here. Part of our argument is that Dan
6 Dorn has some ulterior motives.
7 MR. DAN SLOTCHIVER: Your Honor, this
8 is not -- I object to this. It has not been
9 affirmatively pled that we have any kind of
10 ulterior motive involved, and I don't believe it's
11 proper for them at this point to assert this,
12 especially to assert it through counsel, who is
13 now testifying that he has some outside theory.
14 It's not before the court.
15 MR. DAVIS: Your Honor, again, I would
16 like to lay a foundation for how we got where we
17 are, and I think the med mal action has been
18 discussed in detail, a little bit more detail
19 about the actual award, who received it, how much
20 went in a trust, how much went to an annuity, is
21 all within the purview of what we've been
22 discussing the whole -- the last two weeks.
23 THE COURT: I'll allow those questions
24 with respect to the medical malpractice action and
25 what happened as far as that action.

1 MR. DAN SLOTCHIVER: Thank you, Your
2 Honor.
3 BY MR. DAVIS:
4 Q. Dr. Cohen, again, are you saying that
5 Dan Dorn personally received 6- or $700,000?
6 A. Something like that. I really can't
7 be sure, but it was well into the six-figure
8 region.
9 Q. Did the children, who we all -- in
10 this courtroom, who we all love, of course, did
11 the children receive part of the award also?
12 A. I believe they got some sort of an
13 annuity, but I can't -- I can't be sure exactly
14 how much it is.
15 Q. But they did receive a portion of the
16 award also?
17 A. Yes.
18 Q. And then Abbie received a portion of
19 the award?
20 A. Yes.
21 Q. Part in cash to go into the Abbie Dorn
22 Special Needs Trust?
23 A. Yes.
24 Q. And part to purchase an annuity for
25 her life?

1 A. Yes.
2 Q. And when she passes away when God
3 calls her, does the annuity stop?
4 A. Yes.
5 Q. Thank you, Dr. Cohen.
6 Let's explain for a moment the marital
7 action between Dan Dorn and Abbie Dorn. Can you
8 explain how that marital action began, the
9 genesis? When did it -- when did the idea of the
10 marital action begin?
11 A. Dan called us on the anniversary of
12 the children's birthday, also the -- actually, I
13 take that back. He called us on the day of
14 Abbie's accident, which is a few hours after the
15 kids were born. So technically, it would have
16 happened the next day. I think it was June 21st.
17 And he called Susan and he called me
18 independently. I don't know where Susan was. She
19 took the call. We were staying in Bakersfield at
20 the time. I was on the freeway, going over the
21 mountains north of LA County, an area called The
22 Grapevine, which is a really curvy road on
23 Interstate 5.
24 Q. Let me streamline, if I can,
25 Dr. Cohen. What I'm looking for is when did the

1 idea for the marital action take place with regard
2 to how long after the accident?
3 A. I said he called us that he wanted --
4 he wanted to -- he wanted a -- I don't know how he
5 phrased it. It's been years. But he said he
6 wanted to move on, he wanted to get married again,
7 or words to that effect -- I was driving the car,
8 so I couldn't take this down verbatim -- and he
9 wanted a divorce.
10 Q. When was that time-wise?
11 A. June 21st, 2007. It was a Thursday
12 afternoon around 5:00 PM.
13 Q. Was it one year from the date of the
14 accident?
15 A. Yes.
16 Q. Was it one year to the day?
17 A. Yes.
18 Q. Is there a particular correlation with
19 any kind of religious law for waiting one year
20 from the day of something to obtain a divorce?
21 A. I don't believe so.
22 Q. It just happened to be one year?
23 A. You'll have to ask him why he did it.
24 I have no idea.
25 Q. So is it fair to say that it was Dan

1 Dorn's idea to dissolve the marriage?
2 A. He brought it up.
3 Q. Did you believe that as -- let me ask
4 you this: Were you appointed -- why were you
5 appointed as conservator or co-conservator in
6 California?
7 A. Well, at that point, Dan wasn't
8 visiting very often with the kids, and we were
9 paying for everything at the Centre for Neuro
10 Skills. And several weeks after the phone call,
11 Susan said: We have to go home. We have to go
12 back to Myrtle Beach.
13 And so at that point, we -- I know she
14 contacted a lawyer in Bakersfield who was -- he
15 seemed nice, but he didn't want to do anything,
16 and then she contacted Mr. Michelson, who is an
17 attorney in LA.
18 MR. DAN SLOTCHIVER: Your Honor, I
19 would object to his testimony as to what his wife
20 did. I believe he can testify as to what he did.
21 MR. DAVIS: That's fine, Your Honor.
22 I want to streamline it as well, so no problem.
23 BY MR. DAVIS:
24 Q. What I was getting at, Dr. Cohen, were
25 you appointed as conservator with your wife with

1 an intended purpose to pursue the dissolution of
2 marriage action?
3 A. No. We brought it to bring her back
4 to -- initially to bring her back to South
5 Carolina. That was our first intention. We had
6 to do that. We couldn't take her back without
7 anything. And we were also asked to delay it for
8 a little bit as well.
9 Q. Let me move into the -- you were
10 appointed in -- first let me ask you: You were
11 appointed in California as a co-conservator,
12 correct?
13 A. Yes.
14 Q. And there was an order by the
15 California court that's been entered into evidence
16 as Petitioner's No. 101.
17 MR. DAVIS: Your Honor, may I
18 approach?
19 THE COURT: Yes, sir.
20 BY MR. DAVIS:
21 Q. Dr. Cohen, I'm going to hand you
22 Petitioner's Exhibit -- Plaintiff's Exhibit 101.
23 For the record, are you on Attachment 3-D, which
24 on the bottom references Page 2?
25 A. Page 2.

1 Q. Dr. Cohen, as you know, there is a --
2 there was a marital action in California brought
3 which is the subject of this action here. There
4 have been two questions: One, whether you had
5 authority on behalf of Abbie to bring that action
6 and then also whether you acted reasonably in
7 hiring and paying attorneys in California to
8 handle that action for you, or for Abbie.
9 Please read for the court the first
10 paragraph under Attachment 3-D.
11 A. Is this on Page 2 on this particular
12 thing?
13 Q. Right.
14 A. The first paragraph says --
15 Q. Where it says: The conservators are
16 granted.
17 A. The conservators are granted the
18 independent power under Probate Court Section
19 2591(a) to settle the pending personal injury
20 claim brought on behalf of the proposed
21 conservatee and to compromise or settle any
22 dissolution action between the proposed
23 conservatee and her husband Daniel Bernard Dorn.
24 Q. Let's go back over that last part of
25 that sentence there where it starts with:

1 Compromise or settle. Can you read that slowly,
2 please?
3 MR. DAN SLOTCHIVER: Your Honor, it's
4 been asked and answered. He's read it. There's
5 no reason to read it a second time.
6 MR. DAVIS: Your Honor, I want to
7 emphasize a certain part of this paragraph, and
8 I'd like to do it by pointing out to the court --
9 I realize it may be damaging to his case, but I
10 think we're entitled to the opportunity to do that
11 for this court.
12 MR. DAN SLOTCHIVER: It's asked and
13 answered.
14 THE COURT: Do it briefly, Mr. Davis.
15 I'll allow it.
16 MR. DAVIS: Thank you, Judge.
17 BY MR. DAVIS:
18 Q. Dr. Cohen, please read that sentence
19 slowly, because it is such a critical paragraph.
20 A. Well, it's all one sentence.
21 Q. That sentence, yes.
22 A. The whole sentence again?
23 Q. Where it says: Compromise or settle.
24 A. And to compromise or settle any --
25 Q. Stop right there. It says: Any

1 dissolution action, correct?
2 A. Well, I was just about to read: Any
3 dissolution action, yes.
4 Q. Do you believe that that included
5 everything related to the action in California
6 between your daughter Abbie and Dan Dorn?
7 A. Yes.
8 Q. Is there any confusion in your mind
9 whatsoever that it included every part of that
10 action, including the severance of the union, the
11 child custody, child support, property settlement?
12 Did that include every bit of the action in
13 California?
14 A. Yes.
15 Q. Do you believe from that, along with
16 other documents, that you had authority to hire
17 and pay attorneys to handle that action for Abbie?
18 A. Yes.
19 MR. DAN SLOTCHIVER: And Your Honor,
20 what document was that again, what exhibit number?
21 MR. DAVIS: Plaintiff's 101.
22 BY MR. DAVIS:
23 Q. Next, Dr. Cohen, I'd like for you to
24 look at Plaintiff's No. 87.
25 MR. DAVIS: Your Honor, may I

1 approach?
2 THE COURT: Yes, sir.
3 MR. DAVIS: And if I exercise too many
4 liberties, I apologize. I want to make sure I
5 follow the correct protocols.
6 THE WITNESS: Why can't you approach?
7 MR. DAVIS: I can. I just need to
8 check with the judge.
9 BY MR. DAVIS:
10 Q. Let's start here, Dr. Cohen, on
11 Paragraph 7. I'm reading Page 3, Paragraph 7.
12 A. Ready.
13 MR. DAN SLOTCHIVER: Your Honor, I'm
14 going to place an objection. He's having the
15 witness read the documents without asking a
16 question for which they'd be responsive, was there
17 language for which you based your opinion, or in
18 the case that we had asserted earlier, we
19 impeached and, therefore, would have him read the
20 documents, but just to hand him the documents and
21 say: Please read the paragraph, I don't think is
22 an appropriate question. I don't even think it's
23 a question.
24 MR. DAVIS: Your Honor, it's laying
25 the foundation for a question. Again, the overall

1 claim from Mr. Slotchiver and Mr. Kachmarsky is
2 one that the trustees were not authorized to do
3 what they did, and even if they were authored,
4 what they did was unreasonable.
5 He is a co-trustee and a
6 co-conservator, and I believe we're entitled to
7 perfect the record and show where he believes,
8 specifically, from the letters of these documents,
9 the language in these documents, that he had
10 authority, as trustee of that trust, to do what
11 was done, which they're claiming that he did
12 wrongfully.
13 MR. DAN SLOTCHIVER: I'm familiar with
14 the claim that we filed, Your Honor, but there's
15 been no question asked of the witness, other than
16 to read this portion of a document. There was no
17 question leading up to did you have a basis, did
18 you have authority, what was your reason to
19 believe that, but not would you read Paragraph 6.
20 THE COURT: I'm going to give him a
21 little bit of leeway here.
22 MR. DAN SLOTCHIVER: Thank you, Your
23 Honor.
24 MR. DAVIS: Thank you, Judge.
25 BY MR. DAVIS:

1 Q. Dr. Cohen, for the court's, for our
2 purposes, would you please read Paragraph 7, where
3 it starts: By further order?
4 A. By further order of the Superior Court
5 of California, County of Kern, Metropolitan
6 Division, the co-conservators were authorized and
7 granted independent power to employ attorneys to
8 file an action for dissolution of the marriage
9 between the ward and her husband, Daniel Bernard
10 Dorn. On January 8th, 2008, the co-conservators
11 commenced an action for dissolution of the
12 marriage pursuant to the California court order.
13 Q. Is it your understanding from this
14 language that the South Carolina court understood
15 what was going on and what had taken place in
16 California?
17 MR. DAN SLOTCHIVER: Objection, Your
18 Honor. I don't believe there's a foundation for
19 him to give an opinion as to what he believes the
20 South Carolina court believed at a given time.
21 THE COURT: Mr. Davis?
22 MR. DAVIS: I'll rephrase it
23 differently, if you'd like, Your Honor. I mean --
24 THE COURT: Would you rephrase it,
25 please?

1 BY MR. DAVIS:
2 Q. Is it clear in your mind that the
3 court order references a previous order from
4 California?
5 MR. DAN SLOTCHIVER: Your Honor, once
6 again --
7 MR. DAVIS: That's his understanding,
8 Your Honor.
9 MR. DAN SLOTCHIVER: He didn't ask him
10 his -- what is your understanding is different
11 than is it clear in your mind what the California
12 court -- what the court contemplated. I believe
13 he's trying to get Dr. Cohen to tell what the
14 court contemplated, as opposed to what Dr. Cohen
15 understood, and there is a distinction.
16 THE COURT: Rephrase that again,
17 Mr. Davis.
18 MR. DAVIS: Sure, Your Honor. I'll be
19 happy to.
20 BY MR. DAVIS:
21 Q. Dr. Cohen, do you understand --
22 MR. DAVIS: Is that what you're
23 looking for? I'm not being cute. I'm serious.
24 And I will make one quick comment, not disparaging
25 to him at all, but I'm not trying to establish

1 anything that's really that -- the earth's not
2 changing, or it's not moving off its axis. We've
3 already done this. I just want to perfect the
4 record that they believe they had authority and
5 why they want to have authority. I don't really
6 understand, quite frankly, why he continues to
7 object, but he's entitled to, so we'll move
8 forward.
9 MR. DAN SLOTCHIVER: I wouldn't object
10 if you ask him why do you believe he had
11 authority. I think that's the proper question.
12 BY MR. DAVIS:
13 Q. Did the South Carolina transfer of
14 jurisdiction order reference the California order
15 that we just talked about for granting the
16 co-conservators authority to hire and pay
17 attorneys to handle the dissolution action on
18 behalf of Abbie?
19 MR. DAN SLOTCHIVER: Once again, Your
20 Honor --
21 THE COURT: He asked him did the South
22 Carolina order reference the California order. I
23 think he can answer that.
24 MR. DAN SLOTCHIVER: I agree with that
25 part of it, but what I would object to is the part

1 that alludes to it granted certain authorities.
2 It may have referenced it, but I don't believe
3 that he can testify as to what that order granted.
4 THE COURT: I will allow it.
5 MR. DAVIS: Thank you.
6 THE WITNESS: What was the question
7 again?
8 MR. DAVIS: I have to applaud
9 Mr. Slotchiver, because he definitely runs
10 interference, and he's good at that.
11 MR. DAN SLOTCHIVER: Your Honor, I'm
12 not trying to run interference. I'm just trying
13 to follow the rules and make necessary and
14 appropriate objections as they come along.
15 THE COURT: Thank you.
16 BY MR. DAVIS:
17 Q. The question was: Did the South
18 Carolina order reference the California order
19 granting you and your wife, as co-conservators,
20 the authority to hire and pay attorneys to handle
21 the dissolution action in California between Abbie
22 Dorn and Dan Dorn?
23 A. Yes.
24 Q. Dr. Cohen, can you turn with me to
25 Page 8, Paragraph 9? And I won't ask you to read

1 the whole paragraph, out of deference to
2 Mr. Slotchiver. I don't think you necessarily
3 have to. On Paragraph 9, the third sentence down,
4 starting with: Conclusion. It's actually in the
5 middle of the sentence, but could you start there
6 and read from: Conclusion?
7 MR. DAN SLOTCHIVER: Your Honor, once
8 again, I would object. I'm not sure of the
9 purpose as to reading a document. If the question
10 is do you have a basis, do you have an opinion,
11 what is the opinion based on, looking at this
12 document, what does it do for you, but just to
13 read a document blankly without saying why you're
14 reading it or having him explain what the basis is
15 or what he understood from it, I don't believe
16 that's appropriate.
17 MR. DAVIS: Your Honor, let me tell
18 you a little anecdotal story that I think you'll
19 get a kick out of. When we get a little toy for
20 the kids from the store and bring it home, and I'm
21 trying to put it together without the
22 instructions, and I get that nice little famous
23 question from my wife: Bret, did you look at the
24 instructions? Did you read the instructions? And
25 my answer, most often, is going to be: Well,

1 Honey, I didn't need to read the instructions.
2 No, I didn't read the instructions.
3 Well, Your Honor, these are the
4 court's instructions to the co-trustees and
5 co-conservators. They read this. The court told
6 them what to do. And I certainly can ask them did
7 they rely on this, and what is their understanding
8 of the court's instructions to them, and I have no
9 idea how that could be objectionable.
10 MR. DAN SLOTCHIVER: Well, if he wants
11 to ask him what did you rely on, I don't object to
12 it, but I don't think it appropriate to tell
13 somebody: Read this paragraph, understand that
14 this is the answer, this is your instruction, and
15 then I will ask you a question that you can
16 respond to.
17 THE COURT: Mr. Davis, if you could
18 move this along. Maybe rephrase your questions
19 without asking him directly to read from the
20 order.
21 MR. DAVIS: I have a question about
22 this conclusion of these matters and what did that
23 mean to him is what I was asking him.
24 THE COURT: I think you may ask him
25 that.

1 BY MR. DAVIS:
2 Q. Dr. Cohen, in that paragraph where I
3 was asking you to read: Conclusion of these
4 matters -- actually, just before that, it says:
5 To be paid at the conclusion of these matters
6 through the attorney for Petitioners Cohen are
7 approved and constitute a proper disbursement from
8 the estate and funds of the Abbie Dorn Special
9 Needs Trust.
10 Did you understand, in your
11 instructions from the court, that these matters
12 included Paragraph 7 that you read to me just a
13 moment ago?
14 A. This Paragraph 7 or a different
15 Paragraph 7?
16 Q. Paragraph 7 is the one you read a
17 moment ago.
18 A. There are a couple different
19 Paragraph 7's.
20 Q. It's referenced on Page 3.
21 A. Oh, that Paragraph 7.
22 Q. Paragraph 7 referenced the California
23 order, or letters of conservatorship.
24 A. Yes.
25 Q. And in that paragraph, as well, it

1 says: Those to be paid. In your mind, does that
2 appear to be prospective, including fees to be
3 paid in the future?
4 A. That would be future tense, I guess,
5 so something or other.
6 Q. And where it says: Conclusion of
7 these matters, would that involve every matter
8 related to the dissolution action?
9 A. Yes.
10 Q. Again, referencing the previous
11 document, where we said any, and the first
12 paragraph of Attachment 3-D, based on that
13 language, the word any, and also based on this
14 language in Paragraph 9, where it says: To be
15 paid at the conclusion of these matters, was there
16 any --
17 A. 3-D, what is that? Is that the
18 previous one?
19 Q. Yes, what you read a minute ago.
20 Was there any question in your mind
21 whatsoever that you had authority --
22 A. No question.
23 Q. -- to hire and pay attorneys to handle
24 a marital action on behalf of Abbie?
25 A. No question.

1 Q. All right, Dr. Cohen. That is
2 assuming that you had to have prior court
3 approval.
4 Let's go back and look at the Abbie
5 Dorn Special Needs Trust, and that's
6 Petitioner's No. -- Plaintiff's No. 1.
7 Paragraph 12, Page 10, that paragraph has been the
8 topic of a lot of discussion. Based on that
9 paragraph, do you believe there to be a difference
10 between the attorney hired to represent Abbie and
11 an attorney hired to represent you and the other
12 trustee for, say, a breach of fiduciary duty?
13 A. Yes, I believe it is. There is a
14 difference between -- it's all in the last
15 sentence.
16 Q. Do you believe that you actually had
17 approval to hire attorneys for Abbie's dissolution
18 of marriage action without prior court approval?
19 A. Yes.
20 Q. But you went and -- but you had prior
21 court approval anyway?
22 A. Yes.
23 Q. So what you're saying is you don't
24 believe, under the terms of the document, that you
25 actually had to have approval to begin with, but

1 even if you did, you did have prior court
2 approval?
3 MR. DAN SLOTCHIVER: Your Honor, I
4 object. I can't follow that question. I'm
5 usually pretty good at them. It sounds like it's
6 very compound. He can lead him. It's his choice.
7 I can't follow the question.
8 MR. DAVIS: It's just a dependent
9 clause.
10 MR. DAN SLOTCHIVER: I don't object to
11 the leading. I just don't understand the
12 question.
13 THE COURT: Mr. Davis, if you might
14 could ask that again, or we could have the court
15 reporter read it back.
16 MR. DAVIS: I'll ask it again, Your
17 Honor. No problem.
18 BY MR. DAVIS:
19 Q. Do you believe there's grounds to show
20 that you actually did not need prior court
21 approval to hire and pay attorneys to have a
22 marital action in California for Abbie?
23 A. Yes.
24 Q. If it is established that you actually
25 did have to have prior court approval, do you

1 believe that you did have prior court approval?
2 A. Yes.
3 Q. Dr. Cohen, turn with me to
4 Paragraph 17. As you know, there's been a lot of
5 discussion about preserving assets for the benefit
6 of Abbie's three children --
7 A. Yes.
8 Q. -- from the trust?
9 A. Yes.
10 Q. Do you believe that that is your
11 charge as trustee, to preserve assets for the
12 benefit of the three minor children of Dan and
13 Abbie Dorn?
14 A. No.
15 Q. And do you believe that Paragraph 17
16 helps justify your understanding and belief in
17 that regard?
18 A. That's what it says, the trustees have
19 to consider solely the interest of the
20 beneficiary, Abbie Dorn.
21 Q. In your mind, the term solely pertains
22 only to Abbie. Is that correct?
23 A. That's, I guess, how the English
24 language reads.
25 Q. Back to Plaintiff's Exhibit 87. I

1 left out a point that I want to make. I want to
2 go back to it. Paragraph 16, please tell me your
3 understanding, Dr. Cohen, of the language in
4 Paragraph 16, Page 9.
5 A. Do you want me to read it out loud
6 or --
7 Q. Just read it and give me your
8 understanding of whether it was required to come
9 back to the court to get additional authority or
10 whether you believe the court gave you authority
11 and said you don't have to come back to me and get
12 authority.
13 MR. DAN SLOTCHIVER: Your Honor, I
14 think this has been asked and answered repeatedly.
15 MR. DAVIS: Your Honor, again, I'm
16 entitled to establish a record for a trustee.
17 There's two separate co-trustees. He's on the
18 stand, and these questions have not been asked of
19 him. I believe I can --
20 MR. DAN SLOTCHIVER: I believe they
21 have been asked of him, the same question
22 repeatedly.
23 THE COURT: I'm not sure he's
24 referring to Paragraph 16 on Page 9. I don't know
25 that he -- are you saying, Mr. Davis, you didn't

1 cover that in your initial questioning
2 regarding --
3 MR. DAVIS: Right, I did not.
4 MR. DAN SLOTCHIVER: So perhaps it's
5 the same question, but this time with reference to
6 Paragraph 16, as opposed to Paragraph 12 as
7 opposed to the other documents.
8 MR. DAVIS: I don't interrupt him.
9 It's a different question, Your Honor. This is
10 regarding ongoing supervision of the court. I
11 have not asked him any question about that.
12 THE COURT: I'll allow it.
13 MS. MOORE: Bret, I'm sorry. Which
14 document are we talking about?
15 MR. DAVIS: Talking about the order of
16 transfer of jurisdiction, Paragraph 16, Page 9.
17 BY MR. DAVIS:
18 Q. If you want to take a minute and read
19 that, Dr. Cohen.
20 A. Okay. I've read it.
21 Q. Do you believe the court is telling
22 you there that you've got authority to handle the
23 dissolution action, and you do not have to come
24 back to us for any additional authority?
25 A. That's what it looks like, sir.

1 MR. DAVIS: Your Honor, I'd like to
2 ask the court a question, if I may. I can't
3 recall exactly where we are on this argument of
4 reliance on counsel. I think that we are waiting
5 an order from this court regarding something
6 regarding the -- maybe refresh my memory. We've
7 got affirmative defenses waiting for a later order
8 of this court. We're waiting --
9 THE COURT: Why don't you refresh my
10 memory, Mr. Davis. Are you talking about the
11 motions that were argued yesterday?
12 MR. DAVIS: The motions that -- what's
13 today, Tuesday? Yesterday. You reserved
14 judgment, and you were going to hear -- have some
15 memorandums provided to you, and there was going
16 to be a later ruling, and I'm trying to recall
17 exactly what issues were going to be ruled on
18 later. Maybe Dan can remind me.
19 MR. DAN SLOTCHIVER: Sure. Your
20 Honor, the issues before the court were we
21 objected to any testimony which related to an
22 affirmative defense, as one was not pled, and Your
23 Honor said that you would withhold making a
24 decision on that, and you would allow testimony to
25 go forward, but not allowing testimony that would

1 be violative of that argument to go forward at
2 this time.
3 If, in fact, Your Honor decides in the
4 future that no affirmative defenses can be pled or
5 asserted, then there's no harm. If Your Honor
6 decides in the future that affirmative defenses
7 can be introduced or if Your Honor decides to
8 grant the motion made by Cohens' counsel or by
9 Lynette Hedgepath allowing the -- or amending the
10 pleadings to conform with the evidence under that
11 same argument, then you'll allow new testimony to
12 be brought at some point in the future relative to
13 that issue.
14 But at this juncture, you have -- your
15 order was that for right now, for these purposes,
16 it cannot be testified to in court. That is my
17 recollection of what happened yesterday.
18 MR. DAVIS: Of course, Your Honor,
19 we've got a defense that -- whether they relied on
20 counsel or not, so I think what we're saying is
21 we're going to brief it and then get back and --
22 is that correct?
23 THE COURT: I believe so, yes, sir.
24 BY MR. DAVIS:
25 Q. Dr. Cohen, do you believe that there

1 was -- is there any reason in your mind that you
2 would not have complete and full authority to hire
3 and pay attorneys to handle the complete marital
4 action in California? Is there anything from a
5 court that would interrupt that authority?
6 A. Not that we -- I could foresee.
7 Q. Was the marital action in California
8 all handled under one case number?
9 A. Yes.
10 Q. Was it continuous?
11 A. Well, it was -- yes, it was
12 continuous. I mean, it wasn't like every day, but
13 it was continuous. It wasn't stopped and
14 restarted again.
15 Q. And what is your understanding of
16 the -- all the matters involved in the California
17 dissolution action?
18 A. Could you clarify all the matters
19 involved? What do you mean by that?
20 Q. Property settlement, child custody,
21 those types of things. What did it include?
22 A. Well, it included the termination of
23 the marriage bond.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 don't believe that he is qualified to testify as

1 to the law in California as it applies. The
2 record speaks for itself. The documents speak for
3 themselves. They certainly put up testimony from
4 Ms. Lisa Meyer talking about it, but in his
5 capacity as a physician, I don't believe he could
6 testify as to what is contemplated within the
7 California laws pertaining to marital dissolution.
8 MR. DAVIS: I appreciate the position.
9 He referred to him as a physician, which he is,
10 Your Honor, but he's being questioned as a pure
11 trustee and co-conservator. And he hired the MOLM
12 firm to handle a marital action, and I was asking
13 what they were hired to handle, what all did that
14 include.
15 MR. DAN SLOTCHIVER: So are we to
16 understand, then, Your Honor, that he can ask him
17 what -- we can lay a foundation as to how he got
18 this information?
19 MR. DAVIS: No.
20 MR. DAN SLOTCHIVER: And then at the
21 next juncture, I'll be able to examine Dr. Cohen
22 about communications he had with counsel, assuming
23 that's where he got it from?
24 MR. DAVIS: We didn't say
25 communications with counsel, why did he retain

1 counsel. I'm not talking about any communications
2 he had with counsel. We're not opening the door,
3 Your Honor. I just simply asked what did the
4 marital action in California include.
5 THE COURT: I will allow that.
6 MR. DAVIS: That's all I was asking.
7 THE WITNESS: Well, when we hired the
8 MOLM firm, the divorce -- the separation of the
9 marital bond, or whatever you call it, had already
10 been done already, but all those other items, such
11 as custody, child support, visitation, division of
12 assets, or whatever name you call it by, had not
13 been done yet.
14 BY MR. DAVIS:
15 Q. So it's safe to say the marital
16 dissolution action in California included all
17 those items?
18 MR. DAN SLOTCHIVER: Objection, Your
19 Honor. He's being asked to form an opinion about
20 whether or not it included all those items, and
21 that certainly is a bone of contention in this
22 court.
23 MR. DAVIS: He used his discretion as
24 trustee to make that decision, Your Honor.
25 MR. DAN SLOTCHIVER: I'm not sure

1 there's any foundation with which he can make that
2 decision. I believe the document -- if you want
3 to use Dr. Cohen's words, the document speaks for
4 itself, and I believe the document does speak for
5 itself, but not in the line of the question that
6 was presented to him.
7 THE COURT: Any response, Mr. Davis?
8 MR. DAVIS: Just reminded of a few
9 Grateful Dead songs, Your Honor. It's the same
10 question. It's a simple question, what items were
11 included in the marital dissolution action, what
12 is his understanding of the items or matters that
13 were included. It's a pretty simple question.
14 THE COURT: Did he not just answer
15 that question?
16 MR. DAVIS: Okay. Well, then I
17 think -- all right.
18 BY MR. DAVIS:
19 Q. Dr. Cohen, do you understand that the
20 attorneys in California were working for Abbie and
21 not for you as trustee or conservator?
22 A. Yes.
23 Q. Dr. Cohen, I want to talk to you about
24 the action that was filed on you and Mrs. Cohen's
25 behalf in South Carolina. Plaintiff's

1 Exhibit 100. Dr. Cohen, when this action was
2 filed, did you know that you had authority to hire
3 and pay attorneys in California to handle the
4 marital action on behalf of Abbie?
5 A. Yes.
6 MR. DAN SLOTCHIVER: Objection, Your
7 Honor. I believe the question was did you know
8 that you had authority, as if he's referring to
9 him that you had authority, as opposed to what did
10 you know or what was your opinion about it.
11 MR. DAVIS: I believe it's a fair
12 question, Your Honor. If you'd like me to restate
13 it, I'll be happy to.
14 THE COURT: Please restate that.
15 BY MR. DAVIS:
16 Q. Did you understand that you had
17 authority to bring -- or to hire attorneys to
18 handle a marital action in California for Abbie?
19 A. We understood that.
20 Q. In fact, Dr. Cohen, it's actually
21 stated in this petition, correct?
22 A. You'll have to show me where it says
23 that.
24 Q. Paragraph 11, if you take a look at
25 that paragraph.

1 THE COURT: What document is that,
2 Mr. Davis? I know it's 100, but --
3 MR. DAVIS: It is the amended petition
4 to affirm payment of fees and to reform a trust.
5 As you recall, Your Honor, I filed an initial
6 petition, and then you, this court, instructed me
7 to amend it to include the South Carolina
8 Department of Health and Human Services.
9 THE COURT: Thank you.
10 MR. DAVIS: So it should be the same
11 petition with just the addition of DHHS.
12 BY MR. DAVIS:
13 Q. Paragraph 11, does it state that you
14 believed, as petitioner, that you already had
15 authority?
16 A. May I read this, please?
17 Q. Yes.
18 A. And what was the question again?
19 Q. When this petition was filed by you
20 and Mrs. Cohen, did you believe or understand that
21 you already had authority to do what was being
22 done in California on behalf of Abbie?
23 A. Yes.
24 Q. Does it clearly state that in the
25 petition?

1 A. Yes.
2 MR. DAN SLOTCHIVER: Objection to the
3 relevancy, Your Honor. The petition is one that
4 they created for him, so relying on a petition
5 that you created, I'm not sure how that shows any
6 relevant evidence to the court.
7 MR. DAVIS: Thank you, Mr. Slotchiver.
8 Your Honor, a lot of weight from
9 Mr. Dorn's side has been put in an email that I
10 sent to this court, to you, Your Honor, which is a
11 little unusual in its context to be talking about
12 it in this context, but they have proffered the
13 argument that they didn't believe that they had
14 authority to do what they did because of the
15 language in the email that I sent to you, Your
16 Honor, and I want to point out through this --
17 MR. DAN SLOTCHIVER: And I'm sorry. I
18 don't know if this is a question. I don't believe
19 this is -- this is a dissertation at this point.
20 There's no question before the court.
21 MR. DAVIS: I'm explaining my
22 questioning, why I'm questioning it, to the court.
23 THE COURT: Thank you.
24 MR. DAVIS: The point that we're
25 making through these questions, Your Honor, is

1 that this petition, the original petition, which
2 is virtually identical to this one, was filed very
3 shortly after that email, so they clearly
4 understood --
5 MR. DAN SLOTCHIVER: Your Honor, I
6 object. Now counsel is testifying as to what his
7 counsel -- as to what his client understood. I
8 don't believe counsel is able to testify as to
9 what his client understood. He can argue that at
10 the appropriate time in the proceedings, which I
11 believe would be in the closing arguments, but I
12 don't believe he can testify.
13 MR. DAVIS: He's exactly right, Your
14 Honor. The only problem is he just testified to
15 that, so I'm not testifying to that. He just said
16 it on the record.
17 THE COURT: I believe Mr. Davis is
18 trying to answer your objection that it's not
19 relevant. Wasn't that the objection you made?
20 Because if this was their pleading, they could put
21 anything in it they wanted to.
22 MR. DAN SLOTCHIVER: They could put in
23 anything they wanted to, and my objection was you
24 shouldn't be able to rely on a document you pled
25 as evidence. You can say I pled it because I

1 thought, that's certainly appropriate, and I
2 believe Dr. Cohen's done that about three
3 questions ago, but I objected to him testifying
4 that he's relying on a petition that he filed.
5 MR. DAVIS: I'm not relying on it,
6 Your Honor. I guess I am relying on it because
7 I'm the attorney of record.
8 MR. KACHMARSKY: Your Honor, I wanted
9 to note for the record that the petition was also
10 amended to include the three minor children, who
11 are not included in it in the first one, in
12 addition to the South Carolina Department of
13 Health and Human Services.
14 THE COURT: Thank you.
15 MR. DAVIS: No problem. I'm not
16 disputing that. Appreciate that, Mr. Kachmarsky.
17 THE COURT: Mr. Davis, I believe you
18 can argue that position in your closing as to --
19 MR. DAVIS: Okay. And I don't intend
20 to argue it right now, Your Honor. I'm just
21 trying to explain to the court why I'm questioning
22 the witness in this regard.
23 Your Honor, one second. I just need
24 to grab one document.
25 THE COURT: Sure.

1 MR. DAN SLOTCHIVER: May I approach to
2 see a document?
3 THE COURT: Sure.
4 MR. DAVIS: Your Honor, I would ask
5 the court to take judicial notice of one item that
6 the original summons in this matter -- or
7 actually, I may have an earlier document, as far
8 as a date that something was filed in your court
9 is all I'm asking, but let me get that document.
10 May I approach, Your Honor?
11 THE COURT: Yes, sir.
12 MR. DAVIS: I would simply ask the
13 court to take judicial notice that --
14 THE COURT: I'm sorry. You might want
15 to do that from the podium.
16 MR. DAVIS: No problem.
17 THE COURT: Thank you.
18 MR. DAVIS: I wanted to show you that,
19 Your Honor. I just ask this court to take
20 judicial notice that the original petition to
21 affirm payment of fees from special needs trust to
22 reform trust was filed on November 24th, 2010.
23 I've got a copy here.
24 MR. DAN SLOTCHIVER: The filing speaks
25 for itself, Your Honor.

1 THE COURT: Thank you. Court will
2 note that for the record.
3 BY MR. DAVIS:
4 Q. Dr. Cohen, back to the amended
5 petition that you've got in front of you. Please
6 look at Page 5 of 7 under the prayer for relief,
7 Paragraph E, and can you tell me your
8 understanding of what that paragraph is asking
9 this court to do?
10 A. Directs that no child support or fees
11 or costs incurred by Daniel Bernard Dorn be paid
12 from the trust estate.
13 Q. So it's obvious, then -- is it your
14 understanding that one of the reasons this
15 petition was filed with this court was to get a
16 ruling that child support could not be paid from
17 the Abbie Dorn Special Needs Trust?
18 A. Yes.
19 Q. Was there another reason why this
20 petition was filed with regard to, say, the
21 language regarding prior court approval of
22 trustees' attorneys?
23 A. Well, the only reason I know, which
24 would head off any potential litigation from
25 California.

1 Q. And was it also filed to clean up some
2 language?
3 MR. DAN SLOTCHIVER: Your Honor, I
4 object. The witness has testified as to the only
5 other reason I know was to head off litigation
6 with California. The question's been asked and
7 answered. For him to now ask him another
8 question, was it also filed to do this, would be
9 inappropriate.
10 MR. DAVIS: I certainly can ask him a
11 leading question.
12 MR. DAN SLOTCHIVER: It's been asked
13 and answered. He asked him. He got an answer.
14 MR. DAVIS: Your Honor, if you can
15 recall his response, he was assuming in his
16 response what was done.
17 MR. DAN SLOTCHIVER: I don't believe
18 Mr. Davis can testify as to what his client was
19 assuming in his response. I believe he asked the
20 question, he got an answer. He doesn't like the
21 answer, but he got the answer, and to ask it again
22 would be objectionable. It has been asked and
23 answered.
24 MR. DAVIS: Your Honor, I mean, we're
25 kind of getting a little -- he's already

1 testified, when Mr. Slotchiver questioned him,
2 that he wanted to shore up some language and clean
3 up some language, and it's been also offered by --
4 MR. DAN SLOTCHIVER: It's been asked
5 and answered, Your Honor.
6 THE COURT: Sustained. You need to
7 move on, Mr. Davis.
8 MR. DAVIS: I wasn't done with my
9 questions on this petition. It hasn't been asked
10 and answered, Your Honor. I've still got other
11 questions that I need to ask here on
12 cross-examination.
13 THE COURT: I understand, but that
14 particular question I think he did answer.
15 BY MR. DAVIS:
16 Q. Dr. Cohen, were you trying to shore up
17 language in the trust document when you filed this
18 petition?
19 A. Yes.
20 Q. Did anything in this petition give
21 you -- anything in this petition give you reason
22 to believe that you did not have authority to hire
23 or pay attorneys in California to handle the
24 marital action on behalf of Abbie?
25 A. No. I believe we still had all of

1 that authority, as previously granted.
2 Q. Thank you. And Dr. Cohen, did you
3 believe when you filed this petition that if Dan
4 Dorn -- rather, excuse me, if child support was
5 paid from the trust, that it could disqualify
6 Abbie from Medicaid benefits?
7 A. That's what we believed.
8 Q. Dr. Cohen, from your understanding,
9 and you were there for the whole ride, did Dan
10 Dorn's attorney in California exhibit a pattern of
11 aggressive litigation?
12 MR. DAN SLOTCHIVER: Objection, Your
13 Honor. I don't believe that this witness is
14 qualified to talk about what is a pattern of
15 aggressive litigation. I don't believe it's
16 appropriate to say you've been there for the whole
17 ride. I believe the entire question is
18 objectionable.
19 MR. DAVIS: Your Honor, he certainly
20 can formulate his own opinion. He's here in
21 person testifying about what's in his own mind.
22 There's nothing inappropriate about that at all,
23 Your Honor. That's what he believes. The court
24 can take that information and give it how much
25 credibility it wants to give it or how much weight

1 it wants to give it, but he's entitled to answer
2 the question, Your Honor. His opinion and his
3 thought and his understanding, there's nothing
4 objectionable about that at all.
5 THE COURT: It's an interesting point,
6 Your Honor, but I'm not familiar with any other
7 interaction Dr. Cohen's had with other counsel in
8 litigation. I'm not familiar with the fact that
9 he's had the experience to be able to tell the
10 difference between an aggressive lawyer and a
11 nonaggressive lawyer. I've heard the testimony
12 from Lisa Meyer today that the amount of expenses
13 that were incurred, were commenced, were pretty
14 usual in a divorce over there, nothing different,
15 so I'm not really sure how he can testify about a
16 lawyer who practices in another state being
17 aggressive.
18 MR. DAVIS: Your Honor, he's beginning
19 to testify differently than what Ms. Meyer did.
20 MR. DAN SLOTCHIVER: I'm not
21 testifying at all.
22 MR. DAVIS: She certainly said there
23 was a filing of a standing issue and a refiling of
24 the same one when another judge came. It's not
25 fair to say that it's no different than any other

1 marital action in California. That's not what she
2 testified to, so he mischaracterized the
3 testimony.
4 THE COURT: I'll allow it regarding
5 his opinion.
6 THE WITNESS: Well, just to put an
7 analogy, it felt like she was constantly throwing
8 legal money against the wall, and our attorneys
9 were constantly -- in voluminous amounts, and our
10 attorneys were basically trying to wash it off all
11 the time. It just went on and on and on and on.
12 BY MR. DAVIS:
13 Q. Can you give some specific examples of
14 things that Vicki Greene did, Dan Dorn's attorney?
15 MR. DAN SLOTCHIVER: Objection, Your
16 Honor, hearsay, relevancy. Whatever she did,
17 it's -- he is now testifying as to examples of
18 what he thinks another lawyer -- a lawyer did that
19 exacerbated the expense of an estate without
20 having any basis with which to give that opinion.
21 MR. DAVIS: Your Honor, you can
22 attribute whatever weight that you want. We're
23 not saying he's an expert witness. He's a
24 witness. He's giving information about --
25 testimony about his own mind. It's up to this

1 court, the trier of fact, to see what weight you
2 want to apply to it. It doesn't mean -- if you
3 give it a little bit of weight or a lot of weight,
4 that doesn't mean he can't testify. He certainly
5 can testify about what's in his own mind. It's
6 his testimony.
7 MR. DAN SLOTCHIVER: He's got no basis
8 to judge attorneys.
9 MR. DAVIS: Well, the court can
10 consider that.
11 MR. DAN SLOTCHIVER: He repeatedly
12 told us in direct examination, what he called:
13 I'm not, I think the word was, a legal eagle. He
14 repeatedly told us that: I can't tell you what
15 legal eagles would do. And now he's being asked
16 to give an opinion judging attorneys. I believe
17 it's entirely inappropriate.
18 MR. DAVIS: Again, Your Honor, if I
19 were offering that as expert testimony, I would
20 completely agree with Mr. Slotchiver. I'm simply
21 asking the witness to testify about his own
22 understanding, and there's absolutely nothing
23 objectionable about that.
24 MR. DAN SLOTCHIVER: And it has no
25 relevance to --

1 MR. DAVIS: You can attribute whatever
2 weight you want to attribute to it, but he's
3 certainly entitled to state his opinion. That's
4 his own opinion, his own understanding, nobody
5 else's. He's not talking about what somebody told
6 him or whatever; he's talking about what's in his
7 own mind.
8 THE COURT: I'm going to give him a
9 little bit of leeway here to go into this.
10 MR. DAN SLOTCHIVER: Thank you, Your
11 Honor.
12 THE WITNESS: Well, for example, in
13 order to show how things operated, I think the
14 first time Dan did a deposition, they walked out,
15 even though the deposition wasn't finished,
16 necessitating the expense of getting a retired
17 judge, Cohen, who's no relation to me -- it's a
18 married name, and her husband is no relation to me
19 either -- to be hired.
20 MR. DAN SLOTCHIVER: Your Honor, now
21 we're hearing testimony about what somebody else
22 did as a result of an action that Dan Dorn did in
23 order to substantiate his belief that this was
24 litigious and that the lawyer was aggressive. I
25 think we've gone far awry from the question that

1 was asked.
2 MR. DAVIS: Your Honor, you know, we
3 have to step back and say, okay, what we're trying
4 to do is to get truth and information to this
5 court, because it's critical that the court have
6 the information that it needs to make an informed
7 and complete decision in this matter. It's a very
8 difficult matter, and we certainly would ask for
9 latitude, and him providing information about the
10 context of what happened and recall that this
11 action in South Carolina is about what they did in
12 California, that they spent too much in legal
13 fees, and what we're attempting to show is that
14 the reason the fees --
15 First of all, the fees were the
16 same -- similar for both sides, based on
17 Ms. Meyer's testimony, and that the reason that
18 they were as high as they were is because it was
19 driven by Dan Dorn, and we've got proof and
20 evidence of that, Your Honor. And I know it's
21 damaging to his case, but it's important to get it
22 into this court because the court needs to know
23 that to make its decision.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 think the court's entitled to hear credible

1 evidence. I don't believe this evidence said it
2 was driven by Dan Dorn. In fact, Lisa Meyer
3 testified that the costs associated with this were
4 no different than typically are involved in a
5 visitation action.
6 THE COURT: I'm going to allow the
7 testimony. I believe he can testify based upon
8 his understanding and his knowledge of what
9 happened in the California case.
10 MR. DAN SLOTCHIVER: Thank you, Your
11 Honor.
12 MR. DAVIS: Thank you, Your Honor.
13 BY MR. DAVIS:
14 Q. Dr. Cohen, again, some examples of
15 what Vicki Greene, Dan Dorn's attorney, did in
16 California to drive the costs up?
17 A. Well, after they got the judge, I
18 believe that Ms. Greene showed up -- did not show
19 up for a deposition, one of her assistants showed
20 up, and Ms. Greene I think was there by telephone,
21 and again, she walked out on the judge who was
22 supervising -- who was mediator. I don't know
23 what you call it, being a moderator. I don't know
24 the proper word. Everybody here knows what the
25 proper word is, but I don't. And it took -- for

1 one deposition, I think it took three different
2 tries to get through one whole deposition.
3 Another time, the LA Times was
4 interested in the case, and it turned out to be a
5 First Amendment issue which necessitated more
6 money, and ex partes in California are very
7 expensive.
8 I don't think -- with the exception of
9 Dan and Susan, none of us have been here, but you
10 go, and you wait in court, and you wait -- you sit
11 on the -- outside on wooden benches and wait to be
12 called. One of the other -- the courts are
13 packed, and all your attorneys are on -- I don't
14 know how -- they're billing you for all their
15 hours sitting, and all that stuff gets real
16 expensive, and they're going to court with
17 multiple visits, and it just runs up the bill.
18 BY MR. DAVIS:
19 Q. Let me ask you this, Dr. Cohen, and I
20 have to -- and I want to be mindful of
21 Mr. Slotchiver's objections. While I disagree, I
22 think he does have some points that I need to
23 consider.
24 What actions did Vicki Greene take
25 that caused increasing costs that were ultimately

1 ruled on against her?
2 MR. DAN SLOTCHIVER: Your Honor, once
3 again, same objection. He's now testifying what
4 Vicki Greene did. I think it's inappropriate.
5 THE COURT: I'm not going to allow
6 that.
7 MR. DAVIS: I was going to corroborate
8 the information from Ms. Meyer. I don't think
9 there was anything new. Simply, Your Honor, what
10 I was looking to ask Dr. Cohen about was the First
11 Amendment argument that Ms. Meyer brought, the
12 standing that was brought by two different judges,
13 and did that contribute to the escalation of costs
14 was where I was going.
15 THE COURT: Thank you.
16 BY MR. DAVIS:
17 Q. Dr. Cohen, did you seek to resolve the
18 matters in California?
19 A. Me personally?
20 Q. You and -- did you -- were
21 you aware -- from your side, I may say, did you
22 attempt, as a co-trustee or co-conservator, to
23 resolve this matter long before it finally
24 resolved?
25 A. I believe Susan had emailed Dan and --

1 MR. DAN SLOTCHIVER: Your Honor, I
2 would object to his testimony about actions that
3 Susan Cohen did. I believe he could testify as to
4 what he did.
5 MR. DAVIS: I agree, Your Honor.
6 BY MR. DAVIS:
7 Q. Dr. Cohen, I'm looking for your
8 behavior, your activity.
9 A. I never did anything personally.
10 Q. Were you aware that there were a
11 number of attempts to resolve this matter?
12 A. Yes.
13 Q. Were those attempts rebuffed, or were
14 they received with any form of welcome?
15 A. What was that last --
16 Q. Were they rebuffed or received with
17 any form of welcome?
18 MR. DAN SLOTCHIVER: Your Honor, I'd
19 object to the hearsay. Any settlement
20 negotiations, it would not be appropriate to go
21 into them. Obviously, they weren't accepted
22 because the case wasn't resolved.
23 MR. DAVIS: Your Honor, I believe you
24 already have testimony on this, and again, one of
25 our positions is, and it's already been testified

1 to by more than one witness, is that they tried to
2 reduce the costs. They're claiming they spent too
3 much money. The conservators and trustees made
4 attempts to reduce that, and it was rebuffed.
5 MR. DAN SLOTCHIVER: I'm sorry, Your
6 Honor. Now he's making a closing argument.
7 MR. DAVIS: And I'm trying to
8 establish that through this witness, Your Honor.
9 I'm not making a closing argument. I'm trying to
10 establish those points through this witness, and
11 that's a very important part of our case, Your
12 Honor, and it's already been discussed on
13 testimony from other people.
14 THE COURT: I think your client can
15 testify as to his direct knowledge regarding that.
16 BY MR. DAVIS:
17 Q. Dr. Cohen, do you have direct
18 knowledge that the attempts to resolve this on
19 behalf of the conservators was rebuffed and not
20 welcomed?
21 A. How do you mean rebuffed?
22 Q. Not accepted.
23 A. Could that be not responded to either?
24 Q. It can mean that too.
25 A. Yes.

1 Q. One quick question: Was Dan Dorn's
2 claim for child support ever removed prior to the
3 conclusion of the California marital action?
4 A. No.
5 Q. Did you attempt to have it removed?
6 A. I'm really not sure what our attorneys
7 did in that regard, I can't tell you, but it was
8 always the 800-pound gorilla sitting in the corner
9 of the room.
10 Q. Dr. Cohen, let's talk about Abbie's
11 condition for a few minutes, her physical and
12 mental condition. Was Abbie's condition three
13 months after the accident different than her
14 condition today?
15 MR. DAN SLOTCHIVER: Your Honor, I
16 would object to it in so much as it is expert
17 testimony. Is this limited to his opinion?
18 MR. DAVIS: Your Honor, certainly,
19 it's limited to his own understanding. That's
20 what I've been saying all afternoon, Your Honor.
21 And again, I want to remind the court
22 that their argument is that Abbie is incapable of
23 receiving a benefit from visitation with her
24 children, and our job is to show this court that
25 she absolutely can receive a benefit and does, in

1 fact, receive a benefit from visitation with her
2 children, and I've got to be able to establish
3 that in direct testimony.
4 And I've got a person that's with her
5 virtually every single day, who's also the father,
6 the co-conservator, co-trustee, and is also a
7 physician. So how else can we establish that, and
8 how can this court obtain the information it needs
9 to make a decision unless I'm allowed to establish
10 that?
11 MR. DAN SLOTCHIVER: We believe, Your
12 Honor, this is res judicata. Not only has the
13 court ruled on this already, but the Cohens agreed
14 to it. And now to come into this court and to
15 argue that she's receiving a benefit, despite the
16 fact that the evidence and the order from the
17 California proceeding have already determined that
18 there was no benefit would be inappropriate.
19 Any benefit that took place after the
20 California order, we're not aware of, we don't
21 have documents to support, we're not aware of, and
22 it wouldn't be relevant to the money spent in
23 litigating the California case.
24 And Your Honor, this case that I
25 brought on behalf of my client deals with the

1 funds used to spend in litigation in the
2 California case, so I don't know how it's
3 relevant, and I'm worried that -- and I'm arguing
4 it now because I don't know how far counsel
5 intends to go with this, but to bring in witnesses
6 and to bring in testimony to talk about how her
7 condition got better, even though the California
8 court not only ruled -- oftentimes, we have a
9 ruling by a court, and you lose, people win,
10 people lose, but here, they agreed to it. There
11 was no dispute. It is absolute res judicata.
12 They should be barred from going into this matter.
13 MR. DAVIS: Your Honor, I appreciate
14 his argument, but it is completely and utterly
15 without merit. There's zero grounds for his
16 argument. There's absolutely no res judicata, and
17 there's actually conflicting information in the
18 California order about this issue. There's
19 absolutely positively nothing in California that
20 precludes us from establishing that she's made
21 improvement.
22 We've got information in Dr. Mamelak's
23 deposition, and we've got information from
24 Dr. Hays, who was the court-appointed doctor,
25 neurologist, in California who was recommended by

1 Dan Dorn's attorney, Vicki Greene. So it
2 absolutely, positively, unequivocally has not been
3 established res judicata that she does not receive
4 a benefit from visitation with her children.
5 There's been some dicta, there's been some
6 language in a statement of a case which is not
7 even actually the final judgment of the case.
8 I mean, I applaud his efforts, Your
9 Honor, because then that would help his case
10 tremendously, and I understand why he doesn't like
11 my comments and my arguments, because it's very
12 damaging to his case, but the truth has to come
13 out and that there is absolutely no res judicata
14 effect whatsoever.
15 MR. DAN SLOTCHIVER: Your Honor, the
16 court has relied on the testimony of Dr. Hays in
17 its order. And it's not that I don't like his
18 argument because they're damaging to my case; I
19 don't like his argument because the court has
20 already ruled on these issues.
21 The matter before the court, Your
22 Honor, is whether or not they were authorized to
23 make the expenditures, whether or not it was
24 reasonable to make the expenditures. The rulings
25 in California and agreed upon by the Cohens, as

1 testified not only by Susan Cohen and Paul Cohen,
2 but also as testified by Lisa Meyer, is that the
3 court made these findings. They agreed to the
4 findings. They determined that there was no
5 compelling evidence to show that Abbie had any
6 benefit, and therefore, they did not get
7 visitation.
8 THE COURT: I don't think he's
9 testified today that they agreed to those
10 findings.
11 MR. DAN SLOTCHIVER: That they
12 consented, and this was an agreement. They ended
13 it. There was no trial to conclusion. Everybody
14 agreed to the resolution.
15 THE COURT: Her testimony was that
16 there was another order ending the action.
17 MR. DAN SLOTCHIVER: She testified to
18 that, but the Cohens testified this is the order.
19 Mrs. Cohen testified this is the order they relied
20 on. And we asked her wasn't this order submitted
21 as part of the order, and she said yes.
22 Mrs. Cohen testified this is the order. Yes, it
23 says these things. We talked about it in
24 evidence.
25 MR. DAVIS: Your Honor, Ms. Meyer sat

1 right here this morning and said that she did not
2 agree with those -- some of the findings. It's
3 simply not accurate to say that the court order,
4 the statement of the case, is something that they
5 have agreed to, and we have res judicata effect.
6 From his side, I think it's a wonderful argument.
7 It's just not based in law or in fact.
8 As a matter of fact, it actually goes
9 to show prudence on behalf of the trustees, Your
10 Honor. Let me tell you why, because this matter
11 was going on and on and on and on, and they wanted
12 to get rid of this thing and resolve it, and they
13 said although we completely disagree with those,
14 and we have conflicting medical reports, let's end
15 this doggone thing, and they did. So it actually
16 shows that the trustees exercised great discretion
17 and said let's finish this thing. Please, God,
18 let's finish it. Let's get off this
19 merry-go-round. But that does not establish any
20 res judicata fact from dicta in California on what
21 we're doing here.
22 MR. DAN SLOTCHIVER: Your Honor, they
23 were out of money. They consented to this. They
24 accepted it. They agreed to it. That was it.
25 Mr. Davis expressed it himself. He

1 said we don't like it -- they didn't like it, but
2 they agreed with it, and that is the law. That is
3 the ruling of the court. You can't now come in
4 and say, well, you know, let's relitigate the
5 whole case, and let's bring all these issues back
6 in to show she's better when the court -- when
7 they allowed a court order to be entered in
8 California agreeing to end this thing, agreeing to
9 the rulings. It would be improper, and I do
10 believe it is res judicata.
11 MR. DAVIS: Your Honor, I believe that
12 is absolutely -- and I believe when you have a
13 chance to read through this, you'll agree that's
14 completely and utterly without merit. I
15 understand why he's making that argument, it would
16 really help his case, but it's completely without
17 merit.
18 If you look at the statement of case
19 that we're talking about, there's conflicting
20 information in there about what she can
21 appreciate, what she can't appreciate. And at the
22 end of the day, Your Honor, they go into this
23 great thing of detail about we can't discount a
24 disabled person, and they rely on cases that refer
25 to a disabled person, and at the end of the day,

1 it says: Abbie, by and through her conservators,
2 is granted visitation.
3 Now, why in the world would a court
4 stand up and say this person has completely --
5 cannot appreciate visitation whatsoever, but we're
6 going to grant Abbie visitation? Why would a
7 court do that?
8 MR. DAN SLOTCHIVER: I believe Your
9 Honor could read the order. What it says is we do
10 not agree that being disabled alone would put you
11 in a position where you could not have visitation.
12 They said, however, in this case, it goes beyond
13 that, and they said they've reviewed the evidence,
14 they've reviewed the videotapes, they've reviewed
15 the doctors' reports, they put particular findings
16 in the record from Dr. Hays about his decisions
17 about the fact that she does not have the
18 cognitive ability to understand or appreciate or
19 know people are there, that that part of the brain
20 isn't there, and they say that they cannot find
21 any compelling evidence to show that Abbie would
22 benefit from the children; however, they believe
23 the children would benefit from seeing Abbie, and
24 therefore, with reference to this action, they
25 granted limited visitation.

1 Then they go through the parameters of
2 that limited visitation with reference to the
3 restrictions on Susan Cohen with reference to the
4 limited amount of visitation through Skype of
5 Dr. Cohen with reference to the requirement that
6 Dan Dorn bring the children to Myrtle Beach. It
7 even goes further into the evidence that when he
8 brings them to Myrtle Beach, what the guards are,
9 what can be done, what can be said.
10 But Your Honor, this is -- the
11 difference in the case today and when it was filed
12 is that when it was filed, there were two separate
13 actions. Neither had been resolved. If the
14 action had been tried to conclusion, and they
15 lost, and it was appealed, and it went to the
16 supreme court, and they finalized the decision,
17 that's the decision. But when they settle it,
18 they've agreed to it.
19 And not only did they settle it,
20 Mrs. Cohen testified: I'm not going after the
21 Meyer firm. We're happy with the work they've
22 done. And I don't know how we're going to go into
23 all that evidence again in this case when they, by
24 their own action, agreed to it.
25 MR. DAVIS: Your Honor, again, that is

1 completely and utterly without merit. As a matter
2 of fact, the language in here, in this thing, says
3 there's no compelling evidence. It does not lay
4 down a gauntlet. It does not say there's no way
5 that you can receive a benefit. It granted
6 visitation to Abbie.
7 Their primary argument, which we've
8 heard through Mr. Kachmarsky and Mr. Slotchiver,
9 is that she's essentially dead, and she cannot
10 receive any benefit from her children. Your
11 Honor, we have a multitude of witnesses and ample
12 tons of evidence that's going to come in to prove
13 that she knows she's visiting her kids and that
14 she absolutely benefits, and we've got to get that
15 before the court, Your Honor.
16 THE COURT: Thank you, Mr. Davis.
17 MR. DAN SLOTCHIVER: I would ask the
18 court to take a few minutes, then, to review the
19 statement, because I think it would put it in
20 perspective, and it would probably help us,
21 because if we go down this road, it's going to
22 extend the trial greatly. If we don't go down
23 this road, it'll be a decision made -- either way,
24 I think the court, if you'll take a few minutes
25 and review this document that's submitted into

1 evidence, I think it would be helpful in your
2 rendering a decision.
3 MR. DAVIS: It's already into
4 evidence, Your Honor.
5 MR. DAN SLOTCHIVER: I know. That's
6 what I said, it's already in evidence.
7 THE COURT: I have reviewed the
8 statement previously when it was submitted I
9 believe by Mr. Kachmarsky --
10 MR. KACHMARSKY: Correct.
11 THE COURT: -- when he filed maybe his
12 motion to remove the trustees or maybe his motion
13 for attorneys fees.
14 MR. KACHMARSKY: I've given it to you
15 twice, actually.
16 THE COURT: Okay. And he asked me --
17 he implored me to review it before I ruled on
18 whatever was pending, and I did, and I've reviewed
19 it several times.
20 I think Mr. Slotchiver -- I'm sorry.
21 My mind just went blank. I apologize. I guess
22 it's late in the day. I'm sorry. Could not pull
23 it out.
24 I think you have an opportunity to
25 argue in closing that it's res judicata, but I

1 think until then, I'm going to let them go down
2 this road and present this testimony to the court.
3 MR. DAN SLOTCHIVER: Thank you, Your
4 Honor.
5 MR. DAVIS: All right, Your Honor.
6 I'll see if I can get back on track here.
7 THE COURT: Thank you. Might we have
8 the -- I don't know if you have that last question
9 that prompted all this.
10 THE REPORTER: That was about 40 pages
11 ago.
12 THE COURT: I'm sorry. That will take
13 too much for you to go back.
14 Are you good, Mr. Davis?
15 MR. DAVIS: Yes, I believe.
16 THE COURT: You go ahead, then.
17 MR. DAVIS: The question, I believe,
18 if I'm not mistaken, was has Abbie made
19 improvement since Dr. Mamelak last examined her.
20 MR. DAN SLOTCHIVER: And Your Honor, I
21 would just ask that there be a time frame set.
22 That's a wide-open time period, from many years
23 ago to the present. If he can give a time frame.
24 MR. DAVIS: From the date of -- and
25 I'm not trying to be cute, Your Honor, but again,

1 all of it's relevant, Your Honor, from the whole
2 time period, because they're relying on a
3 deposition from an examination in 2006, so we
4 clearly need to know from 2006 to present whether
5 there's been any improvement. All of it's
6 relevant.
7 BY MR. DAVIS:
8 Q. Dr. Cohen, has there been improvement
9 in Abbie since Dr. Mamelak's examination in 2006?
10 A. Well, I can go by what Dr. Hays
11 discovered 2010.
12 Q. Let me get into that in just a moment,
13 but let me go first as far as personally, what
14 have you -- what are you aware of?
15 A. What am I aware of?
16 Q. Are you with her on a daily basis,
17 regular basis?
18 A. Yes.
19 Q. What improvement have you personally
20 witnessed?
21 A. Well, first of all, she has -- and I
22 know this is going to be objected to, but her
23 capacity to communicate with us by blinking has
24 improved.
25 MR. DAN SLOTCHIVER: Your Honor, I

1 object. There's no basis to give this opinion.
2 MR. DAVIS: Again, Your Honor, back to
3 the same thing that we said before. I'm not
4 asking him to give an expert opinion on that.
5 Bear in mind, he's with her every day, just like
6 the mother. This is in his brain, has she made
7 improvement, can he communicate with her. He and
8 Mrs. Cohen are the only people that can give --
9 are the people that can -- not the only people,
10 but the people that can give the most complete
11 answer to that because they're with her so often.
12 And this court needs to know has she
13 made improvement and does she receive a benefit
14 from visitation, because the trust says --
15 everything goes back to the trust, and the trust
16 says it's for the sole benefit of Abbie. And they
17 have attacked the fact that they don't think that
18 she can receive a benefit, so we have to have an
19 opportunity to show this court that she does, in
20 fact, receive a benefit.
21 And he's testifying as to what's in
22 his mind. The court can take that into
23 consideration how it weighs his testimony, but
24 he's certainly entitled, like he was before, to
25 give his opinion about what's in his mind.

1 MR. DAN SLOTCHIVER: Your Honor, he's
2 giving expert opinion on the benefits that she's
3 receiving or, alternatively, at the same time
4 perhaps, or what she herself perceives. He is not
5 an expert in this case. They had the opportunity
6 to call an expert in this case to give that
7 testimony. They have not done that. Once we open
8 the door to allow them to do it, they can ask him
9 anything they could ever think of and cover it by
10 saying, well, Your Honor, this is what's in his
11 mind --
12 MR. DAVIS: Exactly.
13 MR. DAN SLOTCHIVER: -- and with
14 reference to his fiduciary actions. That's what's
15 before the court. There's a distinction between
16 that and tell me about Abbie with this, tell me
17 about Abbie with this, what is your opinion about
18 this. I don't think they're the same.
19 MR. DAVIS: Your Honor, we have to
20 establish he's with her every day. The court has
21 the discretion to hear the information, and I'm
22 certain the court wants to have the information it
23 needs to make a decision. And it is pivotal as
24 far as Abbie's ability to appreciate visitation of
25 the children, and you need to know that. The

1 court needs to know that.
2 MR. DAN SLOTCHIVER: I think with the
3 limited weight that can be given to Dr. Cohen's
4 testimony in this regard, it would just as well be
5 accomplished by saying: In my opinion, she gets
6 better. She's gotten better, and she's gotten
7 better since the court date, or she's gotten
8 better since Dr. Mamelak, and she's improved.
9 Now, I think that is within the parameters of what
10 a layperson observes, but to give an opinion about
11 particular issues along the way I don't think
12 would be appropriate.
13 THE COURT: I'm going to let him give
14 his opinion as to what he's seen, what he's
15 witnessed, what he knows regarding her condition,
16 not as a medical expert, but as her father and one
17 of her caretakers and someone who's with her day
18 in and day out.
19 MR. DAVIS: Your Honor, I would also
20 ask that he be afforded the opportunity to give
21 you an opinion as a treating physician for her as
22 well, and I will call the court's attention to the
23 Probate Code, Section 627.806. It says: A
24 trustee who has special skills or expertise or is
25 named trustee in reliance upon the trustee's

1 representation that the trustee has special skills
2 or expertise shall use those special skills or
3 expertise.
4 And Your Honor, he already testified
5 that he has treated her before. Not only is he --
6 I'm not finished, Mr. Slotchiver. Not only is he
7 a co-trustee, a co-guardian, and a co-conservator,
8 he's also a parent, and he also has treated her
9 before, and he brought those special skills in as
10 a trustee. And this code, our code, our trust
11 code, says that you have to use those if you bring
12 them in from the beginning as trustee. So he is
13 certainly there. He's got a disabled child. He's
14 a medical professional. That all went into
15 consideration with him serving as trustee, so it's
16 certainly allowable, Your Honor.
17 MR. DAN SLOTCHIVER: Judge, I had a
18 feeling this is the road Mr. Davis was going down,
19 so I wrote some notes when he asked the questions
20 earlier. First, he's not listed as an expert.
21 Second, and the quote I had, and the court
22 reporter can find it, is that he asked: Did you
23 ever treat her? Rarely, if ever. Well, he said:
24 I do remember one time when I gave her some ear
25 drops recently.

1 MR. DAVIS: Antibiotics.
2 MR. DAN SLOTCHIVER: Either way, for
3 ear drops, I believe.
4 Judge, he's not a treating physician
5 for her. I don't believe it would be appropriate
6 for him to be a treating physician for his
7 daughter. He has testified he's not a treating
8 physician for her. He's testified that he is not
9 a neurosurgeon, it's outside of his expertise, and
10 he's not listed as an expert to testify for them.
11 THE COURT: Could you review that
12 section again with me, Mr. Davis, special skills
13 of a trustee?
14 MR. DAVIS: Sure, Your Honor. Do you
15 want me to hand you the book, and you can take a
16 quick look at it?
17 THE COURT: No. You can read it to
18 me. 627 --
19 MR. DAVIS: 806, trustee's skills. A
20 trustee who has special skills or expertise or is
21 named trustee in reliance upon the trustee's
22 representation that the trustee has special skills
23 or expertise shall use those special skills or
24 expertise.
25 So Your Honor, he clearly -- when

1 they're appointing trustees, they say, look, just
2 like this court would, assuming this court were in
3 this role, he says: Man, this is a difficult
4 case, you know, but it gives me some comfort
5 because --
6 MR. DAN SLOTCHIVER: I'm not aware of
7 any testimony to support this, Your Honor.
8 MR. DAVIS: One of the trustees is a
9 medical professional.
10 THE COURT: Mr. Davis, thank you.
11 Let me ask -- I think Mr. Kachmarsky,
12 were you going to voice an objection?
13 MR. KACHMARSKY: Well, I was just
14 going to say the same thing. He said that he'd
15 only like given her some ear drops or antibiotics.
16 There is some testimony in Dr. Mamelak's
17 deposition about what you would need to do in
18 order to basically verify --
19 MR. DAVIS: Your Honor, I'd object.
20 That's not appropriate. That's not part of the
21 question. Is he making an objection as far as the
22 question that I've asked? He's not in an
23 opportunity now to testify to the court or argue
24 before the court. This is a questioning session.
25 If he's got an objection, that's fine, Your Honor,

1 but he's not in a position -- it's not an
2 opportunity for him to argue any kind of case.
3 MR. KACHMARSKY: This document's in
4 the record, I mean, and we'll get into it. We can
5 get into it on cross. That's fine. But
6 basically, you know, there has to be comprehensive
7 testing for -- comprehensive neurological testing,
8 which would require an exam, MRI, CT scan, and an
9 expert to be able to make that opinion.
10 THE COURT: Thank you.
11 MR. KACHMARSKY: So I don't see where
12 he could possibly offer anything that would be of
13 use.
14 THE COURT: Anything from
15 Ms. Hedgepath or Ms. Moore?
16 MS. MOORE: Nothing.
17 MS. HEDGEPATH: No.
18 MR. DAVIS: Your Honor, I would just
19 remind the court that Mr. Kachmarsky said he
20 didn't think there was any way possible that
21 Dr. Cohen could offer anything that would be of
22 any use, yet this man is living with her virtually
23 every single day, and I would ask the court --
24 MR. KACHMARSKY: He's not saying that
25 as an expert, Your Honor. I mean, I'm not

1 discounting --
2 THE COURT: I'm going to allow
3 Dr. Cohen to testify as to Abbie's condition, what
4 he has witnessed, what he has seen, whatever
5 changes in her condition that he's seen as her
6 father, as someone who has been a caretaker for
7 her.
8 MR. DAVIS: And the special skills?
9 THE COURT: I don't think the special
10 skills, Mr. Davis. I don't think his being a
11 physician was necessarily taken into consideration
12 when he was appointed trustee. I don't think it's
13 proper to --
14 MR. DAVIS: Can I ask him that?
15 THE COURT: You can ask him that and
16 see if you can present that to the court, but
17 otherwise, I don't think we can rely upon 627.806
18 for special skills, simply because he's a
19 physician.
20 MR. DAVIS: I understand, Your Honor.
21 I appreciate that.
22 BY MR. DAVIS:
23 Q. Dr. Cohen, do you believe it to be --
24 do you believe your special skills as a physician
25 were taken into consideration when you were

1 appointed as a co-trustee for Abbie Dorn's trust?
2 MR. DAN SLOTCHIVER: Objection, Your
3 Honor. This would call for hearsay testimony, if
4 it existed. I don't believe there's any
5 foundation for him to be able to testify to it
6 without introducing hearsay testimony. I don't
7 even know the answer, but I object to the question
8 as it's been phrased.
9 MR. DAVIS: Your Honor, you said I
10 could ask the question, and I just asked the
11 question.
12 MR. DAN SLOTCHIVER: I think I still
13 have the right to object to the question.
14 THE COURT: Yes, I think he does.
15 MR. DAVIS: And he can certainly
16 testify whether --
17 THE COURT: I will allow him to
18 testify if he has any direct knowledge regarding
19 whether that was taken into consideration.
20 BY MR. DAVIS:
21 Q. Dr. Cohen, was your being a physician
22 taken into consideration, any consideration, when
23 you were appointed as cotrustee for the Abbie Dorn
24 Special Needs Trust?
25 A. I really don't know how to answer

1 that. I would like to think so, but I can't -- in
2 all honesty, I have no idea.
3 THE COURT: Thank you. So I think
4 we're not going to rely on the special skills.
5 Thank you.
6 MR. DAVIS: Your Honor, I understand.
7 BY MR. DAVIS:
8 Q. Dr. Cohen, the court has allowed you
9 to testify with regard to Abbie's improvement.
10 Can you give us some facts, what you've witnessed
11 about how much better she's gotten and what she
12 can appreciate from your own personal opinion?
13 A. When she came back from California,
14 which was approximately November -- well, it was
15 November 2007. I'm trying to do the math in my
16 head. Approximately 15 months after her accident,
17 maybe more than that. It was June of '06 to
18 November of '07. She couldn't do anything
19 responsively, but over the years, she has been
20 able to respond.
21 And it's just not a simple blinking of
22 the eye. It's not a code or anything like that.
23 When she says yes, she gives a long, unnatural
24 blink. I mean, it's obvious. Anybody with one
25 functioning eye can see this is not a normal

1 blink.
2 And let me demonstrate it for you.
3 Abbie, do you want to go back to your bed? She's
4 in her chair. Do you want to go back to bed? And
5 she says yes. It takes a while. It takes a while
6 for her to process it. Doesn't do it right away,
7 may not do it. It'll be looking like this. It's
8 obvious. No one blinks that way. It's obvious.
9 And sometimes she does it rapidly, sometimes she
10 won't do it. She is disabled and does not perform
11 like a trained seal or anything like that, but it
12 is obvious. We've been able to get that.
13 Now, obviously, a no answer, it's a
14 little harder. You get a double blink. I wish
15 she could give two long blinks simultaneously all
16 the time. Doesn't seem to work for me, but --
17 And also, again, once in a while, she
18 will vocalize unintentional -- it seems not
19 spontaneous, but an unexpected, when you don't
20 expect it, because we do ask her questions. It
21 happened last Friday night. I was reading her a
22 book, I'm under oath, and Susan was with her, and
23 she was bent over, and I said: Isn't that right,
24 Abbie? And she said -- because I heard her voice.
25 She has a much lower-pitched voice than Susan

1 does. No one -- with the exception of Dan, no
2 one's ever heard Abbie's voice. It's a much lower
3 pitch, so obviously, it's a different voice. She
4 said: Yeah. And I said to Susan: Did Abbie just
5 say yeah? And she said: Yeah, she did. She
6 said: Yeah. It was an appropriate response to a
7 question I was asking her from a book, and I
8 forget what the question was, but -- and it was an
9 appropriate response. And she doesn't do that all
10 the time, but all her caretakers have heard it as
11 well. It's not always there.
12 May I give another example? Okay.
13 This is, again, kind of off the wall, but Abbie's
14 never tolerated dirty diapers, even when she was a
15 baby. She certainly does not tolerate it now.
16 She does -- I don't know how many diapers they go
17 through a day, but she's always, always clean, and
18 her diapers are taken care of right away. She
19 never had a bed sore or anything like that.
20 But when she's with her children, and
21 she's sitting in a chair with her -- I know her
22 diapers are wet, and at the end, she's been soaked
23 sometimes when they leave if they change her. She
24 never makes a peep, never, because we've told her:
25 You cannot do this in front of your kids. You

1 cannot. And she doesn't. I mean, she's soaking
2 wet at the end, but she just -- I wouldn't say
3 holds it in. That's a bad term, because she
4 didn't hold it in, but she's been able to get hold
5 of herself and not vocalize or cry out like she
6 does when her diapers are wet or fuss.
7 And those are the two examples that I
8 can give you. There are some other things that
9 she is -- behaviors or improvements she has, but
10 we're going to leave that for our medical
11 witnesses.
12 Q. Based on your -- thank you, Dr. Cohen.
13 Based on your understanding that you just
14 testified to there, do you believe Abbie is fully
15 aware that her children are visiting when they
16 visit?
17 A. Yes, and based on her behavior, she
18 knows they are there.
19 MR. DAN SLOTCHIVER: Your Honor, I
20 object. His testimony and his understanding is
21 different than his testimony of her behavior as to
22 what she knows. He said based on her behavior,
23 she knows. I think that's objectionable.
24 MR. DAVIS: Your Honor, an opinion is
25 based on outward behavior, so his mind -- his

1 opinion about whether she's made improvement has
2 to be absolutely -- there's no other way, Your
3 Honor. It has to be based on things that Abbie
4 does. There's no other way for him to gauge
5 whether she's made improvement. So he's simply
6 testifying about what his opinion is as a witness
7 of her behavior. There's no other way for him to
8 form an opinion, Your Honor.
9 MR. DAN SLOTCHIVER: I believe he was
10 testifying as to what she knows, not his opinion.
11 BY MR. DAVIS:
12 Q. Dr. Cohen, could you phrase it --
13 THE COURT: Restrict it. Thank you.
14 MR. DAVIS: Yes, Your Honor. I
15 apologize for interrupting you.
16 BY MR. DAVIS:
17 Q. Phrase it in the form of your
18 understanding or your opinion.
19 A. It's not a matter of what she knows.
20 It's how she behaves when she is told: You need
21 to not cry out in front of the kids. You need to
22 really tighten up and not say anything. Even if
23 your diaper's wet, you need to not do anything.
24 Q. Do you believe that she knows who her
25 children are?

1 A. Yes. And we'll bring that up with our
2 expert witnesses.
3 Q. Do you believe that she knows when
4 they are visiting?
5 A. Well, obviously, because that's when
6 she knows she's on a line that she cannot cry out
7 or anything like that.
8 Q. Do you believe that she can
9 differentiate one child from the other?
10 A. We will show that from our expert
11 witness that she can.
12 Q. What is your understanding? Do you
13 believe that she can?
14 MR. DAN SLOTCHIVER: Your Honor,
15 there's no foundation to show what -- his ability
16 to tell -- if she can tell the difference between
17 one child or the other.
18 MR. DAVIS: We do have it. We do have
19 it. He's got information in his mind that we're
20 aware of that we're going to present to this court
21 that he's used to formulate an opinion in his
22 mind, so that he can tell the court what he
23 understands and what he believes, Your Honor.
24 You've already given me latitude to ask him that.
25 He's making the same objection. I'm asking him is

1 it his opinion that she can differentiate the
2 three children.
3 MR. DAN SLOTCHIVER: How can he give
4 an opinion as to her differentiating the three
5 children? I don't understand how he can possibly
6 do that. There's certainly no foundation. His
7 opinion that she's happy because the children are
8 there by the fact that she doesn't soil herself,
9 that's different. How can he say she can tell the
10 difference in which children are in front of her?
11 MR. DAVIS: Your Honor, how about if
12 they were to ask Abbie: Where's Esti? And maybe
13 she turns her head and looks at Esti. Where's
14 Reuvi? Well, maybe she turns her head and looks
15 at Reuvi. What if they change the outfits of
16 those children, and they said: Where's Esti? And
17 then she turns her head and looks at Esti.
18 Where's Reuvi, and where's Yosse, and she's able
19 to turn her --
20 MR. DAN SLOTCHIVER: Your Honor, I
21 don't think there's any evidence to support that.
22 MR. DAVIS: What if they're able to
23 see that? What if they're able to see that, Your
24 Honor?
25 THE COURT: If you want to lay -- I

1 don't know if you can lay that foundation or not,
2 but if you can lay --
3 MR. DAN SLOTCHIVER: Your Honor, when
4 the children come to visit, my client is -- I'm
5 not aware of any situation where that's ever
6 happened, and now we're just making up
7 hypotheticals to go along with it.
8 MR. DAVIS: They would be nice
9 hypotheticals, Your Honor, but the good news is
10 they're not made up, and we will certainly show
11 that, and he's said that -- I'm not testifying for
12 my client, but he's claimed that they were, and
13 I'm telling you they're not, and we're going to
14 show the court why they're not, but again --
15 THE WITNESS: If we could get it in by
16 the end of the trial.
17 MR. DAVIS: I'm asking Dr. Cohen does
18 he believe that Abbie can differentiate the three
19 children.
20 THE COURT: I'll allow that. I'll
21 allow that, Mr. Davis.
22 THE WITNESS: The answer is yes.
23 BY MR. DAVIS:
24 Q. And do you have facts to back that up?
25 A. Yes.

1 MR. DAN SLOTCHIVER: Your Honor, we
2 haven't been provided with those facts, so if it's
3 part of the defense of the case -- if it's part of
4 the defense of this case, we have not been
5 provided with that information.
6 MR. DAVIS: The trial is not over,
7 Your Honor.
8 MR. DAN SLOTCHIVER: Counsel, Your
9 Honor, we have discovery.
10 MR. DAVIS: These people that are
11 going to testify, they've been provided in
12 discovery.
13 MR. DAN SLOTCHIVER: Your Honor,
14 actually --
15 MR. DAVIS: We're on cross-examination
16 from his clients, and Your Honor instructed us to
17 go ahead and cover all our items on direct that we
18 would cover and try to cover it all at one time,
19 so there's no way. It's an impracticality to say:
20 Okay, well, Your Honor, I've got a couple of items
21 I need to hold back because I need to wait until
22 another witness comes in. Your Honor, it is part
23 of the trial, and we have full intentions of
24 showing this court that information. And he's
25 been provided with names of the people that are

1 going to provide that information.
2 MR. DAN SLOTCHIVER: Providing those
3 names does not provide evidence. If they have
4 evidence that they have, there's a difference. A
5 name is different than evidence. If they have
6 evidence, we should have seen that through the
7 discovery requests.
8 THE COURT: And you can make your
9 objection when they decide to call those
10 witnesses.
11 MR. DAN SLOTCHIVER: I will, Your
12 Honor.
13 THE COURT: Thank you.
14 BY MR. DAVIS:
15 Q. Dr. Cohen, do you believe that Abbie
16 can see and hear?
17 A. Absolutely. Dr. Hays found it in her
18 examination.
19 MR. DAN SLOTCHIVER: Objection, your
20 Honor.
21 MR. DAVIS: I understand. Would you
22 like for me to -- let me ask Dan a quick question:
23 Do you want me to go back to --
24 MR. DAN SLOTCHIVER: I'm just placing
25 an objection on the record. He's testifying as to

1 what Dr. Hays said. That would be hearsay.
2 MR. DAVIS: No problem, Your Honor.
3 Dr. Hays's report is already into evidence.
4 MR. DAN SLOTCHIVER: Absolutely.
5 MR. DAVIS: I'll be more than happy to
6 go through that report with him. I've got a few
7 other reports I'm going to go through with him in
8 a moment. I'll just hit his opinion and come back
9 to Dr. Hays's report.
10 THE COURT: Okay.
11 BY MR. DAVIS:
12 Q. Dr. Cohen, have you witnessed that
13 Abbie can see?
14 MR. DAN SLOTCHIVER: And Your Honor, I
15 object. I don't know how he can witness that
16 somebody could see.
17 MR. DAVIS: Your Honor, it's clear.
18 If you put something in front of a person, and
19 their eyes move when you're doing that --
20 THE COURT: How about I let you
21 explore this with him, and then I'll decide
22 whether it's proper.
23 MR. DAVIS: I'm trying to address
24 these objections, Your Honor.
25 THE COURT: I understand. Thank you.

1 BY MR. DAVIS:
2 Q. Dr. Cohen, can you explain to the
3 court why you believe Abbie can see?
4 A. Well, I've been reading the reports of
5 her treating physician and treating medical
6 people, and I've never performed an examination
7 myself, because it's not my -- it's not my forte,
8 but other people have, can attest to her hearing.
9 Other people can attest to her vision and other
10 things that she can do.
11 MR. KACHMARSKY: And I'm going to
12 object to that, Your Honor. There's nothing been
13 put into evidence, any medical report that says
14 what he's saying it says. It's pure hearsay.
15 THE COURT: Mr. Davis?
16 MR. DAVIS: Your Honor -- thank you,
17 Mr. Kachmarsky. Rule 803, under Subsection 4, I
18 agree. If he's testifying to what somebody said,
19 then that is hearsay, Your Honor. I agree with
20 that. However, I believe there's a hearsay
21 exception.
22 If you look on Rule 803, No. 4,
23 statements for purposes of medical diagnosis or
24 treatment. These are statements made to him.
25 He's a caretaker. It's made by the doctor about

1 treatment of Abbie. It says: Statements -- and
2 I'll read the exception: Statements made for
3 purposes of medical diagnosis or treatment
4 describing medical history or past or present
5 symptoms, pain or sensations, or the inception or
6 general character of the cause or external source
7 thereof insofar as reasonably pertinent to
8 diagnosis or treatment, provided, however, that
9 the admissibility of statements made after
10 commencement of the litigation is left to the
11 court's discretion.
12 She's been under treatment long before
13 these proceedings began, and the statements were
14 certainly made within the parameters of that
15 exclusion, Your Honor, that exception to the
16 hearsay rule.
17 MR. KACHMARSKY: And they have not
18 been provided to this court through discovery, and
19 now you want to introduce those same statements
20 through his testimony.
21 MR. DAVIS: Your Honor,
22 Mr. Kachmarsky -- and Reese, I'll have to ask
23 Mr. Boyd -- I don't believe he's requested that
24 information in discovery, if I'm not mistaken.
25 MR. KACHMARSKY: They have not been

1 provided based on the discovery that's been sent
2 to you, to anybody.
3 MR. DAVIS: Your Honor, he's raising
4 an objection based on discovery that separate
5 counsel --
6 MR. KACHMARSKY: I have the right to
7 do that, Your Honor. I relied on it.
8 MR. DAVIS: And by the way, Your
9 Honor, it has been provided in discovery. It
10 says: All treating physicians, and these
11 physicians have been treating her for a while,
12 years. So it has been provided in discovery, and
13 these are statements that were made by those
14 people that were treating her and are continuing
15 to treat her. So yes, it was provided in
16 discovery, even though Mr. Kachmarsky does not
17 have grounds to make that objection.
18 MR. DAN SLOTCHIVER: So, Your Honor,
19 it's my understanding that if you provide the name
20 of somebody without providing the correlating
21 documents, that that is complying with the
22 discovery rules under Mr. Davis's definition?
23 MR. DAVIS: We don't have documents,
24 Your Honor. We don't have documents, Your Honor.
25 MR. DAN SLOTCHIVER: Well, if there's

1 no documents here in the court, then I don't know
2 how they can rely on these statements and profess
3 them to the court at this point. There's nothing
4 to substantiate or corroborate what he is
5 attesting to.
6 MR. DAVIS: Yes, and he makes a good
7 point, Your Honor; however, our time-settled rules
8 provide that we can do it anyway, because there's
9 an exception to the hearsay rule, because they
10 treat Abbie, they take care of her, and it's a
11 statement made for medical diagnosis or treatment,
12 Your Honor, people that have -- case law and all
13 that stuff established this. It's not something I
14 just made up.
15 MR. DAN SLOTCHIVER: I believe if
16 they're going to rely on those documents, Your
17 Honor, we should have -- or rely on those
18 documents and statements, we should have been
19 provided the information.
20 THE COURT: Are you saying, Mr. Davis,
21 there are no documents, no reports?
22 MR. DAVIS: We don't have any
23 documents that we're relying on. I'm talking
24 about statements that they got from the doctor
25 about how to treat Abbie and about diagnosis, just

1 like it says in there, and it's certainly
2 allowable, and that's in the parameters of the
3 discovery that we provided.
4 MR. DAN SLOTCHIVER: Your Honor,
5 plaintiff's interrogatories: For each person
6 delegated to be a witness concerning the facts of
7 this case, set forth either a summary sufficient
8 to inform the other party of the important facts
9 known to or observed by such witness or provide a
10 copy of any written or recorded statements.
11 Now what Mr. Davis is doing is he's
12 saying, well, we gave you the name, but we don't
13 have any of the written documents, but they also,
14 I guess, haven't provided us the important
15 information relative to it. They've given us a
16 name.
17 MR. DAVIS: Your Honor, the
18 responsible -- I don't want to say that. I don't
19 want to disparage Mr. Slotchiver in any way. I'm
20 not attempting to do that. But I believe it would
21 have been prudent for Mr. Slotchiver, when he
22 received those responses to the interrogatories,
23 to then notice the depositions of the treating
24 physicians. Then he would have been able to gain
25 that information.

1 Your Honor, we did not -- I'm not
2 giving you anything that we knew ahead of time and
3 just refused to disclose. I'm simply giving you
4 an opinion of a witness based on a statement made
5 by a doctor, and he was provided that information
6 in discovery.
7 I mean, we can't -- it's not incumbent
8 on a party, Your Honor, it actually would be too
9 burdensome, to spoonfeed someone who is suing you
10 with every little iota of information that could
11 conceivably be used in a trial, because first of
12 all, the rules don't require us to do it, and
13 second of all, there's no way in the world we
14 could ever know every bit of information to
15 spoonfeed him with.
16 MR. DAN SLOTCHIVER: He seems to know
17 it right now, Your Honor.
18 MR. DAVIS: Yes, I do, because it came
19 up in the --
20 MR. DAN SLOTCHIVER: Your Honor, we
21 made the request, and I believe what's prudent, as
22 a lawyer in this state with the set of rules that
23 govern our conduct, is to rely on the fact that in
24 litigation, counsel will follow those rules.
25 As I understand what counsel,

1 Mr. Davis, wants to do at this time is to say we
2 gave you the name of an expert. We didn't tell
3 you what he was going to testify to, even though
4 you asked for it, because you should have taken
5 his deposition.
6 Well, Your Honor, it goes back to the
7 argument we had earlier today or yesterday. When
8 I send discovery, I have the right to rely on the
9 fact that counsel is going to answer it, and I
10 have the right not to be proactive, but to be
11 reactive. And if they don't provide the
12 documentation, and they come into court and they
13 provide the documentation, I believe it needs to
14 be stricken.
15 And that's exactly what he's doing
16 now. He's trying to rely on testimony of a doctor
17 who has evidence which he believes is relevant to
18 the case, even though he never provided it to us
19 pursuant to the discovery requests that we sent to
20 him quite some time ago, back in maybe 2010 --
21 January of 2011, over two years ago. Over two
22 years ago, we sent him this request, and he's
23 coming into court and telling me now about this
24 new -- about this witness and what he's going to
25 testify to as his pertinent information without

1 having provided that information to us.
2 MR. DAVIS: Your Honor, again, we have
3 to rise up 10,000 and 20- or 30,000 feet and look
4 down and say, okay, a reason has got to abound.
5 It is inconceivable, Your Honor -- and you were a
6 practicing attorney for a number of years, a very
7 good one. How can you possibly think of every --
8 I mean, there's so many things that have come up
9 during this trial that we, quite frankly, may not
10 have anticipated because some things he did, most
11 of it we did, but how can we possibly know every
12 single thing at such an early stage? Everything
13 is always evolving.
14 And this came up in the testimony of a
15 witness. I'm not trying to, and neither is
16 Mr. Boyd trying to, withhold any information. It
17 is incumbent upon the party to notice a deposition
18 and to get the information. I realize it is going
19 to be very damaging to his case when we prove that
20 Abbie can see and hear and process information,
21 but just because it's damaging to his case doesn't
22 mean we're not allowed to establish that for the
23 court.
24 MR. DAN SLOTCHIVER: Your Honor, at
25 the recent deposition that took place, Mr. Davis

1 made a comment to my co-counsel that they think
2 Abbie is doing better, and the response that he
3 made was: We haven't seen any evidence to support
4 that. Now, it's hard for me to imagine that they
5 came into this case planning to defend it with the
6 theory that they have without having known in
7 advance that they were going to assert that she
8 was better. I'm not sure what we did that
9 elicited that response, especially in light of the
10 fact that it was referenced in the opening
11 statement by counsel when they made it.
12 It's just -- we've come back to it
13 over and over and over again. The rules of
14 discovery apply, they do apply, and you've got to
15 follow discovery. It's not trial by surprise.
16 You've got to follow discovery, and they haven't
17 done it, and now they want to bring in, as I
18 understand it, a slew of witnesses to talk about
19 all the things that she has done to get better
20 without providing that information to us.
21 THE COURT: Did they provide the name
22 of the witness?
23 MR. DAN SLOTCHIVER: They provided the
24 name of the witness only, yes, Your Honor.
25 MR. DAVIS: Your Honor, you know he --

1 MR. DAN SLOTCHIVER: I don't know
2 which one they're talking about, first, but I'm
3 assuming that -- which witness are we talking
4 about?
5 MR. DAVIS: I'll get to that in one
6 second.
7 He's exhibited himself to be a very
8 fine attorney. He really has. He's brought up
9 all kind of issues, and we've argued about them
10 for days. He certainly is capable, Your Honor, of
11 noticing a deposition. They have, in my opinion,
12 attempted to leave no stone unturned; however, we
13 have discovered that apparently, there are a
14 couple stones that were left unturned.
15 And as he stood there, Your Honor, the
16 other day, was it Tuesday or Wednesday, and he
17 said: You know what, Your Honor, I'll be happy to
18 tell them who my expert witness is, but the rule
19 provides that I don't have to, and yesterday in
20 court he says there's these litigation games, so
21 he plays these litigation games, but Your Honor --
22 MR. DAN SLOTCHIVER: He's quoted me
23 more about the litigation games.
24 MR. DAVIS: But Your Honor, we are
25 certainly within the rules. He can stand up one

1 day and say: We're going to play this cat and
2 mouse game and not give you the identity of an
3 expert witness, because I've got this time period
4 plus five days, and then also stand up in court
5 and say: I play litigation games. So he's
6 clearly competent to do what he's supposed to do.
7 And then he comes back another day,
8 when he doesn't like that argument, and says:
9 Wait a minute. So you did it under the rules, but
10 you really didn't do it under the rules, so he can
11 make -- he's making opposite sides of an argument,
12 depending on what best serves him, Your Honor.
13 THE COURT: Mr. Slotchiver, what was
14 your discovery request?
15 MR. DAN SLOTCHIVER: I'm going to find
16 it right now for Your Honor. I had it just a
17 moment ago. I apologize, Your Honor.
18 MR. STEVE SLOTCHIVER: Your Honor, for
19 my clarity, can I just get the name of the witness
20 that Bret is referring to that he's going to be
21 bringing in, so I can make sure it's in accordance
22 with what he provided to us as being his expert
23 witnesses?
24 MR. DAVIS: Your Honor, at the end of
25 the day, I think we're going to --

1 THE COURT: I'm not going to make him
2 tell you right now.
3 MR. DAN SLOTCHIVER: Your Honor, the
4 question you asked, No. 3: For each person known
5 to you to be a witness concerning the facts of
6 this case, set forth a summary sufficient to
7 inform the other party of the important facts
8 known to or observed by such witness or provide a
9 copy of any written or recorded statement taken
10 from that person.
11 THE COURT: And they listed --
12 MR. DAVIS: We've listed them, and, of
13 course, they -- their medical records and all
14 their summaries and discussions with them is
15 subject to Mr. Slotchiver simply requesting it.
16 He chose not to do that.
17 MR. DAN SLOTCHIVER: Your Honor, the
18 rules of discovery don't require me to ask you to
19 comply with it. We've addressed this two times on
20 motions for sanctions for failure to comply with
21 discovery rules, and we've rehashed it over and
22 over that when I ask a question for discovery,
23 they have a duty to respond to it. The laws say
24 it's an ongoing duty to respond to it, not just
25 once at that moment. It's an ongoing duty to

1 respond to it.
2 And it's not -- you cannot defend it
3 by saying you should have taken his deposition,
4 because that's a tactical decision that lawyers
5 make in every case that we ever get involved with,
6 whose depositions are we going to take and whose
7 do we need to take and whose do we want to take.
8 And those are decisions I make in any case I've
9 done for almost 23 years. But to say that I'm
10 required to take a deposition in order to get the
11 full benefit of the discovery requests is
12 absolutely inconsistent with the rules.
13 Mr. Davis says that I'm not -- that
14 I'm choosing battles when they're convenient. In
15 reality, Your Honor, my arguments have all been
16 about discovery. Almost every argument we've had
17 in this court has been about discovery.
18 THE COURT: And how did they respond
19 to that discovery request?
20 MR. DAVIS: Do you want me to read
21 this, Your Honor?
22 THE COURT: Is that your response?
23 MR. DAVIS: Response.
24 THE COURT: Yes, sir.
25 MR. DAVIS: In further answering this

1 interrogatory which relates to who -- the one he
2 referenced a minute ago, respondents would also
3 incorporate any and all medical professionals who
4 may be referenced in the various medical and other
5 records, which have previously been provided
6 petitioner in this case or which are herewith
7 produced or may be hereafter produced by
8 respondent to the petitioner.
9 MR. DAN SLOTCHIVER: So, Your Honor,
10 my understanding of that is that I'm to take the
11 deposition of any and every medical provider
12 listed in any and every document provided to me?
13 THE COURT: Mr. Davis, can I see that
14 for a second, please?
15 MR. DAVIS: Sure, Your Honor.
16 MS. HEDGEPATH: Your Honor, for my
17 edification -- I've been listening to this -- were
18 they asked who they anticipate calling as
19 witnesses and were they asked to produce medical
20 records?
21 THE COURT: You'll have to ask
22 Mr. Slotchiver that directly.
23 THE WITNESS: Your Honor, may I take a
24 quick bathroom break? I don't think they're going
25 to be asking me any questions in the next three

1 minutes.
2 THE COURT: You may. Let's take a
3 brief five-minute break.
4 (A recess transpired from 6:59 PM to
5 7:03 PM.)
6 THE COURT: It appears that in
7 response to the interrogatory, names, addresses,
8 and telephone numbers of persons known to the
9 parties to be witnesses concerning the facts of
10 this case --
11 MR. DAVIS: Your Honor, if it helps,
12 the medical professionals were disclosed in the
13 accountings as well, which are referenced there.
14 The payments were made to the medical
15 professionals on the accountings which were
16 provided to them, so they knew who the medical
17 professionals were.
18 THE COURT: In further answering this
19 interrogatory, respondents also incorporate any
20 and all medical professionals who may be
21 referenced in the various medical and other
22 records which have previously been produced to the
23 petitioner in this case or which are herewith
24 produced or may be hereafter produced by
25 respondents to the petitioner.

1 MR. DAN SLOTCHIVER: Yes, Your Honor.
2 So it's not responsive to the discovery that we
3 sent, what has been phrased as a dump truck of
4 documents. Look at these thousands of doctors,
5 and we may call any of these people. We're not
6 going to answer your request as to what they're
7 going to testify to, but look them up. And in
8 fact, maybe you should go take everybody's
9 deposition to see what they're going to say.
10 THE COURT: Well, that's what he's
11 saying now, but it seems to me, Mr. Slotchiver,
12 that they can rely on this to saying that they
13 provided notice that medical professionals might
14 be called to testify.
15 MR. DAN SLOTCHIVER: They provided the
16 names of medical professionals who may be called
17 to testify. The distinction, though, is we asked
18 what they would testify to. Please present the
19 information to us as to what they would testify
20 to, which they have not done.
21 So at this point, Your Honor, under
22 their theory, they can call anybody who's been
23 listed or anybody who ever had any interaction
24 whatsoever with Abbie as a witness to testify
25 about whatever they want to, even though the

1 document requests that they provide us more
2 information than what they have.
3 Selectively, Your Honor, to allow
4 them -- I know you're nodding your head, but to
5 allow them to do this would preclude us from the
6 right of knowing what they were going to say in
7 advance.
8 In the same manner, Judge, that we
9 elected not to take the deposition of Robin
10 Morris, because they asserted an attorney-client
11 privilege, and based on that, we relied on the
12 fact that she's not coming to testify. In the
13 same vein, they have listed a dump truck of
14 people. Look at everybody that's ever -- we
15 reserve the right to call anybody that's ever
16 interacted with her, but we're not going to tell
17 you what we're going to call them for.
18 And although I would -- I could
19 understand a little more in argument that we
20 didn't know, that we would provide it to you when
21 we decided. We were just covering our bases to
22 preserve the record. They've never provided that
23 information to us. They've never given us any of
24 the information as to who they were going to call
25 along the lines, and they haven't complied with

1 the discovery requests that we sent out. And
2 these are standard discovery requests.
3 Other than sending out the standard
4 discovery requests, what more could I do? Am I
5 required to take the deposition of each and every
6 person that ever interacted with Abbie? I don't
7 think that would be reasonable. I don't think
8 that's what the rules call for. That's why the
9 rules call for a disclosure of the witnesses in
10 advance.
11 MR. DAVIS: Your Honor, we subpoenaed
12 witnesses, and we provided that. The court needs
13 some additional information it doesn't have.
14 Your Honor, we -- as I mentioned,
15 there were certain -- in any trial, things come up
16 that you don't anticipate. In our wildest dreams,
17 we did not -- I don't know about -- wildest dreams
18 may be an exaggeration, but we did not anticipate
19 an attack on the ability of Abbie to appreciate
20 visitation.
21 When we first came to court,
22 Mr. Kachmarsky -- and this is as truthful as I can
23 be. Mr. Kachmarsky stood up and said there was
24 some treatment for electrocardiogram thing. I
25 can't remember the exact term. He says he looked

1 at Wikipedia or whatever, and it appeared to be
2 quackery and whatever, and there was some
3 additional testimony. And we went, oh, my God.
4 We were aghast, and we had to, to some extent,
5 console Mrs. Cohen.
6 And so we realized they are actually
7 going to take the argument that Abbie receives no
8 benefit from her children visiting, which we did
9 not anticipate, so we started scrambling. We're
10 like are they really going to go down that road?
11 We're like: Okay. Well, we're going to have to
12 defend it.
13 And that was not something that we
14 fully intended to bring to this court, so we put
15 these things in our discovery responses so that
16 we've got our bases covered, and we can deal with
17 whatever comes up in trial the best we can, and
18 that's what we're doing, Your Honor.
19 And we have perfected the record and
20 perfected the discovery responses to an extent
21 that we are allowed to do this, and that's why we
22 do it, because you don't know what's going to come
23 up. And we did not fully intend to delve into
24 this to the extent that we're doing now, but if
25 they're going to attack that and say that she does

1 not receive a benefit, then, by golly, we are
2 going to put up a defense, and we've got it
3 preserved to an extent which will allow us to do
4 that, Your Honor, and that's what we're doing now.
5 THE COURT: Anything else?
6 MR. DAN SLOTCHIVER: Can I have about
7 five minutes, Your Honor, to look at a document?
8 THE COURT: Yes, sir.
9 MR. DAN SLOTCHIVER: Thank you.
10 THE COURT: Could I again look at that
11 discovery response, please?
12 (A recess transpired from 7:08 PM to
13 7:12 PM.)
14 MR. DAN SLOTCHIVER: May it please the
15 court?
16 MR. DAVIS: Your Honor, I would like
17 to make one --
18 MR. DAN SLOTCHIVER: I believe it's my
19 turn.
20 THE COURT: Yes, sir, Mr. Slotchiver.
21 MR. DAN SLOTCHIVER: Thank you, Your
22 Honor. Your Honor, the interrogatories that I
23 have provided or I have served upon counsel for
24 the Cohens are what are considered to be standard
25 interrogatories that are approved by the Supreme

1 Court of South Carolina. Among the questions
2 contained within these standard interrogatories is
3 provide -- set forth either a summary sufficient
4 to inform the other party of the important facts
5 known to or observed by the witness or provide a
6 written or recorded statement.
7 Your Honor, according to Mr. Davis's
8 own argument that he asserted just now, he said:
9 These items are very damaging to your case. They
10 don't want it to come in because they're very
11 damaging to your case. How can he assert that
12 they're damaging to our case, but he should get
13 them in, even though they clearly -- we've asked
14 for them. If they're important issues, and he
15 believes they're damaging to our case, we should
16 have had an opportunity to have been provided the
17 appropriate responses in advance.
18 These aren't documents that I created
19 on my own. These aren't requests that I tailored
20 which are objectionable. These are the standard
21 interrogatories. This is what every lawyer
22 throughout the state generally uses in setting
23 forth the standard interrogatories, and it's got
24 provisional language that we all have the right to
25 rely on.

1 And I remind the court and refer once
2 again to the language set forth: The important
3 facts known to or observed by such witness. And
4 the fact that Mr. Davis wants to rely on the fact
5 that he had subpoenas sent to witnesses, well, as
6 Your Honor may recall, when we first came into
7 court last Monday, I referenced that there were
8 subpoenas sent to people, and I don't know how
9 they're going to testify, because we don't agree
10 to it. Just because you send a subpoena to
11 somebody doesn't mean they get to testify. Just
12 because you -- it's the same argument redundantly
13 over and over. That doesn't mean they're okay.
14 Just because you tell us: I'm going to call them
15 doesn't mean that I have to accept them, but I
16 certainly have the right, under the South Carolina
17 Rules, to know the important facts that they plan
18 to testify to, and he certainly has an obligation
19 and a duty under the discovery rules to provide
20 these to me, and his failure to do that should
21 strike them from the record. They should not be
22 able to testify.
23 MR. DAVIS: Your Honor, may I make a
24 point?
25 THE COURT: Yes, sir.

1 MR. DAVIS: As you recall, we've had
2 discussion from Mr. Boyd that we've made numerous
3 attempts to find out who their witnesses were, and
4 Mr. Slotchiver said he wants to play a litigation
5 game and not disclose that information. Well,
6 based on that and based on other discussions that
7 were made in this court and comments by
8 Mr. Kachmarsky, we put two and two together that
9 it was going to be a medical expert.
10 Your Honor, that information was
11 requested. I actually stood up and requested it
12 in court and asked them to provide it. I went
13 home after we --
14 MR. DAN SLOTCHIVER: Your Honor,
15 you've ruled on this issue.
16 MR. DAVIS: I'm explaining why we are
17 where we are, Your Honor.
18 MR. DAN SLOTCHIVER: I was playing
19 games.
20 MR. DAVIS: I didn't interrupt him,
21 Your Honor.
22 THE COURT: Go ahead.
23 MR. DAVIS: I went home and said you
24 know what, I need to refresh my memory on the
25 spirit of discovery, and I read some articles,

1 California, New York. There was a supreme court
2 case. There was some other stuff that I looked
3 at, Your Honor. And the spirit of discovery was
4 to avoid trial by ambush, and I mentioned that he
5 was proffering a position that would create
6 ambush, and it absolutely did, Your Honor. We
7 were ambushed on this medical expert, and he hid
8 behind the rules, Your Honor. There's two parts
9 of a rule.
10 MR. DAN SLOTCHIVER: Your Honor, I
11 object to the characterization I hid behind any
12 rules whatsoever. I followed the rules. Your
13 Honor heard this argument last week. She's
14 already discussed with counsel. You've looked at
15 the rules, and I complied with the rules. They
16 had an opportunity to send to me discovery in a
17 timely manner, in which case I would respond
18 according to the rules of discovery. They chose
19 not to exercise that. I object to this whole line
20 of testimony as it relates to this issue that's
21 before the court.
22 MR. DAVIS: It absolutely weighs, Your
23 Honor, because we're proffering medical testimony
24 to counteract their argument based on medical
25 testimony. Well, in my research, it became

1 abundantly clear that the courts hate surprise and
2 hate trial by ambush, and the spirit of the law,
3 it just shines through like a bright neon light.
4 Doggone it, you litigants disclose your
5 information through -- the stuff. It was like
6 loud and clear, Your Honor. That is the spirit of
7 this rule.
8 So we've got the law -- we've got the
9 letter of that rule and the spirit of that rule.
10 I'm absolutely convinced that while he may have
11 complied with the letter of the rule, he
12 absolutely violated the spirit of the rule, and it
13 created an ambush and surprise on our part that we
14 now have to deal with at trial, so I believe we
15 deserve some latitude, Your Honor.
16 He was asked to provide the witnesses.
17 Mr. Boyd had conversations with him and said:
18 Let's provide a witness list as to avoid surprise,
19 to comply with the spirit of the discovery rules,
20 but yet he was not -- Mr. Slotchiver refused to
21 provide that information. That would have avoided
22 surprise on our part, and it would have avoided
23 surprise on his part, Your Honor.
24 MR. DAN SLOTCHIVER: Your Honor, I
25 offered to provide anything that you asked me to

1 do, if you recall. If you want me to give it,
2 I'll give it now. But what I'm hearing is you
3 think you didn't comply with the spirit of it, so
4 we didn't, and we should get away with it, and we
5 should bring in a slew of witnesses, all in
6 violation of the discovery, because you didn't
7 give us your discovery responses in advance, even
8 though the court said it's okay.
9 Your Honor, clearly, the South
10 Carolina Supreme Court says that standard
11 interrogatories and that standard language,
12 there's a reason it's here. We did send it in a
13 timely manner. We should have the right to rely
14 on getting responses appropriately, and if they're
15 not given, they shouldn't be able to testify.
16 MR. DAVIS: We provided it in
17 discovery, Your Honor.
18 MR. DAN SLOTCHIVER: And if we want,
19 Your Honor, we can hold this thing off, and why
20 don't we -- tomorrow we'll call Professor Freeman
21 to come testify about it. I think he'd be happy
22 to do it.
23 MR. DAVIS: I'm not done with my
24 witness, and I'm ready to roll, Your Honor.
25 MR. DAN SLOTCHIVER: I'm talking about

1 the medical situation. I think he's qualified to
2 opine on that, and he'll be here tomorrow.
3 MR. DAVIS: We provided it to them in
4 discovery. You've already ruled from the bench
5 there that you believe they've gotten notice.
6 That was a ruling that I believe that you made or
7 a comment that you made earlier. We've got a
8 witness here who talked to the doctors and is
9 ready to testify, and we're ready to go, Your
10 Honor.
11 THE COURT: Let me hear from
12 Ms. Moore, please.
13 MS. MOORE: Your Honor, I was sitting
14 back and waiting for an opportune moment. As I
15 indicated at the very beginning of this trial when
16 it became an issue of whether or not the parties
17 were going to provide witness lists to each other,
18 I made it very clear that I would wait and see who
19 called what witnesses to the stand before I
20 actually made a determination of what witnesses I
21 might need or what witnesses Ms. Hedgepath might
22 need. And at this point, there's been no
23 discovery served upon either of us, either from
24 Mr. Slotchiver, Mr. Kachmarsky, either Reese or
25 from Bret, so at this point, we're under no

1 obligation to provide such a list.
2 And this whole issue may be moot,
3 because, for example, if, for some reason, the
4 court were to preclude Mr. Davis from being
5 allowed to ask questions of this witness as to
6 certain witnesses that they may intend to call, if
7 they are ultimately not allowed to call them in
8 their case-in-chief because you may rule on a
9 discovery issue, there's nothing to prevent either
10 Ms. Hedgepath or I from calling the same witness
11 in our case-in-chief, and thereby, we would be the
12 ones that would be cross-examining the witness as
13 to information that we intend to solicit from such
14 witnesses.
15 At this point, I don't know what
16 witnesses it may be, because I don't know which
17 ones they intend to finally call in their
18 case-in-chief. It may be that all the witnesses
19 that we ultimately would want to call is taken
20 care of. If not, then we would be calling the
21 witnesses.
22 MR. DAN SLOTCHIVER: And actually,
23 Your Honor -- I'm sorry.
24 MS. MOORE: So I just want to point
25 that out to the court --

1 THE COURT: Thank you.
2 MS. MOORE: -- that some of this
3 argument may be moot because we may ourselves be
4 the ones that call the witnesses.
5 MR. DAN SLOTCHIVER: And I would take
6 certainly a different position. If the Cohens had
7 information that they were obligated to provide
8 us, and they did not, then they should not be
9 allowed to have those witnesses called through
10 other parties. Those witnesses and the testimony
11 from those witnesses should be stricken. You
12 can't have it both ways. They had an obligation
13 to provide it to us, they didn't, and now to say,
14 well, we didn't, so I'm going to tell you the
15 person you call, and you can bring in the evidence
16 that we were supposed to have told you about, but
17 we didn't, but we can try to get it in
18 differently.
19 Everything flies to the Cohens in this
20 case. They're the fiduciaries. Any knowledge
21 that I've heard of, at least with reference to the
22 argument that Ms. Moore made at this point, is if
23 I think there's a witness that Dr. Cohen knows
24 that would be beneficial to me to call, then I'll
25 call them, even though he knew about it.

1 MS. MOORE: That's not correct.
2 MR. DAN SLOTCHIVER: Well, if it's not
3 correct, then we can take it up at the time, but
4 that's what I understood.
5 MS. MOORE: My whole point was any
6 witness that either of the parties, whether it's
7 Mr. Slotchiver or his party, Dan Dorn, whatever
8 witnesses he may call, or if it's Bret Davis on
9 behalf of his clients. I didn't mean to make it
10 an intimation that it's simply Dr. Cohen.
11 MR. DAN SLOTCHIVER: My understanding
12 is that if Dr. Cohen has information relevant to
13 this case, and he has witnesses who are relevant
14 to the case, and the witnesses and their -- first
15 of all, they have an obligation to notify us of
16 the witnesses. Secondly, they have an obligation
17 to tell us about the important facts those
18 witnesses have, and they can't hide behind it.
19 They can't say: Well, we didn't tell you about
20 it, so I'm going to let somebody else call that
21 witness and get it, because the whole point of the
22 discovery process is to preclude the abuses, which
23 I fear is being attempted right now with reference
24 to getting in witnesses to testify that have not
25 been provided to us.

1 THE COURT: Mr. Kachmarsky?
2 MR. KACHMARSKY: Yeah. I'm basically
3 in the same place as Ms. Hedgepath and Moore. I
4 have not served discovery on anybody, and no one
5 has served it on me as well. Mr. Slotchiver and I
6 had a conversation about whether or not I should
7 serve discovery, and I would like to remind the
8 court that I was arguably admonished for being a
9 little too active in this litigation, so to go and
10 serve discovery seemed to be a little out of line,
11 particularly when it was already done by him.
12 I have come in this court last week.
13 I had no intention of bringing any witness, any
14 document that has not already been disclosed
15 properly, in a timely fashion, through the
16 discovery, which has never been served by me, but
17 has been served by Mr. Slotchiver and which is due
18 five days after the fact.
19 I'm a little bit confused as to the
20 court's reluctance to rule on this matter. I
21 mean, I've come in here in the best of spirits. I
22 don't see how anybody could challenge that.
23 Mr. Slotchiver said he's going to
24 comply with the discovery requests. They didn't
25 timely serve them, I mean, that's the problem, and

1 now it's being -- the finger is being pointed at
2 us as if we've done something wrong. We haven't
3 done that.
4 MR. DAVIS: Your Honor, he claimed
5 that we didn't timely submit a request for the
6 witnesses, and Your Honor, we're claiming that he
7 did not avail himself of the discovery rules and
8 notice the deposition. I mean, he had an
9 opportunity to do that, and he did not do that.
10 MR. KACHMARSKY: They're two different
11 things.
12 MR. DAN SLOTCHIVER: I did avail
13 myself of the discovery rules by sending the
14 standard discovery, Your Honor.
15 MR. DAVIS: We responded.
16 THE COURT: Thank you.
17 Ms. Hedgepath?
18 MS. HEDGEPATH: Your Honor, it needs
19 to be kept in mind that I don't represent the
20 Cohens in any capacity, individually, trustees, or
21 conservators. I represent Abbie, and Abbie alone,
22 and nothing has been served on Abbie, by and
23 through me, so I had no obligation to go to the
24 Cohens to get anything.
25 If I had received discovery responses,

1 yes, ma'am, I would have responded to them, but I
2 have received none, so now -- in fact, on Day 1,
3 if you'll remember, I wanted us to disclose
4 witnesses. Let's do this. No, they didn't want
5 to do it. So don't come back now and fuss at me
6 because of some things that had been said, and we
7 now realize that we --
8 MR. DAN SLOTCHIVER: I'm not fussing
9 with Ms. Hedgepath or Ms. Moore.
10 MS. HEDGEPATH: And if it's imperative
11 for Abbie and for Abbie's benefit that we call a
12 couple witnesses in response to what has been
13 presented, then I'm bound to do that, and they
14 certainly had the right to serve him with all the
15 discovery that they deemed appropriate, and I have
16 gotten that.
17 MR. DAN SLOTCHIVER: I'm not aware how
18 either witness or either guardian or the guardian
19 ad litem -- well, maybe we should address that
20 later on. Why don't we address this right now.
21 THE COURT: I would like to go ahead
22 and rule on this. I did note in the interrogatory
23 that the Cohens responded by incorporating any and
24 all medical professionals who may be referenced in
25 the various medical or other records which have

1 been produced to petitioner or which may be
2 produced, so I do think that they responded as to
3 who might be witnesses in that respect, but I'm
4 not sure if they've been followed up with a second
5 question, which was to provide some type of
6 narrative about the facts of the case to which
7 those witnesses would testify. I briefly looked
8 at that, but I did not see that there was any type
9 of response to that regarding the medical
10 professionals. Am I mistaken?
11 MR. DAVIS: Well, we referenced some.
12 THE COURT: As to what their testimony
13 would be or the facts that they would testify,
14 which I guess was the follow-up interrogatory
15 after: Tell us who your witnesses are going to
16 be. Was there an answer to that in your
17 discovery?
18 MR. DAVIS: I think the answer is that
19 we will or may call them as a witness.
20 THE COURT: But did you set forth the
21 answer to the next question, which was: What are
22 they going to testify to?
23 MR. DAVIS: Your Honor, I'm going to
24 have to look at them and talk to Mr. Boyd.
25 THE COURT: If you'll do that now.

1 I'll be happy to give you a moment because --
2 MR. KACHMARSKY: And one step further.
3 THE COURT: Yes, sir.
4 MR. KACHMARSKY: The documents that
5 were to be produced under the production, there
6 were no documents produced either.
7 THE COURT: I'm not sure -- they've
8 testified -- not testified. They've stated,
9 they've argued that there were no documents that
10 they were relying on as far as written reports or
11 depositions, witness statements, I believe.
12 MR. KACHMARSKY: I understand.
13 THE COURT: Mr. Slotchiver, you might
14 assist in possibly telling them what --
15 MR. DAN SLOTCHIVER: I'm not aware of
16 any responsive documents, Your Honor, to what
17 you're referring to.
18 THE COURT: No, I'm sorry, with
19 respect to which interrogatory that was, that
20 follow-up one.
21 MR. DAN SLOTCHIVER: Oh, I'm sorry.
22 THE COURT: Mr. Boyd is looking, and I
23 was hoping you might could -- I believe it's the
24 one that Mr. --
25 MR. DAN SLOTCHIVER: I think it was

1 No. 3, Your Honor.
2 THE COURT: -- Davis brought up here
3 and I looked at.
4 MR. DAN SLOTCHIVER: No. 3, Your
5 Honor.
6 MR. DAVIS: Your Honor, Dr. Gerace,
7 Sarah Gerace, has been subpoenaed to appear as a
8 witness. She is a doctor that deals with hearing.
9 MR. DAN SLOTCHIVER: I don't believe
10 that subpoenaing a doctor complies with the
11 discovery requests, Your Honor.
12 THE COURT: Yes, sir.
13 MR. DAVIS: Your Honor, he was
14 provided a copy of the subpoena, and that
15 supplements discovery.
16 THE COURT: But I don't believe,
17 Mr. Davis, that that complies with his discovery
18 request, which was to provide a narrative of the
19 facts to which they would be testifying, statement
20 of their testimony. I believe in the discovery
21 that I looked at a few moments ago, unless that
22 was supplemented at some point --
23 MR. DAVIS: I want to remind the court
24 that the court has discretion to rule on this
25 either way. The case law that I reviewed,

1 Floyd v. Floyd and the cases cited throughout
2 that, give the trial court a tremendous amount of
3 latitude to make sure that each party is afforded
4 an opportunity to provide information, so the
5 court will have what it needs to make a decision.
6 And it's clear in those cases, to me,
7 Your Honor, that the higher courts want
8 information at the trier-of-fact level, so the
9 trier of fact can make an informed decision.
10 We've got issues going back and forth. There's
11 plenty of room for this court, in its discretion,
12 to say that they have been provided with
13 information, references to the medical
14 professionals, which have been treating Abbie
15 before this case and continue to treat Abbie,
16 which are relevant to this case, and which came up
17 at trial. I would ask the court to give us a
18 special deference for the fact that this actually
19 came up at trial, and we are doing our very best
20 to protect the interests of Abbie and these
21 trustees and co-conservators and co-guardians.
22 So it's within the discretion of the
23 court to rule that they have gotten notice of it
24 and that Dr. Cohen has received statements from
25 them and that he has formed an opinion, so the

1 court, again --
2 THE COURT: So Dr. Cohen has seen
3 written statements?
4 MR. DAVIS: No, oral statements, as in
5 discussions, which is what I proffered before, so
6 that this court can make informed decisions. So
7 this court must, in my opinion, Your Honor, err on
8 the side of receiving the information, because at
9 the end of the day, in a legal process, it's about
10 the court or the trier of fact having the facts
11 and the truth to make an informed decision. That
12 is what our legal system is designed to do.
13 And this court has discretion to
14 receive that information, and I would hate for
15 Abbie to be harmed or the trustees who have worked
16 tirelessly forever, since Abbie's been injured, to
17 be injured in any way because of a technicality
18 that this court can see through and rule over.
19 You certainly have discretion to do it, and they
20 certainly were provided notice, Your Honor.
21 MR. DAN SLOTCHIVER: Your Honor, I
22 would hate for my client to be harmed because he
23 complied with the discovery rules in advance, and
24 he did everything he was supposed to do.
25 I'll read to you, Your Honor, a short

1 section from the Samples case. This is Samples
2 versus Mitchell, which is 495 SE 2nd 213, and on
3 Page 5 of the decision, it states: The entire
4 thrust of discovery, of the discovery rules,
5 involves full and fair disclosure to prevent a
6 trial from becoming a guessing game or one of
7 surprise for either party. Essentially, the
8 rights of discovery provided by the rules give the
9 trial lawyers the means to prepare for trial, and
10 when these rights are not afforded, prejudice must
11 be presumed.
12 We availed ourselves of those rights.
13 We submitted the standard interrogatories to
14 counsel in order to have this information.
15 There's not a companion argument. They sent us
16 discovery. We answered in a timely manner. We
17 brought it up to the court on several occasions.
18 There's no give or take.
19 THE COURT: Mr. Slotchiver, did they
20 provide the nature of the testimony of these
21 medical professionals in their discovery response?
22 MR. DAN SLOTCHIVER: They did not.
23 THE COURT: I'm going to grant the
24 motion and not allow the medical testimony to be
25 presented by the Cohens.

1 MR. DAVIS: By the Cohens.
2 THE COURT: Yes, sir.
3 MR. DAVIS: Limited to the Cohens.
4 THE COURT: You're representing the
5 Cohens, correct, as trustees and co-conservators?
6 MR. DAVIS: Yes.
7 THE COURT: They were presented with
8 the discovery requests, they did not respond
9 appropriately, and I think it's appropriate to
10 then not allow that testimony to come in through
11 the Cohens. They're not allowed to call them as
12 witnesses, whether they were subpoenaed or not. I
13 don't think it's their responsibility to look
14 through all of those documents and try to
15 determine what these medical professionals might
16 testify. They asked for the nature of their
17 testimony, the facts that they know about the
18 case, and I don't think you responded to that with
19 respect to those witnesses in your discovery
20 response.
21 MR. DAVIS: Thank you, Your Honor.
22 And I take it the ruling of this court is limited
23 to the Cohens and does not have any impact on the
24 attorney for Abbie or the guardian for Abbie?
25 THE COURT: I have ruled with respect

1 to your clients at this time. I will take up any
2 objection if anyone else desires to call them as a
3 witness at that time.
4 MR. DAN SLOTCHIVER: Thank you, Your
5 Honor.
6 BY MR. DAVIS:
7 Q. Dr. Cohen, again, you've been a
8 trooper.
9 THE COURT: We are going to quit at
10 8:00, all right.
11 MR. DAVIS: Okay.
12 THE COURT: So you may finish, may
13 not. I'm not sure. We'll see, Mr. Davis.
14 MR. DAVIS: No. I just had a -- I'm
15 sorry.
16 THE COURT: No jokes.
17 MR. DAVIS: Exactly.
18 THE COURT: Thank you.
19 BY MR. DAVIS:
20 Q. Again, we're back to your opinion,
21 Dr. Cohen, improvement. Has Abbie exhibited
22 improvement, in your opinion, and can she see and
23 can she hear, based on your witness observations
24 and based on your opinion?
25 A. Based on my witnesses' observations?

1 Which witnesses are we talking about?
2 Q. That you have personally witnessed,
3 I'm sorry, Dr. Cohen, and that you have personally
4 observed.
5 A. Well, there's no question that she can
6 see, because she watches TV, and there are a
7 couple of shows that she seems to like more, and
8 she looks at them, as opposed to her eyes drifting
9 elsewhere, so -- and I know she can hear because
10 occasionally there's, as in any house,
11 something --
12 MR. DAN SLOTCHIVER: Objection, Your
13 Honor, to his reference that he knows that she can
14 hear, as I believe the court's ruling is he can
15 testify as to his understanding and his belief,
16 but not what she knows.
17 THE COURT: Yes, sir.
18 BY MR. DAVIS:
19 Q. Dr. Cohen, phrase it in terms of your
20 understanding is that she can hear because.
21 A. I can observe that she hears because
22 she has jumped -- at least her head has jumped
23 when a sudden loud noise occurs, like something
24 falls, and that's a typical response in a physical
25 examination called a startle reflex.

1 MR. DAN SLOTCHIVER: Your Honor, at
2 this point he's giving medical testimony. I would
3 object.
4 THE WITNESS: You can find that on the
5 Internet.
6 MR. DAN SLOTCHIVER: I'm not saying
7 that he can't, Your Honor.
8 BY MR. DAVIS:
9 Q. Dr. Cohen, you can say that. Just
10 couch it in the terms of your observation. You
11 can go into the details of what a normal startle
12 response test would be, and then explain that
13 response.
14 A. You clap your hands in front of
15 somebody's ears and --
16 MR. DAN SLOTCHIVER: Your Honor, I
17 object. If I may, he's not been called as an
18 expert witness in this case. He's been allowed
19 the liberty to testify as to what he sees, what he
20 observes, what he understands, but there's a
21 distinction between that and: Tell me what you
22 understand about all the rules to deal with
23 reference to the startle. Now we've gone well
24 beyond what he's observed.
25 MR. DAVIS: I think I can satisfy

1 Mr. Slotchiver.
2 THE COURT: We are going to limit his
3 testimony to what he sees, what he knows, what he
4 observes, and not rely on his medical expertise.
5 MR. DAVIS: And that's what I was
6 trying to do, Your Honor. The clap, and then
7 Abbie moves is what he's saying. That's all I was
8 asking to -- that's what he was trying to tell us.
9 BY MR. DAVIS:
10 Q. Dr. Cohen again, explain --
11 THE COURT: In simple layman's terms.
12 How about that?
13 BY MR. DAVIS:
14 Q. Explain what happens to indicate that
15 she can hear.
16 A. Well, I asked her a question last
17 Friday night. She said yes.
18 Q. How about if you clap by her ear, does
19 she respond?
20 A. Well, again, it's called a startle
21 response, and I don't understand how you can --
22 that's what it is. They sort of flinch when they
23 don't expect it.
24 Q. Does she do that?
25 A. Like a backfire of a car that we all

1 have, makes you jump.
2 Q. Not the background of it, but does she
3 do that? Have you witnessed her do that?
4 A. Yes.
5 Q. Is it consistent? Does she respond
6 every time?
7 A. Well, I can't answer that. My memory
8 isn't good on how often this occurs, but I've seen
9 it. I can't tell you if I drop a plate on the
10 ground three times a day, she's going to do it
11 three times a day. We don't do it that way.
12 Q. Dr. Cohen, let's talk about
13 Dr. Mamelak's deposition for a moment. What is
14 your understanding of the -- your understanding,
15 not your expert medical understanding, but based
16 on your reading of Dr. Mamelak's report,
17 deposition, Dr. Hays's report that is already into
18 evidence, of the levels of consciousness. Let me
19 throw out something, and you tell me if this
20 sounds reasonable.
21 MR. DAN SLOTCHIVER: Your Honor, I
22 would object. His understanding based on your
23 reading of Mamelak and your reading of Hays and
24 your reading of reports, that's not his
25 understanding anymore. It goes beyond that. His

1 understanding would be a different scenario.
2 MR. DAVIS: How could it not be? It
3 absolutely is his understanding.
4 MR. DAN SLOTCHIVER: That would be an
5 opinion.
6 MR. DAVIS: I'm not asking -- I just
7 said not as a medical expert opinion, your
8 understanding. I've got understandings about
9 things. You've got understandings about things.
10 That's all I'm asking.
11 MR. DAN SLOTCHIVER: Well, then I
12 would object to the relevancy of it.
13 MR. DAVIS: You'll see the relevancy.
14 It fits like a glove into these reports, because
15 the reports mention these things.
16 MR. DAN SLOTCHIVER: I believe he can
17 testify as to his understanding of the reports,
18 what he agrees or what he disagrees with in the
19 reports, but his understandings of what the
20 reports -- of comparing all the reports and all
21 the medical documentation, at that point he's
22 asking for an opinion.
23 THE COURT: I agree.
24 MR. DAVIS: You agree?
25 THE COURT: I agree with

1 Mr. Slotchiver. That would call for a medical
2 opinion. If you want to ask him about a
3 particular report and his understanding of a
4 particular report, but I don't believe in
5 comparing all the reports. I believe that goes
6 beyond what he's here to testify regarding.
7 MR. DAVIS: Your Honor, I wasn't going
8 to do that. What has been offered in the
9 testimony is a reference to a coma or being brain
10 dead, a reference to a vegetative state, a
11 reference in Dr. Hays's report of minimally
12 conscious, and, of course, there's a conscious
13 state, which we're all in now. That's all I'm
14 referring to, Your Honor, and these reports talk
15 about those different states, and it talks about
16 them in that order, so I'm not -- it's not some
17 new science or something. This is stuff that
18 actually is mentioned in Dr. Mamelak's deposition
19 right here, and I'm just asking him does he
20 understand that to be sort of a hierarchy of
21 consciousness. And they're claiming that Abbie is
22 either brain dead or vegetative, and we've got
23 evidence to prove that she's either minimally
24 conscious or conscious.
25 MR. DAN SLOTCHIVER: I don't know how

1 he can testify as to his understanding of the
2 hierarchy of consciousness without giving an
3 expert opinion.
4 MR. DAVIS: We had that. We had
5 expert opinions. We had two of them, two
6 neurologists.
7 MR. DAN SLOTCHIVER: But not
8 Dr. Cohen's expert opinion.
9 MR. DAVIS: He's not giving his expert
10 opinion. He's regurgitating information that he
11 got from Dr. Mamelak and from Dr. Hays.
12 MR. DAN SLOTCHIVER: Well, if he's
13 regurgitating it, I believe it would be irrelevant
14 to regurgitate information. I think they can ask
15 him about his opinion about this particular
16 phrase, do you agree with the opinion that he
17 gave, or based on your understanding, do you agree
18 with it, based on your observations, do you agree
19 with it, but not based on his medical opinion.
20 MR. DAVIS: I mean, we're kind of
21 splitting hairs. Do they disagree that you're
22 dead, brain dead, coma, or vegetative dead,
23 mentally conscious, minimally conscious, and then
24 conscious? I mean, is that something that's so
25 hard to -- I mean, that's pretty simple stuff,

1 Your Honor. I don't see the problem.
2 THE COURT: I don't think Dr. Cohen
3 can testify as a medical expert as to those. He
4 can talk about his understanding and whether he
5 agrees with those types of studies.
6 MR. DAVIS: And I'm assuming he can
7 testify whether he agrees that that is a
8 reasonable hierarchy of consciousness in his
9 personal opinion.
10 MR. DAN SLOTCHIVER: That's a medical
11 question, Your Honor.
12 MR. DAVIS: It's not. He's not been
13 offered as a medical expert, Your Honor. I'm not
14 asking the court -- again, back to my comments
15 earlier. You have an opportunity to receive the
16 information in, as we all know, and you say, okay,
17 what level of credibility or what weight do I give
18 this information, and you attribute the weight of
19 that information. Just because it may sound like
20 expert testimony, you, as the judge and trier of
21 facts, say you know what, that is not from a
22 medical expert, so I may downgrade it a little
23 bit, and it came from a person, and you would have
24 an opportunity to evaluate that, but if it's in
25 his mind, it's his understanding, there's nothing

1 that should keep it out, Your Honor.
2 MR. DAN SLOTCHIVER: Your Honor, I'm
3 not even sure that Dr. Cohen even read the Mamelak
4 deposition. He testified earlier that he had
5 looked at pieces of it and hadn't read it, and now
6 we're asking him his opinion on the hierarchy of
7 medicine of saying that it's not really a medical
8 opinion, what's your opinion. If he's not a
9 doctor, then I don't believe he has the
10 qualification to give that opinion to begin with.
11 Excuse me. I apologize. If he's not accepted as
12 an expert in this case. I know he is a medical
13 doctor.
14 MR. DAVIS: Your Honor, if you ask me
15 what the color of this carpet is, and I say it's
16 like a bluish-greenish gray, I'm not a textile
17 expert, but I certainly can tell you what the
18 color of the carpet is. My opinion is it's a
19 pretty bluish-grayish-greenish color.
20 MR. DAN SLOTCHIVER: I don't believe
21 you need a medical doctor for a qualification to
22 determine a color.
23 MR. DAVIS: And I don't need an expert
24 to determine that the color --
25 THE COURT: Mr. Davis, if you'd like

1 to move on, please. I'm going to limit his
2 testimony with respect to these medical issues to
3 what he knows, what he understands, but not in his
4 capacity as a medical doctor or a medical expert.
5 MR. DAVIS: So he can say that his
6 understanding is this is the hierarchy,
7 personally, not medically, but he can say that.
8 He understands that. Is that what you're saying?
9 THE COURT: I don't believe so,
10 Mr. Davis.
11 BY MR. DAVIS:
12 Q. We have a copy of Dr. Mamelak's report
13 in the record. Page 58, Dr. Cohen.
14 THE COURT: What is that number of the
15 exhibit?
16 THE REPORTER: It's 109.
17 THE COURT: 109. Thank you.
18 What page, Mr. Davis?
19 MR. DAVIS: Page 58.
20 BY MR. DAVIS:
21 Q. Dr. Cohen, what do you -- well, first
22 of all, when was Abbie last examined by
23 Dr. Mamelak?
24 A. 2006, maybe September.
25 Q. When was the action for the marital

1 dissolution brought?
2 A. I believe the whole thing started in
3 early 2008.
4 Q. And when was Dr. Mamelak deposed?
5 A. May 28th, 2010.
6 Q. And to reiterate, your daughter Abbie
7 had made improvement from 2006 to 2010, correct?
8 MR. DAN SLOTCHIVER: Objection in so
9 much as it calls for medical opinion. If it's his
10 understanding, no objection.
11 BY MR. DAVIS:
12 Q. You can answer, Dr. Cohen. In your
13 opinion, as we testified before, as you've
14 testified before, it's correct, isn't it, that
15 your daughter Abbie made improvement medically and
16 neurologically from 2006 to present?
17 A. That's correct.
18 Q. In Dr. Mamelak's report, does he
19 characterize Abbie as a certain level of
20 consciousness?
21 A. Well, again, I only saw a little bit
22 of his report, but he says she's in a persistent
23 vegetative state.
24 Q. And that's abbreviated as a PSV?
25 A. PVS.

1 Q. Excuse me, PVS.
2 On Page 58, the question on Line 7
3 says: Have you ever had a patient go from a
4 persistent vegetative state to some level of
5 minimal consciousness? He says: I personally
6 have not. It has been reported.
7 Is your understanding that Dr. Mamelak
8 is saying that his opinion is that she's in a
9 persistent vegetative state; however, it is
10 certainly possible to move to a minimally
11 conscious state?
12 MR. DAN SLOTCHIVER: Your Honor, I
13 don't believe that he can testify as to his
14 understanding of what the report is. The report
15 speaks for itself, and he's taking the context
16 away from it, because there's plenty of other
17 languages in there.
18 MR. DAVIS: That's what it says, Your
19 Honor. I just read it.
20 MR. DAN SLOTCHIVER: It's in evidence.
21 It speaks for itself.
22 THE COURT: It speaks for itself.
23 I'll review it. Thank you.
24 BY MR. DAVIS:
25 Q. Dr. Cohen, if you'd turn to Page 59,

1 and can you read the answer starting on Line No. 5
2 regarding plasticity and how plasticity is
3 described by Dr. Mamelak?
4 MR. DAN SLOTCHIVER: Your Honor, I
5 object. I'm not sure of the purpose of asking him
6 to read a document into the record. The record
7 speaks for itself. If there's a question
8 pertaining to it, that's a different situation,
9 but just to read the document, we've already
10 crossed that bridge earlier today.
11 MR. DAVIS: We haven't crossed this
12 bridge, Your Honor. He's a physician. He
13 understands what plasticity is.
14 MR. DAN SLOTCHIVER: He's not been
15 provided as an expert.
16 MR. DAVIS: I'm not finished, please.
17 Counsel will not allow him to testify
18 as to his understanding, because he's not a
19 medical expert. We have a medical expert, one
20 that they actually are relying upon, that in his
21 deposition that they just offered into evidence,
22 explains what plasticity is, so I'm simply laying
23 the foundation so he can then comment on what
24 plasticity is and how it relates to Abbie.
25 MR. DAN SLOTCHIVER: Your Honor, it's

1 not that I won't allow him to testify. He has not
2 been listed as an expert. It is his daughter's
3 case. He is not provided as an expert, and the
4 court decides who is an expert and who is not an
5 expert. I don't have that ability, but I
6 certainly have the right to the notice.
7 Now, with reference to the testimony,
8 there's no question. He just says: Can you read
9 this document? If he said: Do you, of your
10 own -- there's other ways to address it, if you
11 agree with the statement from your own knowledge,
12 or there's other ways to do it, but to just say
13 read this section, that's not a proper question.
14 THE COURT: Sustained.
15 BY MR. DAVIS:
16 Q. Dr. Cohen, what is your understanding
17 of plasticity, and what does it mean?
18 MR. DAN SLOTCHIVER: Your Honor,
19 without -- the same objection as to he is not an
20 expert to testify as to plasticity or anything in
21 the medical field. He's not listed as an expert
22 in this case.
23 MR. DAVIS: Again, Your Honor, we're
24 playing cat and mouse. This is -- we're wasting
25 time. I'm simply going right by what Dr. Mamelak

1 says is the definition of plasticity, which
2 Dr. Cohen certainly already understands, and he's
3 running interference, and it's a complete waste of
4 time. I mean, we need to move through this case.
5 There's nothing harmful that -- he's
6 offered this, and I'm simply saying, Dr. Cohen,
7 what is your understanding of plasticity, and I'm
8 laying a foundation, because he won't let me do it
9 otherwise, so I'm relying on his document to lay a
10 foundation. I've got to have some latitude here.
11 MR. DAN SLOTCHIVER: They can't rely
12 on their expert to give an opinion, a medical
13 opinion, and that's exactly what they're trying to
14 do, and they're saying what is your definition of
15 plasticity, what is your opinion about it, which
16 that's not his role. Another doctor can testify
17 to it if they disagree with Dr. Mamelak.
18 MR. DAVIS: Your Honor, we've gone off
19 on some tangents here, and I want to just ask you,
20 please, to reel us back in. This is getting kind
21 of -- maybe we're getting tired, but it's getting
22 kind of --
23 THE COURT: I'm sure we're all getting
24 tired, Mr. Davis. If you could move on. I don't
25 think he can testify in this respect. He's not

1 been qualified as an expert.
2 MR. DAVIS: And I'm not asking that,
3 Your Honor. That's the whole point I'm making.
4 I'm not asking him to testify as an expert. I'm
5 asking him to testify of what Dr. Mamelak's
6 opinion about plasticity is that's referenced in
7 his deposition. I'm not asking for his -- that's
8 the whole thing I said like ten minutes ago. I'm
9 not asking him to testify as an expert. I'm
10 simply asking him to tell me his understanding of
11 Dr. Mamelak's definition of what Dr. Mamelak says
12 is plasticity, and he can read it right here. I
13 don't know what in the world --
14 THE COURT: Can the court not read it,
15 Mr. Davis?
16 MR. DAVIS: Your Honor, there's a lot
17 of stuff in here, and we need to hit the high
18 points. This whole deposition has got some points
19 that are important. He was afforded an
20 opportunity to cherry-pick parts out of this that
21 he felt were beneficial to his case, and we should
22 be afforded the same opportunity to take parts out
23 of here and establish the record of what
24 plasticity is, what improvement can be made, so we
25 can establish that she has made improvement. I

1 mean, come on.
2 MR. DAN SLOTCHIVER: Actually, Your
3 Honor, in my examination, I was questioning
4 Dr. Cohen in his capacity as a fiduciary and his
5 responsibility to read -- whether he had a
6 responsibility to read this, and do these factors
7 impact it, and is he aware of this statement made
8 by Dr. Mamelak, and does it affect his ability and
9 his decision-making. It's a whole different thing
10 than asking him to give an opinion about the
11 doctor's opinion, and I'm not going to comment
12 further on the other stuff.
13 MR. DAVIS: Your Honor, again, this
14 has gone -- that part, his questioning -- or
15 objections have gone too far. He is the trustee,
16 he's the guardian and conservator of his child,
17 and he's a physician, and he is monitoring her and
18 working with her, and we've got a professional
19 saying what is going on with her and that they're
20 relying on. He certainly can answer questions
21 about this deposition. I feel like I'm in The
22 Twilight Zone.
23 MR. DAN SLOTCHIVER: I don't believe
24 there's any professional coming in to say that,
25 Your Honor, based on your ruling, and I don't

1 believe that he's treating her. He's taken care
2 of her, but he's not treating her as a physician,
3 and he's not listed as an expert. We've talked
4 about this ten times.
5 MR. DAVIS: So can I not ask him any
6 question about his deposition? Is that what he's
7 saying, no questions about the deposition? Of
8 course I can ask questions about the deposition.
9 It's in the record.
10 THE COURT: I think you can ask
11 certain questions, Mr. Davis, but I think you're
12 limited as to what you can ask your client, who is
13 the trustee, the parent, the guardian, the
14 co-conservator, not to give his medical expert
15 opinion as to what this physician may have meant
16 by this particular statement or what his
17 understanding is of that particular condition.
18 MR. DAVIS: You're now telling me that
19 he cannot give his own personal understanding?
20 Your Honor, you just ruled a while ago that he can
21 give me his personal understanding.
22 THE COURT: His understanding of
23 Abbie's condition, what he sees and knows and what
24 he's witnessed as to how her condition may have
25 changed over time.

1 MR. DAVIS: Well, let me ask the
2 court, because I'm definitely confused. They have
3 proffered an argument that Abbie is essentially
4 brain dead and cannot appreciate visitation and
5 cannot and will not ever make improvement, and we
6 are charged with defending that, Your Honor, and
7 you have handcuffed me for reasons that I don't
8 understand. I mean, he certainly can testify with
9 regard to the deposition that they offered.
10 MR. DAN SLOTCHIVER: Your Honor, we
11 don't disagree anybody's been handcuffed. We just
12 ask that he follow the rules, Mr. Davis follow the
13 rules with reference to his examination.
14 MR. DAVIS: Dr. Mamelak, in his
15 deposition, says plasticity, an indication of an
16 improvement in plasticity is sight. It relates to
17 sight, okay. And we've got evidence that her
18 sight has greatly improved, absolutely improved.
19 Her plasticity has, in turn, improved.
20 MR. DAN SLOTCHIVER: Now he's
21 testifying.
22 MR. DAVIS: I'm not attempting to
23 testify. I'm simply attempting to use their
24 document to indicate what has happened.
25 MR. DAN SLOTCHIVER: What evidence do

1 they have that sight improved unless they're going
2 to bring in a doctor, who they didn't disclose to
3 us in advance? They have no testimony to support
4 it. And he's testifying at this point, Your
5 Honor. I'd ask that we move along. It has been a
6 long day.
7 THE COURT: Mr. Davis, please move
8 along.
9 BY MR. DAVIS:
10 Q. Dr. Cohen, has Abbie's sight improved
11 since Dr. Mamelak examined her?
12 MR. DAN SLOTCHIVER: Is that limited
13 to his understanding, Your Honor?
14 MR. DAVIS: Yes. We've already been
15 through that.
16 THE COURT: Well, if you could phrase
17 it in that manner, Mr. Davis, so that the record
18 is clear.
19 MR. DAVIS: Yes, Your Honor. I
20 thought I said your understanding.
21 THE WITNESS: Can I answer?
22 THE COURT: Yes.
23 THE WITNESS: It's my understanding
24 that her sight has improved since she was seen by
25 Dr. Mamelak.

1 BY MR. DAVIS:
2 Q. Can you please turn to Page 64?
3 MR. DAVIS: And Your Honor, if you
4 will, I would point out to the court that what
5 they're doing is a very good legal litigation
6 tactic, but it's not fair to us, and what they're
7 doing --
8 THE COURT: Mr. Davis, if you could
9 refrain from those comments and move along, I
10 would appreciate it.
11 MR. DAN SLOTCHIVER: Thank you, Your
12 Honor.
13 THE COURT: I don't think they're
14 necessary.
15 BY MR. DAVIS:
16 Q. On Line 7, does it appear that
17 Dr. Mamelak has indicated she's moving in a
18 certain direction?
19 MR. DAN SLOTCHIVER: Your Honor, I
20 believe the record speaks for itself. Does it
21 appear that he stated something? The record
22 speaks for itself.
23 MR. DAVIS: I'd like for him to read
24 it.
25 MR. DAN SLOTCHIVER: Well, he's asking

1 him to read a document, Your Honor, that --
2 MR. DAVIS: 64, Lines 7 through 10.
3 MR. DAN SLOTCHIVER: Your Honor, I
4 would object to him just reading a document.
5 There's no question on --
6 MR. DAVIS: This is the last thing
7 that I'm going to have him read, Your Honor, if I
8 can beg your indulgence for four sentences.
9 MR. DAN SLOTCHIVER: Last thing or
10 not, I still place the objection. It's still not
11 proper. It's the same thing that we've dealt with
12 over and over again.
13 MR. DAVIS: And if we can stomach four
14 sentences, I'll move on.
15 THE COURT: Mr. Davis, we have been
16 over this. You can't ask the witness to just read
17 the document. You can ask him limited, very
18 limited questions, I'm afraid, regarding this
19 medical deposition.
20 MR. DAVIS: And I don't know what
21 is --
22 THE COURT: And I'm happy if you would
23 like to recess now and resume this testimony in
24 the morning. That might give all of us an
25 opportunity to clear our heads a little bit and

1 regroup. Of course, you cannot talk to Mr. Cohen,
2 I'm sure you won't --
3 THE WITNESS: Dr. Cohen.
4 THE COURT: -- about his testimony.
5 Any objection -- and I know we talked
6 about quitting at 8:00, and it's just a couple
7 minutes 'til 8:00.
8 MR. DAN SLOTCHIVER: Absolutely, Your
9 Honor. If we could just take up some quick
10 housekeeping as far as tomorrow.
11 THE COURT: Yes, sir.
12 MR. DAN SLOTCHIVER: Your Honor, I
13 know we would like to be able to finish with the
14 testimony of Dr. Cohen, to call John Freeman and
15 to call Julian Walker tomorrow. Those are our
16 three witnesses that we intend to call tomorrow,
17 and if we can, we'll call Dan Dorn. But the
18 timing perspective, I'd like a little bit of
19 guidance, if I may, as far as scheduling the
20 expert witnesses. They cost money, and I just
21 want to know -- they're coming from Columbia,
22 so --
23 THE COURT: We're going to finish with
24 everybody. We'd like to finish with Dr. Cohen, I
25 believe, first, which means that Mr. Davis would

1 complete his examination of Dr. Cohen. I believe
2 you've already examined him.
3 MR. DAN SLOTCHIVER: I have.
4 THE COURT: And then Ms. Hedgepath,
5 Ms. Moore, Mr. Kachmarsky, and then any follow-up.
6 MR. DAN SLOTCHIVER: Right. If I
7 could just ask, I don't know if anybody has any
8 idea how long the testimony is going to be.
9 Obviously, we don't know -- it's just a guess --
10 if it's two hours or three hours or one hour.
11 MR. DAVIS: We're looking at
12 finishing -- he's asking me how long do I have
13 left?
14 MR. DAN SLOTCHIVER: If you have any
15 idea, yes.
16 MR. DAVIS: And again -- well, not
17 again, but it really depends on how many
18 objections Mr. Slotchiver raises. I can get
19 through it in 15 minutes if he didn't raise
20 objections, but then with objections, and I'm not
21 saying it in a disparaging way --
22 THE COURT: Well, how about this,
23 Mr. Davis. How about if you try to be mindful of
24 the objections he's already made to your
25 examination and my rulings in support of his --

1 MR. DAVIS: I think it would be an
2 hour-and-a-half, two hours.
3 THE COURT: Well, Mr. Davis, I'm going
4 to remind you of the objections that have already
5 been made and the objections that I have sustained
6 and ask you to conform your questioning of
7 Dr. Cohen, mindful of those objections that have
8 been sustained, so that he doesn't continuously
9 stand up and object to the form of the question or
10 getting into medical testimony that he's not been
11 qualified as a medical expert, so that we might
12 can move this along.
13 MR. DAVIS: Thank you, Your Honor.
14 And I would also ask the court to advise
15 Mr. Slotchiver the exact same thing, because a
16 number of his objections are identical that you
17 have ruled on, and several were overruled, so I
18 would ask that you make him -- caution him to be
19 mindful as well.
20 MR. DAN SLOTCHIVER: I'll be mindful,
21 Your Honor.
22 THE COURT: Thank you.
23 MR. DAN SLOTCHIVER: I understand that
24 Mr. Davis says he's got two hours, and I'm
25 assuming that there's at least another hour of

1 stuff. What time --
2 THE COURT: Is that what he said, two
3 hours?
4 MR. DAN SLOTCHIVER: He said an
5 hour-and-a-half to two hours.
6 THE COURT: I thought that was -- is
7 that correct, Mr. Davis?
8 MR. DAVIS: Based on what we've done
9 so far.
10 THE COURT: But I think everybody's
11 going to try to be very mindful of the objections
12 and not go down the roads that we've already been
13 down.
14 MR. DAVIS: I'm going to do my best,
15 Your Honor --
16 THE COURT: Thank you.
17 MR. DAVIS: -- to move along. I don't
18 like stretching this out any more than anybody
19 else does. It's a tremendous amount of
20 objections. I think it's a lot. He's entitled to
21 object. I'm not saying he's not.
22 MR. DAN SLOTCHIVER: What time are we
23 going to start tomorrow, Your Honor?
24 THE COURT: Well, let me go through
25 this a little bit more.

1 MR. DAN SLOTCHIVER: Please.
2 THE COURT: So based upon that,
3 Mr. Davis, how long would you anticipate?
4 MR. DAVIS: I mean, you want to say an
5 hour, Judge?
6 THE COURT: I'm asking you. Do you
7 think maybe an hour?
8 MR. DAVIS: I am very, very hopeful.
9 THE COURT: And Ms. Hedgepath and
10 Moore?
11 MS. HEDGEPATH: We'd like your
12 guidance tonight. On Mr. Cohen -- Dr. Cohen?
13 THE COURT: Yes, ma'am, just on
14 Dr. Cohen.
15 MS. HEDGEPATH: Mine's going to be
16 brief, no more than 30 minutes at max, more like
17 15 minutes.
18 THE COURT: Ms. Moore?
19 MS. MOORE: I was going to say 15 to
20 30 minutes at max.
21 THE COURT: Mr. Kachmarsky?
22 MR. KACHMARSKY: I would say 30
23 minutes at max.
24 MR. DAN SLOTCHIVER: So looks likes
25 we're at about two hours, two-and-a-half hours,

1 Your Honor, maybe three.
2 THE COURT: I guess we should say
3 three.
4 MR. DAN SLOTCHIVER: Under that
5 circumstance, Your Honor -- I don't know what time
6 you're planning to begin, I'm assuming 8:30?
7 THE COURT: 8:30.
8 MR. DAN SLOTCHIVER: So under that
9 circumstances, could I -- would it be fair for me
10 to have Mr. Freeman here by 11:30, and if, for
11 some reason, we finish a few minutes earlier,
12 maybe we'll get an early lunch and come back.
13 THE COURT: Well, are you wanting to
14 go to lunch before we begin with Mr. Freeman?
15 MR. DAN SLOTCHIVER: Well, actually,
16 I'd rather not. My concern -- and I'll let the
17 court guide me. My concern is I've got
18 Mr. Freeman coming, and I think that my testimony
19 with him is going to take 45 minutes. How long
20 cross and everything takes, I don't know, but I'm
21 hoping that Your Honor will allow us to attempt to
22 finish Mr. Freeman before we go to lunch, and then
23 to take a break, come back, and let me call
24 Mr. Walker, and if you're so inclined to continue
25 to work tomorrow a little bit later, like we did

1 today, because I don't want either of the experts
2 to have to spend the night if we can possibly
3 avoid that.
4 THE COURT: I would certainly try to
5 do that.
6 MR. DAVIS: Your Honor, I think mine's
7 going to be a little quicker, because I'm looking
8 back at some questions that I've got left.
9 Hopefully, 30, 45 minutes, unless something
10 unusually unforeseen comes up, but based on the
11 ruling with regard to the medical professionals,
12 it's going to probably streamline what I'm going
13 to do.
14 THE COURT: So could Professor Freeman
15 possibly be here at 10:30?
16 MR. DAN SLOTCHIVER: He can be here at
17 whatever time you want. I'm just -- we can pay
18 him once he gets here. That's why I wanted to try
19 to arrange it.
20 THE COURT: I understand.
21 MR. DAN SLOTCHIVER: But if we got him
22 here at 10:30, and would it be fair, Your Honor,
23 to assume that if he starts at 10:30, could I have
24 Mr. Walker here at 2:30? Would that be
25 appropriate?

1 THE COURT: 10:30, 11:30.
2 MR. DAN SLOTCHIVER: Including a lunch
3 somewhere in between and all.
4 THE COURT: Right, maybe 2:00. What
5 were you saying, 2:30?
6 MR. DAN SLOTCHIVER: 2:30.
7 THE COURT: You know, I don't know how
8 long -- you're saying 45 minutes with Professor
9 Freeman?
10 MR. DAN SLOTCHIVER: Well, I think
11 that if this case has demonstrated one thing, it's
12 we're all very poor judges of time, and things
13 seem to take a little bit longer. If we started
14 with Dr. Cohen at 8:30, and we were done by --
15 THE COURT: 10:30.
16 MR. DAN SLOTCHIVER: Which would be
17 surprising to me, then if we started Mr. Freeman
18 at 10:30 --
19 THE COURT: 11:30.
20 MR. DAN SLOTCHIVER: I'm guessing
21 12:30 or 1:00, because it's going to be my
22 testimony, and then the whole circle again, so
23 11:30 to 1:00, perhaps 2:00 with Mr. Walker.
24 Would that be okay?
25 THE COURT: I think that would be

1 fine.
2 MR. DAN SLOTCHIVER: Thank you, Your
3 Honor. I'll let them know.
4 THE COURT: Anything else from
5 counsel?
6 MS. HEDGEPATH: Yes, ma'am. If you're
7 going to allow us to call Dr. Dean, Dr. McCarthy,
8 and Dr. Gerace, we need to let them know, and, of
9 course, Robin Morris. We need to know so that
10 especially the doctors, as well as Robin, can
11 clear their schedule.
12 MR. DAN SLOTCHIVER: And I have an
13 objection, Your Honor, which I'll be happy to put
14 on the record whenever you want.
15 THE COURT: And I don't think we're
16 going to go into that now. When do you say,
17 Ms. Hedgepath, you have to let them know?
18 MS. HEDGEPATH: Well, if we're going
19 to be able to get to them Thursday, I feel that I
20 need to let them know first thing tomorrow
21 morning, because with the doctors, I'm sure
22 they're booked up on a Thursday, and they would
23 have to clear those times.
24 THE COURT: I guess if you could let
25 them know to be on standby, and then we'll try to

1 take up this issue.
2 MR. DAN SLOTCHIVER: I would imagine,
3 Your Honor, that we're going to take all day
4 tomorrow. We'll be lucky to get to Dan Dorn.
5 Then at the conclusion of my case, as I understand
6 it, Mr. Davis and Mr. Boyd go with their case. At
7 the conclusion of their case, when they've rested,
8 then the guardian ad litem's attorney goes, then
9 when she's rested, I guess -- so it's a long -- I
10 don't think it's going to be this week.
11 MS. HEDGEPATH: Do Mr. Boyd and
12 Mr. Davis have any -- are y'all to going to call
13 any additional witnesses in your case-in-chief, or
14 are the witnesses we're talking about now, is that
15 going to be the totality of it?
16 MR. DAVIS: We've got an expert.
17 MR. DAN SLOTCHIVER: I'm assuming
18 they're going to call Wingate.
19 MR. BOYD: Yes. We've got Wingate.
20 MR. DAVIS: Other than that, we've
21 covered it. So is it just one more? We just have
22 one -- I'm sorry, Your Honor. We just have the
23 one witness, Wingate, Ken Wingate.
24 MR. DAN SLOTCHIVER: Maybe we could
25 take it up tomorrow at a break, Your Honor,

1 whatever you want, but I do want to argue that
2 point.
3 THE COURT: I don't know if we'll get
4 to them or not by Thursday, Ms. Hedgepath. I
5 think you could tell them to try to be on standby.
6 Certainly, I know we're all working very hard to
7 try to get this finished by Thursday. I don't
8 know if it's going to happen or not.
9 I'm available on Friday. If we want
10 to try to go one more day, I can certainly do
11 that. I know everybody was set to go through
12 Thursday. And I'm willing to go late on
13 Wednesday, late on Thursday, to this time or
14 later, if necessary, and I'm also available on
15 Friday, if that's a possibility, so that we might
16 could get it finished.
17 So I'll let y'all think about that.
18 If you want to tell these people they might need
19 to be on standby for Thursday, late Thursday.
20 That's the best I can tell you now.
21 MR. DAN SLOTCHIVER: My client can't
22 be here on Friday.
23 THE COURT: Pardon me?
24 MR. DAN SLOTCHIVER: My client cannot
25 be here on Friday. He has the right to be here.

1 That's why we had limited it to Monday through
2 Thursday, Your Honor. We'd like to get it done
3 also. I don't know. We'll see what happens
4 tomorrow.
5 THE COURT: I suggest, Ms. Hedgepath,
6 if you want to tell them they might could be on
7 standby. I don't know that we can give anything
8 else more definite than that.
9 MS. MOORE: Could we at least address
10 what objections Mr. Slotchiver may have in the
11 morning?
12 THE COURT: First thing?
13 MS. MOORE: Correct.
14 MR. DAN SLOTCHIVER: Your Honor, I
15 would prefer, honestly, not to, because we've got
16 witnesses we're bringing in to testify. We've got
17 to finish this examination to get to these two,
18 and if I have --
19 THE COURT: Well, why don't we start
20 at 8:00.
21 MR. DAN SLOTCHIVER: I'm just stating
22 if I have an overlap, and they're both here, it's
23 costing my client an incredible amount of money.
24 THE COURT: I know. I'm saying maybe
25 we start at 8:00 and hear the objections to them

1 bringing in --
2 MR. DAN SLOTCHIVER: If that's what
3 you're so inclined to do, Your Honor. I would
4 rather do it at the end of the day, after we've
5 finished our witnesses.
6 THE COURT: But Mr. Slotchiver, if
7 they have witnesses they need to notify, and some
8 of them are doctors, to try to come in on
9 Thursday --
10 MR. DAN SLOTCHIVER: They can notify
11 them right now. We could argue the motion later
12 on down the road, Your Honor. I don't want to
13 be -- I don't want my case -- in all candor, I
14 don't want my case and my expenses to be increased
15 because they have witnesses they want to notify.
16 That's in their case. In my case, I've
17 accommodated Ms. Meyer and let it go forward, but
18 now I'm getting to the point that I've got two
19 experts coming to testify, and I'm paying hourly
20 rates for both of them, and I'm guessing when
21 they're going to start, and I know I'm going to
22 have some dead time, and I just don't think that
23 it's fair to us to be in that position, when the
24 other alternative is for them to notify the
25 doctors to be here, and they'll let them go if

1 they don't need them.
2 MS. HEDGEPATH: And Your Honor, it's
3 not fair to our witnesses, the doctors, to clear
4 out their day and then not have their patients
5 come in, and it's not fair to their patients for
6 them to show up on the day that they have to be
7 there, and the doctor's not there.
8 MR. DAN SLOTCHIVER: I represent a
9 party in this case in this court and asking for
10 fairness for my party. If they're a witness,
11 that's always not the most pleasant thing for them
12 to do, but Your Honor, I think that we brought the
13 case. We should have the ability to move forward
14 with the case and with our case as we proceeded,
15 and I don't think we should be impacted by their
16 desire -- by their concern about witnesses
17 separate.
18 MR. DAVIS: We brought a case, too,
19 Your Honor, and that was a pivotal thing that we
20 discussed all afternoon, or tonight, and I think
21 it needs to be taken up immediately, as soon as we
22 possibly can, to let these doctors know, because
23 that's a very important part of this case.
24 MR. KACHMARSKY: Judge, I also want to
25 make it clear that if they bring medical experts

1 in, that I will be calling one myself, and I'll be
2 seeking the court to grant payment out of the
3 trust for it. And it'll be a neurologist, because
4 I have the right to do that.
5 THE COURT: I suggest we take it up
6 first thing in the morning, so that we can then
7 move on, and I will take limited argument on it.
8 MR. DAN SLOTCHIVER: If it's not done
9 by 8:30, can we proceed with Dr. Cohen? I just
10 want to have a time table.
11 THE COURT: Well, we'll limit it,
12 okay. I'm not going to let you go on very long.
13 I'm happy to come in at 8:15, let you argue for 15
14 minutes, and I'll make my decision.
15 MR. DAN SLOTCHIVER: Thank you, Your
16 Honor.
17 THE COURT: How is that? We'll start
18 at 8:15.
19 (The proceedings were adjourned at
20 8:11 PM.)
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1 CERTIFICATE OF REPORTER
2
3 I, Marie H. Bruegger, Registered
Professional Reporter, Certified Realtime
4 Reporter, and Notary Public for the State of South
Carolina at Large, do hereby certify that the
5 foregoing transcript is a true, accurate, and
complete record.
6
I further certify that I am neither
7 related to nor counsel for any party to the cause
pending or interested in the events thereof.
8
Witness my hand, I have hereunto
9 affixed my official seal this 16th day of October,
2013, at Charleston, Charleston County, South
10 Carolina.
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19
20
21 Marie H. Bruegger
Registered Professional
22 Reporter, CCR
My commission expires
23 April 18, 2021
24
25

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STATE OF SOUTH CAROLINA
PROBATE COURT
COUNTY OF HORRY
DANIEL B. DORN, in his Capacity as the Parent and Natural Guardian of Esti Dorn, Reuvi Dorn, and Yosse Dorn,
Petitioner,
CASE NO. 2008-GC-26-25
vs. CASE NO. 2008-GC-26-50
PAUL S. COHEN and SUSAN COHEN, individually and in their capacity as the Co-Conservators of the person of Abbie Ilene Dorn, a protected person and ward, and in their capacity as Co-Trustees of the Abbie Dorn Special Needs Trust,

Respondents.

VOLUME V

BEFORE: HONORABLE DEIRDRE W. EDMONDS, Judge

DATE: March 6, 2013

TIME: 8:24 AM

LOCATION: Horry County Courthouse
1301 Second Avenue
Conway, SC

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

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1 THE COURT: We are back on the record
2 this morning in the matter of Abbie Dorn. It is
3 March 6th, 2013, I believe, on Wednesday -- good
4 morning -- Case No. 2008-GC-26-25 and 26-50.
5 And I believe we were going to start
6 this morning -- there was an issue that was raised
7 late yesterday about some of the parties or
8 counsel calling witnesses that the court has
9 indicated to counsel for the Cohens, denied their
10 right to call them as witnesses to respond
11 appropriately to discovery requests, and I think
12 there was some indication by maybe Ms. Moore or
13 Ms. Hedgepath, maybe even Mr. Kachmarsky. Were we
14 not going to talk about that first?
15 MR. DAN SLOTCHIVER: We were, Your
16 Honor.
17 MR. BOYD: Yes, Your Honor.
18 MR. DAN SLOTCHIVER: I assumed we were
19 going to do it very briefly, then move back into
20 the testimony.
21 THE COURT: We are going to do that
22 briefly, have argument on it, and then move on to
23 our next witness.
24 MR. DAN SLOTCHIVER: Yes, Your Honor.
25 Thank you very much.

1 My understanding is that either
2 Ms. Hedgepath or Ms. Moore intend to call as
3 witnesses those doctors who have been precluded
4 from testifying based on the discovery responses
5 of the Cohens' counsel with reference to this case
6 in that they want to be able to notify them to be
7 here, and I wanted to be heard on that issue.
8 THE COURT: Yes, sir.
9 MR. DAN SLOTCHIVER: Your Honor, the
10 correlation could be made in the criminal world to
11 what's called fruit of the poisonous tree. If a
12 car is stopped wrongfully, and in the car there
13 are drugs and weapons and other criminal items,
14 you cannot charge that person, the charge cannot
15 stick against that person, because when you go
16 back to the stem of the arrest, it was improper.
17 In this case, my understanding, even
18 if we take the evidence in light -- or in the
19 light most favorable to the Cohens' testimony,
20 which that Abbie has some cognitive ability to
21 communicate, even their testimony about her
22 limited ability would not place her in a position
23 wherein she was able to vocally converse with the
24 guardian or the guardian ad litem's attorney about
25 her interaction with different doctors.

1 THE COURT: I'm sorry. It's not the
2 guardian ad litem's attorney.
3 MR. DAN SLOTCHIVER: Excuse me. I
4 phrased it wrong. With the guardian ad litem or
5 her appointed attorney. She would not be able to
6 converse with either of them about who she saw,
7 what they did, what they determined for her. The
8 only way to obtain that knowledge would be through
9 the Cohens, in that fruit of the poisonous tree
10 analogy.
11 Your Honor, to allow them to call the
12 witnesses that the Cohens had wanted to call would
13 be an end run around the system. It would be a
14 mockery of the discovery rules. It would actually
15 even allow the Cohens to cross-examine the
16 witnesses who they were not allowed to call.
17 If the information is deemed to be
18 relevant and prudent to the case -- and I'll
19 remind the court that this case, although it's
20 captioned between -- although there's different
21 parties, we've got the parties representing the
22 minor children, we've got the parties representing
23 the Cohens, we've got the parties representing
24 Abbie, I would argue that the parties representing
25 Abbie, their interest -- I'm not trying to speak

1 for them, but as I understand it, their interest
2 is for Abbie. We're not seeking to remove the
3 Cohens as guardians for Abbie. This is purely
4 about the wrongful expenditures of monies.
5 So far throughout this proceeding and
6 all the proceedings relevant to the case, there
7 seems to be more of a line divided between Dan
8 Dorn and everybody else on every issue. There's
9 not a single issue I've seen that's been supported
10 by anybody other than those persons representing
11 the minor children.
12 Further, Your Honor, I went through
13 the billings submitted to date from both
14 Ms. Hedgepath and Ms. Moore. None of those
15 billings reference any communications they've had,
16 any outward efforts they've made to meet with or
17 to contact these doctors independently. It
18 appears to me that this is purely an effort to do
19 that which the Cohens can't do, and to allow them
20 to do that would be to place into evidence
21 information that would be improper.
22 From our perspective, a lot's been
23 said about the fact we haven't sent discovery.
24 Well, part of the reasons that you send discovery
25 is to learn what is discoverable. Because of our

1 understanding of the facts, neither Ms. Hedgepath
2 or Ms. Moore can learn things other than what we
3 learn or other than through the Cohens. And if
4 the Cohens advise them of things, either directly
5 or through their counsel, and if those things are
6 pertinent to the case, that is information that we
7 should have known.
8 So the only way they can have it is
9 through the Cohens. If the Cohens are allowed to
10 elicit it and to bring in the communication, as
11 per the court's prior ruling, then how could the
12 guardian ad litem or the attorney for Abbie or
13 anybody else in this case be able to elicit that
14 information? Thank you.
15 THE COURT: Thank you.
16 MR. DAVIS: Is this purely -- I'm
17 sorry, Your Honor. Is this purely
18 between Ms. Hedgepath --
19 THE COURT: At this point it is.
20 MR. BOYD: Your Honor, I would like an
21 opportunity to be heard on this, if I may be heard
22 briefly.
23 THE COURT: Let me hear from
24 Ms. Hedgepath and Ms. Moore.
25 MS. HEDGEPATH: Your Honor,

1 Mr. Slotchiver is correct. I had not contacted
2 any of these doctors. It was my understanding,
3 from talking with Mr. Boyd, since we had not sent
4 out discovery, that the main objection to the
5 monies that had been spent was the monies that had
6 been spent on the litigation. I did not know or
7 realize that they were objecting to some of the
8 treatments, did not realize until Mr. Kachmarsky's
9 opening, and as we got further into it, of course,
10 find out he even wants to put her in a nursing
11 home.
12 MR. KACHMARSKY: I never made that
13 statement, by the way. I asked her about whether
14 or not she had ever considered or looked into a
15 nursing home, but I have no desire to put Abbie in
16 a nursing home. I just want to make that clear.
17 MS. HEDGEPATH: It led me to believe
18 that a nursing home was an option that he had
19 wanted them to consider, why I asked them about
20 it.
21 But when all of this came up,
22 Ms. Moore and I were talking about the doctors,
23 and I think the following day is the day that
24 Ms. Moore was sick and was not here. And I talked
25 with counsel and I believe the Cohens to find out

1 who the doctors -- who the primary doctors were
2 that did such and such a thing, and I went and
3 visited those doctors and made the decision, in
4 consultation with Ms. Moore, that it would be
5 important to the court and certainly important to
6 Abbie for the court to know what they have to say,
7 what her condition is today, the benefit that she
8 is receiving from the money that's being spent on
9 a daily basis or on a monthly basis for this care.
10 If you remove them as trustees, she
11 may well not get that, and this is important. The
12 court needs to know that had they not fought for
13 the visitation and got the visitation that they
14 got for her and had they not pursued every
15 treatment that they felt was beneficial, then if
16 that money had not been spent, Abbie may well not
17 even be here today. If she had been kept in a
18 facility, certainly would not have received the
19 care and would not be at the -- reach the extent
20 of improvement and the condition that she is now.
21 And quite frankly, I was very impressed with some
22 of the treatments that she received and the
23 results that they told me that they were getting.
24 Now, I have talked with Dr. McCarthy
25 and Dr. Dean, and though I have not yet talked

1 with Gerace, Sarah Gerace, the therapist, I think
2 she would be important, from what I understand.
3 And the other witness I want to call -- we might
4 as well go ahead and address it now -- is Robin
5 Morris. There's nothing to preclude me from doing
6 that.
7 THE COURT: Ms. Moore?
8 MS. MOORE: Yes, ma'am, Your Honor.
9 They are absolutely correct, I have not had direct
10 contact with the medical providers. However, in
11 an effort to keep the cost of this litigation
12 down, I actually asked Mrs. Cohen if there was any
13 way I could get some information that would be in
14 greater detail from all of the providers that
15 would give me an idea of how their treatment
16 interacted with each other, what sort of treatment
17 they provided, how they saw the improvement.
18 And there was actually a roundhouse
19 that was held where every single provider
20 participated, there was a recording done for my
21 benefit, and there was a detailed discussion as to
22 what type of care was being provided for Abbie,
23 and the comments being made something to the
24 effect of that they were very glad to have done
25 the roundhouse, so that they could know what each

1 was doing and how it was impacting Abbie.
2 So they're absolutely correct. I have
3 not had direct information, but I certainly have
4 information that would give me the detail that I
5 needed to know as far as the care of Abbie was
6 concerned.
7 In addition, the information that was
8 provided me obviously has to come from the Cohens,
9 because they're the ones that make the
10 arrangements for the medical care, so as far as
11 the identification of the people, certainly, I
12 asked Mrs. Cohen, and I wrote it down in a
13 detailed memo.
14 Once again, had discovery been served
15 upon me, I certainly would have provided every
16 single name, address, telephone number, and a
17 summary, just like I have, of what it is that I
18 would expect them to testify to.
19 But I think it is important for the
20 court to be provided with information certainly
21 not from every single provider, but from some of
22 the providers that have been providing some of the
23 critical care for Abbie that has been done at the
24 direction of both Dr. Cohen and Mrs. Cohen in
25 their capacity as guardian and trustee.

1 I don't think you can separate the
2 two. Certainly, their responsibility to make
3 arrangements comes under the auspice of being a
4 guardian, making the decision about what type of
5 care needs to be done, but then the flip side is
6 is as trustee, they have to make a decision about
7 whether or not the care is fiscally responsible,
8 whether or not there are sufficient funds to cover
9 the cost, and they have to weigh the balance of
10 that.
11 So I believe that is important, and I
12 don't believe there's anything that prohibits
13 either Ms. Hedgepath or myself from calling any
14 witnesses that we feel are necessary that have not
15 been called by either Mr. Slotchiver or by
16 Mr. Reese or Mr. Boyd. Often is the case where
17 that happens.
18 Most times, quite frankly, it's a
19 witness that neither one of the parties want to
20 call, and therefore, the guardian ad litem is put
21 in a position where they feel it's necessary to
22 present that information to the court. In this
23 situation, it is a little unusual, where it might
24 have been a witness that otherwise would have been
25 called by the Cohens, no question about that, but

1 just because there has been a ruling that would
2 prohibit the Cohens from calling those individuals
3 as witnesses, I do not believe that it prohibits
4 us from calling them as witnesses.
5 THE COURT: Thank you.
6 MS. HEDGEPATH: Your Honor, may I add
7 one more thing?
8 THE COURT: Yes, ma'am.
9 MS. HEDGEPATH: There has been a lot
10 of discussion about failure to comply with
11 discovery, and though I did not send that formal
12 discovery -- I, as Mr. Kachmarsky, had been trying
13 to keep fees down -- but as the trial was
14 approaching, I emailed Dan Slotchiver to get from
15 him and asked him if he would, though it was not
16 formal, provide me with a list of the costs that
17 they found objectionable. I never heard anything
18 back.
19 Now, he is correct. Under the rules,
20 he had no obligation to respond to me, but all
21 this has not been one-sided, Your Honor, and I
22 have kept nothing from him of which I'm aware that
23 he has asked for.
24 MR. DAN SLOTCHIVER: Your Honor,
25 actually, the email I received was asking me what

1 the issues were that I thought were going to be
2 presented. I found it surprising that two years
3 into a case, I'm getting an email from the
4 guardian, the attorney for Abbie, not knowing what
5 the issues were. And we had answered the
6 discovery. We have a lot of other moving parts in
7 this case, and we went forward with them.
8 Your Honor, once again, I'm not
9 disputing that these witnesses would be
10 appropriately called or could be appropriately
11 called if they had appropriately been identified.
12 My concern is that because of the discovery
13 responses given, we've been precluded from moving
14 forward. Had we been provided the information, we
15 would have had the opportunity -- we asked for it
16 over two years ago, two years ago January. We
17 asked for it 26 months ago. We would have had the
18 opportunity within that time period to have taken
19 a deposition if we chose to do that.
20 Obviously, when counsel is contacted
21 by -- counsel or Mrs. Cohen is contacted by the
22 guardian ad litem about who are these doctors, and
23 I'm going to set up a roundtable, if they didn't
24 have notice by that time, I don't know when they
25 would. But it goes back, Your Honor, to the issue

1 of the fruit of the poisonous tree. It all stems
2 from the Cohens' conduct or lack of or misconduct
3 in the case.
4 THE COURT: Mr. Slotchiver, thank you.
5 I appreciate it.
6 MR. DAN SLOTCHIVER: Thank you.
7 THE COURT: Mr. Boyd, I'm not going to
8 hear from you on this matter.
9 Anything from you, Mr. Kachmarsky?
10 MR. KACHMARSKY: I want to make it
11 pretty clear that I have no issue with the Cohens
12 and the way that they've handled Abbie. I mean, I
13 think they've done a remarkable job, and I know
14 she's had a lot of treatments that have helped her
15 physical body.
16 I only take exception with her
17 cognitive functioning, and that seems to be a lot
18 of what we're hearing a lot about, that she can do
19 certain things that I don't believe, based on the
20 testimony I've looked at or the deposition, that
21 it's possible.
22 So one of the questions I would like
23 to ask is with regard to the professionals that
24 you call, the medical experts, is the neurologist
25 one of them? Would that be one of the persons

1 that would come here? Because that's who I'd like
2 to hear from.
3 MS. HEDGEPATH: Mr. Kachmarsky had
4 indicated before we left yesterday if we were
5 allowed to call the doctors that we were
6 anticipating, then he was going to call a
7 neurologist, but if he anticipates calling a
8 neurologist, yes, we will call Abbie's
9 neurologist.
10 MR. KACHMARSKY: And I only -- I
11 represented to this court yesterday that I did not
12 propound discovery, I didn't have any intention of
13 bringing any witnesses or any documents that
14 Mr. Slotchiver hasn't already identified, and I
15 would only do that to the extent that I perceive
16 this to be an attempt to rehabilitate the case
17 that is brought by the Cohens. If they're going
18 to do that, then I'm going to do the same thing,
19 but only if the ruling is that they're allowed to
20 go forward on that.
21 THE COURT: Thank you. I believe
22 that -- I do not believe that Abbie, through her
23 court-appointed attorney and guardian ad litem,
24 who is the person who's the primary benefit of the
25 trust, is precluded because the co-trustees and

1 co-conservators have been precluded by the court
2 from calling these witness. I don't believe that
3 precludes Abbie, through her court-appointed
4 attorney and guardian ad litem, from calling these
5 witnesses.
6 They were not presented with any
7 discovery requests. They did not fail to respond
8 to discovery requests. I think they can call
9 witnesses, and I think it would be prejudicial to
10 Abbie if the court precluded her attorney and her
11 court-appointed guardian ad litem from calling the
12 witnesses based upon what counsel for the
13 co-trustees and co-conservators may not have done
14 with respect to the discovery requests.
15 I have precluded them from doing that.
16 They could choose not to call them if they didn't
17 want to. If they want to call them, I'm not going
18 to preclude them because I've precluded the Cohens
19 from calling them.
20 I will, though -- and I'm happy to
21 hear this argument when we get to it, but I am
22 inclined to preclude their counsel from
23 questioning these witnesses. I don't know if
24 there's a basis for doing that or not, but I would
25 think that there would be, because they're

1 precluded from calling them to begin with, and, of
2 course, we're going to allow them to go around
3 that preclusion by allowing them to question them.
4 I will probably restrict their ability and not
5 allow them to examine those witnesses and allow
6 counsel for Abbie, Mr. Kachmarsky, and counsel for
7 Dan Dorn to examine those witnesses.
8 MR. DAN SLOTCHIVER: I would ask that
9 in conjunction with that, Your Honor, that you
10 also place a gag order precluding the Cohens or
11 their counsel from speaking with the guardian or
12 the guardian's attorney about the issues with
13 which they believe would be prudent or any issues
14 relative to those experts.
15 In other words, they called them, they
16 can ask them, but they shouldn't be able to coach
17 them, because if they're able to coach them and
18 tell them what they think was prudent, then
19 they're accomplishing through them, meaning
20 Ms. Hedgepath and/or Ms. Moore, exactly what you
21 said they could not do.
22 THE COURT: I will take that into
23 consideration.
24 MR. DAN SLOTCHIVER: In the meanwhile,
25 while you're taking it into consideration, can you

1 temporarily place that gag order so that if they
2 do it today, they're not in violation? If they do
3 it tomorrow, they might be.
4 THE COURT: I will instruct them not
5 to talk with the Cohens about these particular
6 witnesses and try to solicit from the Cohens
7 information regarding these witnesses. I'm not
8 going to preclude them from talking to the Cohens
9 about other matters.
10 MR. DAN SLOTCHIVER: I understand. I
11 wasn't asking it. Would that also apply to
12 Cohens' counsels?
13 THE COURT: Yes.
14 MR. DAN SLOTCHIVER: Thank you, Your
15 Honor.
16 MR. BOYD: Your Honor, I have a motion
17 that I would like to bring to the court's
18 consideration, if I may, very briefly.
19 THE COURT: Very quickly.
20 MR. DAVIS: Can we address this, what
21 you just did? You just precluded us from doing
22 something without giving us an opportunity to be
23 heard, Your Honor. I think we ought to have at
24 least a chance to argue.
25 MR. BOYD: Your Honor, I'm not

1 familiar with any case where a gag order has been
2 prescribed, but maybe I can address that as part
3 of my motion for reconsideration, may it please
4 the court.
5 Your Honor, I'd just like to briefly
6 address -- because I did not speak yesterday. I
7 was not in the bullpen. I want to make just a
8 very brief observation and a quick motion for the
9 court's consideration.
10 THE COURT: And I don't want to go
11 back over what we've already ruled on.
12 MR. BOYD: I understand, Your Honor.
13 I just would like -- could I just make one
14 observation for the record?
15 THE COURT: Yes, sir.
16 MR. BOYD: One of the overarching --
17 and I would like to put this to the court, Your
18 Honor, in the form of a motion for
19 reconsideration, but what my point, Your Honor, is
20 that one of the overarching aims of the rules of
21 discovery, as I've reviewed them and the cases
22 interpreting them, is that trial courts are
23 encouraged to make their decisions on as much
24 evidence as is available as possible. The courts
25 have made clear -- appellate courts have made

1 clear in order --
2 THE COURT: Mr. Boyd, are you asking
3 me to reconsider my ruling of yesterday evening
4 regarding the ability of your clients to call
5 these witnesses?
6 MR. BOYD: Yes, Your Honor, I am.
7 THE COURT: I deny that.
8 MR. BOYD: May I just briefly put
9 something on the record, Your Honor?
10 THE COURT: Very briefly.
11 MR. BOYD: There are three cases that
12 I want to bring to the court's attention, Your
13 Honor, and the standard, Your Honor, for excluding
14 evidence, which is a Draconian remedy. It's a
15 very high standard. And the cases refer to
16 willful disobedience or gross indifference to the
17 rights of the other party. There's three cases
18 that I'll bring to the court's attention: Briggs
19 versus Richardson --
20 And I've got copies I'll hand up in
21 just a second, Your Honor. Actually, I'll go
22 ahead and hand these up, if I may. I'm sorry,
23 Your Honor. I only have copies of one of these
24 cases. I will email copies of the other cases to
25 counsel.

1 The second case after the Briggs case,
2 Your Honor --
3 MR. DAN SLOTCHIVER: Your Honor, I
4 understood he was going to give the names of the
5 cases so we could proceed, if that would be
6 acceptable. Just to move forward with the
7 witnesses, he was going to name the names of the
8 cases. You've already denied the motion.
9 THE COURT: I will give him two
10 minutes.
11 MR. DAN SLOTCHIVER: Thank you, Your
12 Honor.
13 MR. BOYD: Your Honor, in the Briggs
14 case, the court said that allowing witnesses whose
15 name was not disclosed pursuant to interrogatories
16 to testify was harmless error unless the outcome
17 of the case was determined by the testimony of
18 that witness.
19 The second case I would bring to the
20 court's attention is the Bowman versus AT&T case.
21 It's a very important case, Your Honor, and it
22 talks about a trial court improperly excluding the
23 testimony of an expert doctor who had not been
24 named in response to an interrogatory.
25 Nonetheless, the court excluded it, but there was

1 a failure of a showing by the other party of
2 willful disobedience or gross indifference to
3 their rights.
4 And Your Honor, the last case that I
5 will bring to the court's attention is the case of
6 Jenkins versus Few, which I've handed up, talks
7 about sanctions and the Draconian remedy that
8 we're talking about here, which is excluding
9 evidence. And the court, in the Few case, said
10 before excluding a witness as a sanction for
11 violating the continuing duty to disclose
12 information, the trial court should ascertain:
13 One, the type of witness involved; two, the
14 content of the evidence; three, the explanation
15 for the failure to name the witness in the answer
16 to the interrogatory; four, the importance of the
17 witness's testimony; and five, the degree of
18 surprise to the other party.
19 Your Honor, just in very brief
20 summation, with respect to these witnesses that we
21 admittedly did not suffice Mr. Slotchiver's
22 standard, meet Mr. Slotchiver's standard in
23 answering our interrogatories --
24 MR. DAN SLOTCHIVER: Your Honor, I
25 object to the characterization that it's my

1 standard. I believe it was the court's standard.
2 MR. BOYD: What he's saying, Your
3 Honor, is, look, we're just following the rules,
4 but let me -- I would ask the court briefly to go
5 back. What he's asking us to do is look at his
6 complaint, which is extrapolated forward.
7 MR. DAN SLOTCHIVER: You ruled on this
8 matter, I believe, Your Honor.
9 THE COURT: Thank you.
10 MR. BOYD: Your Honor, there's
11 something that needs to be on the record because
12 this is a very important issue, Your Honor, and
13 he's asking us to extrapolate forward from his
14 complaint and then work backward to every possible
15 document that could be relevant in any conceivable
16 direction that he could go with his case, and then
17 he's going to say, hey, it's a standard
18 interrogatory. And he may be right in that
19 regard, Your Honor, but in the way it's being
20 applied in this instance, it's unduly burdensome,
21 and it's unfair.
22 Candidly, Your Honor, when I first
23 looked at this case, it looked to me something
24 akin to a declaratory judgment. I believe there
25 was a relatively small universe of documents, the

1 order of transfer of jurisdiction, the California
2 orders of conservatorship, the special needs trust
3 itself, that the court would effectively be
4 interpreting to determine exactly what the
5 authorities of the trustees were and whether they
6 exercised those authorities appropriately.
7 If I read Mr. Slotchiver's petition,
8 it basically alleges as follows: We've not been
9 filing the accountings. We demand those. You
10 didn't get prior court approval for commencing
11 California litigation and paying attorneys' fees
12 in California that you paid. They asked for
13 restrain performance, bond, removal of the
14 trustees and the co-conservators, and, of course,
15 they asked for attorneys' fees.
16 MR. DAN SLOTCHIVER: Your Honor, I
17 think the document speaks for itself. I have a
18 witness coming in an hour and 45 minutes.
19 THE COURT: I understand.
20 MR. BOYD: I would encourage the court
21 to review -- the interesting thing when you review
22 Mr. Slotchiver's petition, Your Honor, is it does
23 not mention --
24 MR. DAN SLOTCHIVER: This has gone
25 well beyond the argument, Your Honor.

1 THE COURT: One second,
2 Mr. Slotchiver.
3 MR. BOYD: It does not mention in any
4 regard the benefit Abbie receives from visitation
5 or any lack. It alleges no lack of benefit that
6 she receives from visitation.
7 Number two, it has absolutely zero
8 references to medical providers selected by the
9 trustees and certainly no allegation that any such
10 provider was improperly selected.
11 Three, there is no reference at all in
12 Mr. Slotchiver's petition to the efficacy of any
13 treatments that the Cohens have undertaken for
14 their daughter and certainly no allegation that
15 they were paying for treatments that have no
16 benefits for Abbie.
17 In fact, Your Honor, when you look at
18 Mr. Slotchiver's petition, I can't find the words
19 medical, physician, or doctor mentioned in his
20 petition. So if he wants to limit us to the four
21 corners of our discovery in a strict legalistic
22 interpretation of the rules, then I would submit
23 to you that we need to limit Mr. Slotchiver to
24 arguments that are raised in his petition.
25 And I would also move that in addition

1 to a motion for reconsideration, I would move that
2 we exclude any evidence that Mr. Slotchiver would
3 present that has not been raised in his petition,
4 and that will narrow the case significantly, Your
5 Honor.
6 THE COURT: Thank you.
7 MR. BOYD: Thank you.
8 THE COURT: I'll take that under
9 consideration during a break.
10 MR. DAVIS: Your Honor, one last
11 thing. You've ruled that we are unable to
12 cross-examine the witness. I understand the
13 court's ruling, and I understand he's been very
14 persistent in his arguments, and I have to applaud
15 that; however, it doesn't change the fact that
16 there's no legal basis for not allowing us to
17 cross-examine the witness. Had I not brought them
18 up at all, and they just on their own unilaterally
19 said we're going to call these witnesses, nothing
20 would have precluded us, Your Honor.
21 MR. DAN SLOTCHIVER: We would have
22 made the same objection.
23 MR. DAVIS: We would have
24 cross-examined those witnesses just like in any
25 case that ever comes before -- when a guardian or

1 an attorney for the ward calls a witness, every
2 time that I've ever seen, we've been able to
3 cross-examine a witness, Your Honor.
4 So just because I brought up testimony
5 does not change the fact that we're still entitled
6 to cross-examine a witness, and it would
7 absolutely be prejudicial to the Cohens, who are
8 being sued here. And Your Honor, I remind you
9 what Mr. Boyd said about the allegations in his
10 complaint, so we certainly should have an ability
11 to cross-examine.
12 MR. DAN SLOTCHIVER: Your Honor,
13 they're both arguing the same points, and I
14 believe this has been heard.
15 THE COURT: Thank you. Let's move on,
16 please. I understand Dr. Cohen was testifying
17 late yesterday.
18 MR. DAVIS: Yes, Your Honor.
19 THE COURT: Would we like him to
20 re-take the stand? I believe, Mr. Davis, you were
21 examining the witness.
22 MR. DAVIS: Your Honor, to avoid -- to
23 speed this along, I just want to make sure we're
24 clear. You have ruled that Dr. Cohen can testify
25 as to his understanding, but he is not an expert,

1 medical expert, and cannot give his opinion. Is
2 that generally what you've ruled?
3 THE COURT: His medical opinion, that
4 is right.
5 MR. DAVIS: Cannot give a medical
6 opinion, but can give his opinion as a trustee
7 formulated in his own mind. Is that -- my
8 understanding is correct? I just want to preempt
9 any unnecessary objections by Mr. Slotchiver.
10 MR. DAN SLOTCHIVER: Object to the
11 reference to unnecessary objections.
12 THE COURT: Thank you.
13 MR. DAN SLOTCHIVER: I believe they
14 were necessary.
15 THE COURT: We'll strike that
16 statement.
17 MR. DAVIS: I withdraw the statement
18 if he considers it to be offensive. I wasn't
19 intending it to be, Your Honor.
20 THE COURT: Thank you.
21 PAUL COHEN
22 having first duly affirmed, testified further as
23 follows:
24 CROSS-EXAMINATION
25 BY MR. DAVIS:

1 Q. Dr. Cohen, as trustee, what is your
2 understanding of Dr. Mamelak's diagnosis of Abbie
3 three months after her accident?
4 A. Three months after the accident, he
5 said that she was in a persistent vegetative
6 state.
7 Q. Is your understanding that he also
8 mentioned in his deposition that improvement is
9 possible?
10 A. He cited some -- he reported that
11 there was some case reports of this.
12 Q. Dr. Cohen, I'd like to draw your
13 attention to Respondent's Exhibit No. 6.
14 MR. DAVIS: And for the court's
15 information and everybody else, that report is
16 Dr. Hays's medical report.
17 THE COURT: Just briefly while you do
18 that, what time is your first witness going to be
19 here, Mr. Slotchiver?
20 MR. DAN SLOTCHIVER: 10:30, Your
21 Honor.
22 BY MR. DAVIS:
23 Q. Dr. Cohen, are you familiar with
24 Dr. Hays's report?
25 A. I haven't read it recently, but I'm

1 familiar with it.
2 Q. And can you explain to the court who
3 Dr. Hays is?
4 A. She is a professor of neurology at
5 Medical University of South Carolina in
6 Charleston.
7 Q. And how did she become involved in a
8 case in California?
9 A. She was a court-appointed neurologist
10 for the divorce proceedings.
11 Q. What is your understanding of
12 Dr. Hays's examination of Abbie?
13 A. Well, her examination of Abbie -- the
14 initial part of the first two-and-a-half, three
15 pages consists of a history of what happened, and
16 there after that, she did a neurological
17 examination, which would have been --
18 MR. DAN SLOTCHIVER: Your Honor, I
19 would object. This is -- he's just giving a
20 narrative as to what a document says. It's not
21 relevant.
22 MR. DAVIS: Your Honor, I'm just
23 asking for his understanding. That's all I'm
24 doing. I don't know any other way to do it.
25 THE COURT: Let me just caution

1 counsel, we need to move along as quickly as we
2 can this morning. I would recommend, Mr. Davis,
3 that you move along as quickly as you can with
4 your witness and try not to elicit testimony that
5 might not -- maybe it's already been presented,
6 it's not critical to the trial of this, things
7 that I can gather from reading the document
8 myself.
9 Mr. Slotchiver, I recommend that to
10 the extent that you can give a little bit of
11 leeway with your objections. I certainly don't
12 want to tell you you can't object to anything if
13 it's a critical matter, but we do need to move
14 this along.
15 MR. DAVIS: And I completely agree,
16 Your Honor. I'm going to do everything I can --
17 THE COURT: You've got to finish,
18 everyone has to examine Dr. Cohen, and we need to
19 finish by 10:30.
20 MR. DAVIS: You have my word. I'm
21 going to do everything I can, Your Honor, to do
22 that.
23 THE COURT: Thank you.
24 BY MR. DAVIS:
25 Q. Dr. Cohen, the point that we're trying

1 to get at is there's been a change in diagnosis.
2 Is your understanding that there actually has been
3 a change in diagnosis from Dr. Mamelak's report to
4 Dr. Hays's report?
5 MR. DAN SLOTCHIVER: Your Honor, I
6 object. He is not listed as an expert. He cannot
7 pit the two doctors against each other and give
8 his understanding of the difference between the
9 two doctors' reports, especially insomuch as
10 Mamelak's report said: I believe at this time
11 this is her condition. Hays's report said similar
12 things, but in a different way. I don't believe
13 he can ask him to compare the two of them to give
14 an opinion as to a change.
15 MR. DAVIS: Your Honor, I'll be happy
16 to do whatever, and if you want to instruct me on
17 a more efficient way to do it, be it Dr. Mamelak,
18 who at three months after -- the testimony will
19 show three months --
20 THE COURT: I understand, and I will
21 certainly review both of those reports in full,
22 Dr. Mamelak's and Dr. Hays's report.
23 BY MR. DAVIS:
24 Q. Dr. Cohen, what is your understanding
25 of Dr. Hays's diagnosis?

1 A. She believed that Abbie was in a
2 minimally conscious state and not a persistent
3 vegetative state.
4 Q. And it's your understanding that's
5 improvement?
6 A. It's a higher level of functioning.
7 MR. DAN SLOTCHIVER: Your Honor, now
8 he's been asked to give an opinion.
9 MR. DAVIS: It's his understanding.
10 BY MR. DAVIS:
11 Q. Not your opinion, Dr. Cohen, your
12 understanding as trustee.
13 MR. DAN SLOTCHIVER: Your Honor, the
14 documents speak for themselves. You've already
15 stated you're going to read the documents. To
16 continue to ask him --
17 MR. DAVIS: Let me put it in context.
18 MR. DAN SLOTCHIVER: If I could
19 finish, please.
20 He's continuing the same efforts
21 without changing. He's asking him to give his
22 opinion about a document. The document speaks for
23 itself. Since he's not an expert, he cannot
24 opine, so the only thing he could do is look at
25 the opinion and tell you what it says, and I

1 believe from that standpoint, Your Honor, you just
2 as well can read the document, you've already
3 stated you would, and absorb everything that you
4 can read from it by reading it yourself.
5 THE COURT: Thank you.
6 MR. DAVIS: And Your Honor, that's
7 just not -- it's not helpful to the court in this
8 case, and it's not appropriate. Let me explain
9 why. They are charged, as we mentioned yesterday,
10 as he mentioned, and we established the testimony,
11 and it's already been established, that they're
12 charged with the responsibility of doing things
13 that are in the benefit of Abbie. How can they
14 determine what is going to be in the benefit of
15 Abbie unless they understand her condition?
16 So it cuts right to the heart of the
17 case, Your Honor. I'm not sure why he's
18 objecting. And we're trying to determine will she
19 receive a benefit and can she receive a benefit,
20 and we need to know what information -- the court
21 needs to know what information he's using to
22 formulate the understanding that, yes, she will
23 receive a benefit, Your Honor, and that's all I'm
24 doing.
25 MR. DAN SLOTCHIVER: I believe he can

1 ask -- but he can ask him what information did he
2 use in order to determine it, and if he says: I
3 relied on Dr. Hays's report, you're going read
4 Dr. Hays's report. He's already told us he didn't
5 read Mamelak or rely on it, but he can say: I
6 relied on Dr. Hays's report, and then we can move
7 on to the next issue.
8 THE COURT: Could you do that,
9 Mr. Davis?
10 MR. DAVIS: I think I can. I think
11 that I'm doing it, Your Honor. And again, I'm not
12 trying to be cute. I'm trying my best to get --
13 to move it along. I really am, Your Honor.
14 BY MR. DAVIS:
15 Q. Is it your understanding, not your
16 medical opinion, Dr. Cohen, that Abbie has
17 received an improved diagnosis?
18 A. Yes.
19 MR. DAN SLOTCHIVER: Objection, Your
20 Honor. That would have to be a medical opinion to
21 state there's an improved diagnosis. He's
22 testified he believes she's improved, but now he's
23 asked to give an opinion as to an improved
24 diagnosis.
25 MR. DAVIS: Your Honor, that is not

1 a medical opinion.
2 THE COURT: I'm going to allow that.
3 MR. DAVIS: Just like anybody knows
4 that takes a family member to the doctor what --
5 THE COURT: Mr. Davis, please. We
6 don't have time.
7 MR. DAVIS: Okay.
8 BY MR. DAVIS:
9 Q. Dr. Cohen, have you taken any
10 compensation for serving as trustee?
11 A. No.
12 Q. Please tell me and the court what
13 services your son Jeffrey provides for the trust,
14 or for Abbie, rather.
15 A. He does bookkeeping for us. He pays
16 all Abbie's bills, provides also personal services
17 to her at times. He reads to her over the
18 telephone, and we believe that she derives a
19 benefit from this.
20 Q. Does Jeffrey have particular skills
21 with regard to items that would be beneficial to
22 Abbie?
23 A. Well, of course, he reads to her. He
24 has a pleasant reading voice. She seems -- we
25 believe that she seems to derive benefit from

1 this. He also has better bookkeeping skills than
2 his mother does, that I don't. He is working at
3 an accountant's office right now and doing various
4 things there, so he could do that a lot better
5 than she -- my wife can.
6 Q. Does he have a particular skill and
7 ability to read in Hebrew?
8 A. Yes.
9 Q. Do you believe Abbie benefits from
10 being read to in Hebrew?
11 MR. DAN SLOTCHIVER: Objection to any
12 foundation as to how he can know that she benefits
13 from being read in Hebrew versus any other
14 language.
15 MR. DAVIS: It's his understanding.
16 He's making an informed understanding as
17 trustee --
18 MR. DAN SLOTCHIVER: There's no
19 foundation.
20 MR. DAVIS: -- that she benefits or
21 not. The foundation, Your Honor, is his personal
22 witness and experience. We've already established
23 that he's there with her and sees it happening.
24 How else can --
25 THE COURT: I'll allow it.

1 MR. DAN SLOTCHIVER: Your Honor, my
2 understanding is she doesn't even speak Hebrew.
3 MRS. COHEN: Yes, she does.
4 THE COURT: I'll allow it.
5 BY MR. DAVIS:
6 Q. Dr. Cohen, do you know whether or not
7 your daughter Abbie speaks Hebrew?
8 A. She can to some extent, but I think
9 she understands it a lot better.
10 Q. Is it your understanding that she is
11 receptive to Jeffrey more so than she would be
12 someone else?
13 MR. DAN SLOTCHIVER: Objection, no
14 foundation.
15 MR. DAVIS: Well, he witnessed that
16 she is receptive to Jeffrey's reading of Hebrew to
17 her.
18 MR. DAN SLOTCHIVER: Objection, no
19 foundation as to her being receptive.
20 MR. DAVIS: Your Honor, again, his
21 understanding based on personal observation.
22 We've already talked about this.
23 THE COURT: I'll allow it.
24 THE WITNESS: She's family. She's
25 always had a good relationship with him. Excuse

1 me. He is family. She's always had a good
2 relationship with him.
3 BY MR. DAVIS:
4 Q. Do you believe it to be, your
5 understanding, your understanding -- I realize --
6 we all know that you can't tell us what's Abbie's
7 understanding, but your understanding from your
8 personal observation, does it appear to be
9 soothing to Abbie when --
10 A. It appears to be soothing to Abbie.
11 MR. DAVIS: Your Honor, we've got some
12 additional information that's going to be quite
13 significant.
14 THE COURT: Quite significant? I'm
15 sorry.
16 MR. DAVIS: Quite significant, and
17 I'll move along as fast as I can, Your Honor.
18 THE COURT: Please.
19 MR. DAVIS: Your Honor, yesterday
20 there was testimony from Ms. Meyer that the
21 statement of case that we've been working from was
22 not the final order of this case. We're South
23 Carolina attorneys, as you know, not California
24 attorneys. We've been working under the
25 understanding -- and I won't speak for

1 Mr. Slotchiver, but I would like to know whether
2 he knew about this or not, but testimony yesterday
3 indicated that there was, in fact, a final order,
4 that the statement of the case was not the final
5 order, as you recall from Ms. Meyer's testimony.
6 We have obtained a copy of that final
7 order that was clocked January 24th, 2012, that we
8 were not aware of, Your Honor. And I don't --
9 again, I can't speak for Mr. Slotchiver, but I
10 would ask him was he aware that there was a
11 separate document. It appears from his
12 questioning that he may have been, but I'm not
13 going to speak for him, and I would just -- so I
14 would ask him myself or ask the court to ask him
15 was he aware that there was actually a separate
16 document that was considered the final judgment in
17 the California marital action.
18 THE COURT: Did you have something you
19 wanted to admit, Mr. Davis?
20 MR. DAVIS: Yes, Your Honor.
21 THE COURT: If you'd like to go
22 forward at this time, I'll be happy to hear that.
23 MR. DAVIS: May I approach, Your
24 Honor?
25 THE COURT: Yes, sir.

1 MR. KACHMARSKY: Can I get a copy as
2 well, please?
3 MR. DAVIS: I'll be more than happy
4 to, Your Honor; however, I'm limited. I'm kind of
5 going to go off memory because I don't -- this is
6 something that we received yesterday, and I don't
7 have another copy. Understand that I've given
8 Mr. Slotchiver a copy, and Ms. Hedgepath and
9 Ms. Moore have copies, and that's my last copy
10 there.
11 THE COURT: Ms. Moore, do you have a
12 copy? I'm just wondering if --
13 MS. MOORE: Yeah, that's fine.
14 MR. DAVIS: We probably need some --
15 it may be helpful.
16 THE COURT: You could ask her back
17 here. She'll be happy to make you several copies.
18 Okay. Mr. Boyd will. Thank you, Mr. Boyd.
19 Go ahead, Mr. Davis.
20 BY MR. DAVIS:
21 Q. Dr. Cohen, is this the final order for
22 the marital action in California?
23 MR. DAN SLOTCHIVER: Your Honor, if I
24 may have a moment to review this. I have not been
25 provided a copy of this before.

1 MR. DAVIS: Can I ask Mr. Slotchiver
2 if he was aware -- in his questioning, he said was
3 there --
4 THE COURT: Mr. Davis, let's just give
5 him just a moment. We're going to take about two
6 minutes.
7 MR. DAN SLOTCHIVER: Okay, Your Honor.
8 THE COURT: Mr. Davis, if you'd like
9 to proceed.
10 BY MR. DAVIS:
11 Q. Dr. Cohen, does this appear to you to
12 be the final judgment in the marital action?
13 A. Yes.
14 Q. Are you familiar with the document?
15 A. Well, I haven't seen this document in
16 quite some time, so there's so many documents I've
17 seen, I don't remember this one per se.
18 MR. DAN SLOTCHIVER: Your Honor, if
19 Dr. Cohen has seen this document before and it
20 hasn't been produced to us, I'm curious as to why.
21 If this is relevant or, as Mr. Davis says, got
22 some significant things coming, I'm curious why it
23 hasn't been disclosed to us before, keeping in
24 mind that the duty of disclosure not only falls
25 upon counsel, but also on the clients.

1 THE COURT: Mr. Davis or Mr. Boyd?
2 I'm happy to hear from y'all.
3 MR. DAVIS: Yes, Your Honor. I was --
4 as I mentioned yesterday, we received a notice of
5 this document yesterday. It's a final judgment of
6 the case in California, it's public record, and
7 it's got some beneficial value in this case. I
8 believe it should be accepted, Your Honor, into
9 evidence.
10 MR. BOYD: Your Honor, if there's a
11 doctrine that would apply, I would say this is an
12 example of mutual mistake. I mean, I'm not -- I
13 can't get in anybody else's head, but prior to
14 Ms. Meyer's testimony yesterday, I thought that
15 the document that had been distributed as the
16 final judgment of the court was, in fact, the
17 final judgment of the court.
18 THE COURT: You did not have this
19 document, Mr. Boyd?
20 MR. BOYD: No, ma'am.
21 MR. DAN SLOTCHIVER: But Dr. Cohen
22 testified that he was aware of it.
23 MR. BOYD: Your Honor, we're
24 placing --
25 MR. DAN SLOTCHIVER: He testified --

1 if I may finish, Your Honor. He testified to that
2 just a few moments ago. Your Honor, the
3 obligation, as I understand it, is for the counsel
4 not to just give what he has in his possession,
5 but in order to search out what exists. In order
6 to do that in any case, you must ask your client.
7 And it applies not only in a probate case, but in
8 a civil case and a divorce case. If I was to ask
9 what evidence do you have of XYZ, if someone asked
10 me that question, then I would look at my file. I
11 have none, don't have any, but what I really have
12 to do is go to my client and find out the answer.
13 So if they want to rely on a document,
14 and they want to assert this to be the order, as
15 opposed to what's already been presented, which we
16 will argue over if we need to, but if they want to
17 assert it, they certainly should have presented
18 this document to us before, especially in light of
19 the fact that Dr. Cohen has testified under oath
20 that he's seen this before, it's been quite some
21 time, and I'm assuming quite some time did not
22 mean yesterday afternoon.
23 THE WITNESS: Actually, I'm going to
24 retract that. I've never seen this document
25 before.

1 MR. DAN SLOTCHIVER: Well, Your Honor,
2 we have an issue because a moment ago he testified
3 he did, and then we have an --
4 THE WITNESS: I've seen parts of this
5 document, but I've never seen this first page.
6 MR. DAN SLOTCHIVER: So now, Your
7 Honor, we've had three responses all in five
8 minutes.
9 THE COURT: Okay, Mr. Slotchiver.
10 Mr. Davis, if you could explore that testimony
11 with your client, and then I will rule.
12 MR. DAVIS: Okay.
13 BY MR. DAVIS:
14 Q. Dr. Cohen, you've had a chance now to
15 glance at the document that I handed you. Does
16 that document appear to be the final order in the
17 marital dissolution action in California?
18 A. As I said, I've never seen the first
19 or second page, but I've read parts of this on the
20 computer. I've never seen this, the first two
21 pages.
22 Q. But with regard to my question, do you
23 understand this document to be the final order, an
24 order of judgment in the marital action in
25 California?

1 A. It appears to be so.
2 Q. On Page 1, does it incorporate the
3 statement of the case that we've been working off
4 of in this South Carolina matter?
5 A. Page 1 of what, this first page?
6 Q. Page 1 of the numbered lines.
7 THE COURT: Let me -- Mr. Davis, I
8 don't mean to interrupt you, but let me ask
9 Dr. Cohen a couple questions.
10 MR. DAVIS: Sure.
11 THE COURT: Dr. Cohen, you said a
12 moment ago that you had not seen that document for
13 quite some time.
14 THE WITNESS: That's correct.
15 THE COURT: And then you said: I take
16 that back. I've never seen this document. And
17 then you said: I've never seen the first two
18 pages of the document, and I saw some of the other
19 pages on the computer. I need you to clarify for
20 me and explain to me whether you were aware of
21 that document, what you have seen, what you have
22 not seen.
23 THE WITNESS: Okay. I've never seen
24 these first pages, and therefore, I've never seen
25 this document in toto. I've seen -- when we got

1 the first stuff from the attorney, I read all this
2 stuff here, but I've never seen these first two
3 pages, and therefore, I can say I've never seen
4 this document in its totality.
5 MR. DAVIS: Your Honor, I need to
6 advise the court also, I don't believe we're under
7 an obligation to produce this. This is actually
8 signed by Dan Dorn himself and his attorney, so he
9 certainly has a copy of this document, Your Honor.
10 It's consented to and signed by him, so we're not
11 under an obligation to produce that. They
12 already -- clearly, they already have it because
13 he signed it, and his attorney signed it.
14 MR. DAN SLOTCHIVER: Your Honor, if
15 they're relying on this -- and I don't know why
16 they are, and I don't know why it's significant,
17 so I'm arguing it more for the procedural benefit
18 at this point, and I can certainly cross-examine
19 him, if so desired, but at this point my concern
20 is that once again, we're in a situation where
21 we've heard counsel say this is significant, same
22 way he said it with reference to the documents
23 testimony, it's going to be big, significant
24 stuff. I have these doctors, surprise.
25 Now this is significant stuff, Your

1 Honor. We have significant stuff coming forward,
2 and he shows us a document that he'd never given
3 us before that he believes is significant in the
4 defense of this case, that he's advising us that
5 -- and his client has testified four different
6 ways at this point that I've seen, and I don't
7 believe it appropriate to come in. I don't
8 believe that they have complied with the discovery
9 again.
10 MR. DAVIS: Your Honor, let me
11 rephrase my statement earlier. I think it's
12 important that the court get this. I think
13 there's a lot of significant events. I'm not
14 indicating that this is more significant than the
15 other events. I would simply like to have it as
16 evidence for the court to review. I don't believe
17 it any more significant than the doctors'
18 testimony, than the testimony of Dr. Cohen. I
19 believe it to be a very important document. I was
20 merely anticipating a number of objections. I
21 guess significant from the time standpoint, Your
22 Honor, more so than anything else, so I'd like to
23 rephrase that, if I may, for the court.
24 But again, we're under no obligation
25 to provide this in discovery, and it's a document

1 that they already have, in fact, they've already
2 signed, both him and his attorney, Your Honor.
3 MR. KACHMARSKY: That's nonsense. I
4 object to that. If you're going to use it in
5 trial, you need to produce it. I mean, that's all
6 there is to it.
7 MR. DAVIS: Again, Your Honor, I
8 appreciate Mr. Kachmarsky's comment; however, I
9 completely disagree with him. The purpose of
10 discovery is to avoid surprise, to give parties
11 information that's helpful. We've talked ad
12 nauseam about the statement of the case
13 representing that was the final judgment of the
14 case.
15 MR. DAN SLOTCHIVER: It was, Your
16 Honor. That's the whole point. The statement of
17 the case is -- it's incorporated. Even in this
18 language, he testified it's incorporated as part
19 of it, but now he wants to add additional language
20 to it.
21 MR. DAVIS: I just want to --
22 THE COURT: I'm going to allow it in
23 over your objection, give you an opportunity to
24 cross on it, Mr. Slotchiver.
25 MR. DAN SLOTCHIVER: Thank you, Your

1 Honor.
2 THE COURT: Mr. Davis has indicated
3 that until yesterday, counsel did not know it
4 existed, Dr. Cohen has clarified his testimony
5 that he had not seen this document in its
6 entirety, and so I'm going to allow it in.
7 MR. DAVIS: Thank you, Your Honor.
8 So I'm going to need some help on
9 which number to call this. I'm R, as I
10 understand.
11 THE COURT: Respondent.
12 (RES. EXH. 15, Order of Judgment in
13 Marital Action in California, was marked for
14 identification.)
15 MR. DAVIS: Your Honor, one last thing
16 for the court's edification on that document. The
17 Cohens -- and I represent to the court the Cohens
18 advised us that they did not realize the
19 difference between the statement of the case --
20 MR. DAN SLOTCHIVER: Objection, Your
21 Honor.
22 THE COURT: Mr. -- thank you.
23 MR. DAVIS: Is that information
24 objectionable?
25 THE COURT: You can question your

1 client about that, but I think it's inappropriate
2 to tell me what your client told you --
3 MR. DAVIS: Okay. I apologize, Your
4 Honor.
5 THE COURT: -- at this juncture.
6 Thank you.
7 BY MR. DAVIS:
8 Q. Dr. Cohen, is there a current
9 neurologist that treats Abbie?
10 A. Yes.
11 Q. What is his name?
12 A. Dr. Benz, B-E-N-Z.
13 Q. Is there a current physician that --
14 or a current provider, medical provider, that
15 treats Abbie with regard to her hearing?
16 A. To her hearing?
17 Q. Her hearing.
18 A. No. Abbie has no problems with
19 hearing. She doesn't need a hearing doctor.
20 Q. What does Sarah Gerace do?
21 A. She's a speech therapist.
22 Q. Is that related to hearing?
23 A. No, it's related to speech.
24 Q. How about is there a physician that
25 treats -- or medical provider of some sort that

1 treats Abbie for sight or seeing matters?
2 A. His name is Mark Dean, D-E-A-N.
3 Q. Are you familiar with any special
4 treatments that he provides for her?
5 A. Special exercises.
6 Q. Is your understanding that he works to
7 help Abbie improve?
8 MR. DAN SLOTCHIVER: Objection, Your
9 Honor. He's now asking him questions as an
10 opinion, and I don't believe that's proper.
11 MR. DAVIS: I'm just asking for his
12 understanding, Your Honor. If you find it
13 objectionable, I'll certainly move on, but I think
14 it's within the purview of what you've already
15 ordered.
16 THE COURT: I think we've heard a
17 little bit of this already, Mr. Davis, from
18 Mrs. Cohen. We certainly need to move on to those
19 things that maybe we have not heard.
20 MR. DAVIS: Yes, Your Honor.
21 THE COURT: Thank you.
22 BY MR. DAVIS:
23 Q. Dr. Cohen, is there a medical provider
24 that provides medical services to Abbie with
25 regard to her neurological functioning or

1 biofeedback?
2 A. His name is Dr. McCarthy.
3 MR. DAVIS: Your Honor, that's all I
4 have. Thank you.
5 THE COURT: Thank you very much.
6 MR. DAVIS: Thank you, Dr. Cohen.
7 THE COURT: Ms. Hedgepath?
8 CROSS-EXAMINATION
9 BY MS. HEDGEPATH:
10 Q. Dr. Cohen, I'm certainly not going to
11 belabor it. We've talked about
12 Dr. Mamelak's deposition --
13 A. Could you speak a little louder,
14 please?
15 Q. If I can, I will. I'm not going to
16 belabor it, but we have talked substantially or a
17 good bit has been said about Dr. Mamelak's
18 deposition.
19 A. Mamelak.
20 Q. Mamelak, okay. He treated Abbie when
21 she was in the hospital. Is that correct?
22 A. That's correct.
23 Q. And that would have been from
24 June 21st, 2006, correct?
25 A. That's correct.

1 Q. And she was in the hospital for how
2 long, about a month?
3 A. About three months.
4 Q. And his deposition was not taken until
5 May 28th of 2010, about four years later?
6 A. That's correct.
7 Q. After Abbie left the hospital, did he
8 treat or see her at all?
9 A. I don't believe he saw her at all.
10 Q. Now, I asked your wife this, but I
11 must ask you, because you are a co-trustee, and if
12 she is responsible, then you may also be held
13 responsible. The monies in the trust for Abbie,
14 have they been used for anything other than for
15 Abbie's benefit?
16 A. No.
17 Q. Have they been used in the best
18 interest of Abbie?
19 A. We believe so.
20 Q. Have you used any of the monies for
21 your personal benefit or gain?
22 A. Absolutely not.
23 Q. Have you used any of the monies for
24 the personal benefit or gain of any of your family
25 members?

A. Absolutely not.
Q. Other than the money in the special needs trust and the Medicaid that she gets, do you and Mrs. Cohen personally pay for things for Abbie out of your pocket?
A. Not usually, but sometimes we get some incidentals at the store for her, and I pay with my credit card or whatever. Sometimes we take reimbursement on it, sometimes we don't.
Q. What about your house, the remodeling of your house?
A. What about it?
Q. Did you pay for that?
A. When we remodeled it, I'm not sure we had -- or did some modification on it. I'm not sure that the trust would have -- we'd gotten the first money out of it yet, so some of it might have come out of our pocket. A lot of the equipment we put in the house has come from Abbie's trust.
Q. But you believe that you two, you and Mrs. Cohen, have paid some of those as well?
A. Well, a minor amount, but yes.
Q. Now, what seems to be the crux of this litigation is the amount of money that was spent

in California for the litigation, and comments have been made you could have dismissed the visitation at any time, okay.
A. That's correct.
Q. But all of the money that was spent in California was not just focused on visitation, was it?
A. No. It was spent on all the other things that all the attorneys like this do, bringing motions, witnesses, billing back and forth, and it just goes on and on and on like a perpetual motion machine.
Q. In fact, you had to deal with the issue of dissolution?
A. Oh, you mean the -- as far as the marriage bond or whatever you call it.
Q. The divorce, what we call in South Carolina the divorce.
A. Yes.
Q. And that was even asked to have a separate hearing to have it heard early, rather than everything together?
A. Yes.
Q. So that took extra time. Is that correct?

A. Well, I guess -- I don't know how you define extra time, but it lengthened the procedure.
Q. You had to go to court just for the dissolution, is that correct?
A. Yes.
Q. And there were issues raised about standing. Is that correct?
A. Quite a few.
Q. Is it fair to say that there was a substantial amount of money spent on the issue of standing?
A. Yes.
MR. DAN SLOTCHIVER: Objection, Your Honor. I don't believe there's a foundation that he knows how much money was spent on standing, unless he's relying on the testimony that was given by Ms. Meyer yesterday, in which case he can testify to it if he's going to state that and recalls that, but other than that, his testimony earlier was: I didn't really pay attention to the bills. I didn't review the bills.
THE COURT: Ms. Hedgepath?
BY MS. HEDGEPATH:
Q. Are you aware of the bills?

A. No, but I paid attention to all the correspondence and goings-on which would lead to bills.
THE COURT: I'll allow that.
BY MS. HEDGEPATH:
Q. And there was time spent on the division of the property, was there not?
A. Yes.
Q. So basically, from what I understand or hear from you, is that everything was kind of together. Is it possible for you to tell me or the court exactly how much was spent on visitation?
MR. DAN SLOTCHIVER: Objection, Your Honor. I don't believe he has -- there's any foundation for him to give that opinion. In fact, he testified he doesn't know. He testified even a moment ago he looked at some of the correspondence. He testified earlier in examination he didn't pay attention to the bills. Now he's been asked to opine on something which he cannot opine on, based on his own testimony.
MS. HEDGEPATH: Your Honor, I'm asking him to tell me if all of it was so intertwined to the point that he cannot, in fact, give me a

1 dollar amount that was spent on just visitation.
2 THE COURT: I'll allow you to ask him
3 that, Ms. Hedgepath.
4 BY MS. HEDGEPATH:
5 Q. Did you understand my question,
6 Dr. Cohen?
7 A. Could you rephrase that again?
8 Q. I'll try. Was the billing and the
9 time spent so intertwined, the issues so
10 intertwined, that you cannot tell me here today
11 the dollar amount that was specifically designated
12 for visitation?
13 A. No, I cannot.
14 Q. If you had dropped the cause of action
15 for visitation, do you believe you would have --
16 that Abbie would have received any visitation with
17 her three children?
18 MR. DAN SLOTCHIVER: Objection, Your
19 Honor. There's no foundation for him to answer
20 that. I don't know how he possibly could answer
21 that. That's a legal eagle issue, according to
22 Dr. Cohen.
23 MS. HEDGEPATH: Your Honor, they're
24 blaming the Cohens for proceeding with visitation.
25 I think Dr. Cohen has the right to tell the court

1 why he thought it was necessary to pursue the
2 issue of visitation.
3 MR. DAN SLOTCHIVER: And I pursued
4 that with him, Your Honor, and he responded to
5 that by stating that he had no basis, he had no
6 foundation, so they're now asking him to impeach
7 himself on what he told us earlier, and all I'm
8 asking, Your Honor, is she can ask the question,
9 but before he answers, I would ask that she be
10 required to lay a proper foundation that he has
11 the ability to answer.
12 THE COURT: Ms. Hedgepath, would you
13 like to explore that?
14 MS. HEDGEPATH: I'll try, Your Honor.
15 BY MS. HEDGEPATH:
16 Q. Dr. Cohen, you have been asked and the
17 issue posed to you about you did not have to
18 proceed with the issue of visitation, and I think
19 you may have indicated to Mr. Slotchiver that
20 yes -- or to some of the attorneys -- that you
21 could have dropped it?
22 A. What do you mean, dropped it? I don't
23 understand dropped it. Dropped that part of the
24 divorce proceedings or the whole divorce
25 proceedings? You're asking me a question that I

1 don't understand, and there's a lot of things
2 going on here that they're all so intertwined that
3 that's impossible for me to answer that question
4 directly.
5 Q. I want us to focus just on visitation
6 right now.
7 A. Meaning that part of the divorce
8 proceeding, the visitation?
9 Q. Yes, sir. Now, could you -- it's my
10 understanding that you have testified, and I may
11 be wrong, that you could have dropped the issue of
12 visitation, that you, as a co-trustee for Abbie,
13 did not have to pursue visitation?
14 A. We felt it was in the best interest of
15 our daughter to have visitation, and therefore, we
16 couldn't drop it.
17 Q. Do you believe she would have any
18 visitation today had you dropped it?
19 A. It's a theoretic question, but we
20 don't think so, but it's a theoretic question, of
21 course.
22 Q. And I understand it's your opinion
23 that Abbie -- that you believe that it's your
24 understanding that from what you observed, that
25 Abbie does derive a benefit from being in contact

1 with her children?
2 A. It's our perception as her parents and
3 co-trustees --
4 MR. DAN SLOTCHIVER: Your Honor, I
5 would just ask to limit that testimony to his
6 perception. I don't believe he can testify as to
7 his wife's perception.
8 BY MS. HEDGEPATH:
9 Q. Just tell me what you believe.
10 A. It's my perception as a parent and as
11 co-trustee, co-guardian, co-conspirator -- I mean
12 co-conservator -- that Abbie draws benefit from
13 visitation.
14 Q. The present condition of Abbie, from
15 what you have observed from the time she left
16 California and the time you moved her from
17 California to the condition she is in now, has it
18 improved?
19 A. Yes.
20 Q. Tell me what things she can do now
21 that she could not do prior to your bringing her
22 to South Carolina.
23 A. Okay. Well, I mentioned a number of
24 these things yesterday, I believe, and one thing I
25 did leave out was we have her hooked up to a

1 computer with a program from Boston College, and
2 it is called Eagle Eyes.
3 MR. DAN SLOTCHIVER: Your Honor, I
4 would object to his testifying about a program and
5 the results of a program. That would be expert
6 testimony. I believe the question was what, in
7 your perception -- or appropriately would be asked
8 what, in your perception, can she do that she
9 couldn't do.
10 THE WITNESS: If you'd let me finish,
11 I would.
12 THE COURT: I'll give him a little bit
13 of leeway.
14 MR. DAN SLOTCHIVER: Thank you, Your
15 Honor.
16 THE COURT: Thank you.
17 THE WITNESS: Thank, Your Honor.
18 She's hooked up to a computer with
19 electrodes to the sides and the top and the bottom
20 of her eyes. They pick up the motions of her
21 eyeballs --
22 MR. DAN SLOTCHIVER: Objection, Your
23 Honor. Once again, he's now testifying as an
24 expert as to a program that he is asserting that
25 it benefits her or she can do things with it.

1 That goes way beyond his observation.
2 THE WITNESS: I can observe her do it.
3 MR. DAN SLOTCHIVER: He can observe
4 her hooked up to electrodes. He cannot observe
5 the results.
6 THE WITNESS: Yes, I can, on the video
7 screen.
8 MR. DAN SLOTCHIVER: Your Honor --
9 THE COURT: I'll give him --
10 MR. DAN SLOTCHIVER: Now he's
11 interpreting results as an expert. He's not
12 listed as an expert, and he's not qualified as an
13 expert in this case, and I believe it's gone
14 beyond the scope of what he can be asked. Stating
15 your understanding will allow him to say what he
16 observes, but not opine on them, and I don't think
17 it's proper, and I do object.
18 THE COURT: Ms. Hedgepath?
19 MS. HEDGEPATH: Your Honor, if these
20 are things that -- he is a physician -- that, in
21 his capacity as a layperson, he has observed her
22 doing, whether it's by and through a machine or
23 something, that she has improved, that she can do
24 physically, I think it's proper for him to testify
25 to those.

1 THE COURT: I will allow him to
2 testify regarding what she may be doing, what he
3 actually witnesses, but not reading reports,
4 reviewing computer-generated type of reports, and
5 trying to interpret those, but he can testify as
6 to what he has witnessed her doing through this
7 computer program.
8 THE WITNESS: May I be allowed to
9 describe this, Your Honor?
10 THE COURT: Yes, sir, I will allow it.
11 THE WITNESS: Okay. Thank you.
12 Again, she has these electrodes hooked
13 up. They're hooked up to her -- around her eyes,
14 which measures her eye --
15 MR. DAN SLOTCHIVER: Your Honor, once
16 again, he's testifying as to what the machines do.
17 THE COURT: Yes, sir.
18 MR. DAN SLOTCHIVER: Describing it, I
19 would object to that as the relevancy of it.
20 Describing the machine can only be for the purpose
21 of telling what the machine does. Telling what he
22 observed --
23 THE WITNESS: No. It's Abbie does it,
24 not the machine.
25 THE COURT: Sir --

1 MR. DAN SLOTCHIVER: What he observes
2 is different, Your Honor. And I believe, once
3 again, we're going beyond the scope.
4 THE COURT: Thank you.
5 BY MS. HEDGEPATH:
6 Q. Through what doctor does she receive
7 this treatment?
8 A. None. We bought it ourselves.
9 Q. And how did you discover or know about
10 this?
11 A. My wife discovered it online.
12 MS. HEDGEPATH: So Your Honor, he is
13 the only one that can testify about this machine,
14 how it works and how Abbie is able to operate it.
15 MR. DAN SLOTCHIVER: Your Honor, he's
16 not an expert in this case. He can't testify to
17 it. And I don't understand that he's the only
18 one. He's not an expert in this case to testify
19 as to this machine or the results of the machine.
20 THE COURT: Mrs. Cohen, I'm sorry. I
21 think you need to have a seat, ma'am.
22 THE WITNESS: May I be allowed to --
23 THE COURT: I'll give them a little
24 bit of latitude for him to describe this computer
25 program or this machine.

1 THE WITNESS: This machine follows her
2 eye motion. She has a large cursor on her
3 computer. It's a laptop, about your size, and
4 there is a circular -- it centers a cursor, which
5 is a circle, a circular halo, like a doughnut,
6 with her eyes, and she can move that cursor.
7 MR. DAN SLOTCHIVER: Your Honor, I
8 object, because it's still, once again, going to
9 the medical testimony and his opinion about what
10 the machine does and what she can do relative to
11 the machine.
12 MS. HEDGEPATH: But Your Honor, if
13 he's sitting there --
14 THE COURT: I'm going to allow this,
15 Mr. Slotchiver.
16 THE WITNESS: There are some games she
17 can play, some things she can do. She can move
18 this cursor and basically kill space aliens. She
19 does this willfully. She can kill them. She
20 doesn't do it with the speed of a child, okay,
21 with a joystick, but she can move the cursor.
22 When it hits one of these little squiggly aliens,
23 it goes poof, and that's it. She can also move a
24 soccer ball around into the net. There are some
25 icons on there where she can select music. I'm

1 not talking -- I'm just talking about -- I'm not
2 even sure what kind of music.
3 BY MS. HEDGEPATH:
4 Q. All these are games on the machine
5 that you've observed her playing?
6 A. Yes. And this is not given by a
7 doctor. It's given -- her caregivers do it for
8 her, with her. There's not a medical -- it's not
9 a medical procedure. But she can do this.
10 Obviously, she knows what she's doing. She didn't
11 do it well at first, but she does it better now.
12 I mean, a child could do a lot better, obviously.
13 You or I could do a lot better.
14 MR. DAN SLOTCHIVER: And I object,
15 Your Honor, to his testimony that she knows what
16 she's doing. I believe he can testify to his
17 observations based on your instruction.
18 THE WITNESS: You can come to our
19 house and look at it.
20 THE COURT: I'll strike that. Thank
21 you.
22 BY MS. HEDGEPATH:
23 Q. Dr. Cohen, are there any other
24 improvements in Abbie since she came to Myrtle
25 Beach that you would like to inform the court?

1 A. Well, she does take visual therapy
2 with Dr. Dean, which he has told us --
3 MR. DAN SLOTCHIVER: Objection,
4 hearsay, Your Honor.
5 THE COURT: Yes, sir.
6 BY MS. HEDGEPATH:
7 Q. You can't tell what Dr. Dean has told
8 you.
9 A. Can I rely on medical testimony and
10 what they tell us?
11 Q. You can tell us -- you can tell the
12 court what you have seen or noticed her do as a
13 result of the treatments of Dr. Dean.
14 MR. DAVIS: Your Honor, may I make one
15 comment? I believe it was established yesterday
16 that there's an exception, my discussion with
17 court and Exception No. 4 to the hearsay rule. We
18 went over that, and I believe you ruled on that,
19 that this is medical diagnosis and treatment,
20 803-4, which I brought to the court's attention,
21 so I believe he can testify as to what they told
22 him, the doctor told him.
23 MR. DAN SLOTCHIVER: And Your Honor,
24 we discussed the fact that because they did not
25 disclose this information to us in discovery, they

1 could not.
2 MR. DAVIS: And he's right, we can't,
3 but they can.
4 MR. DAN SLOTCHIVER: But the Cohens
5 cannot.
6 THE COURT: The Cohens cannot, but
7 Ms. Hedgepath can go in --
8 MR. DAN SLOTCHIVER: She can ask him
9 the question, but I don't believe he's afforded to
10 answer the question. They can bring in that
11 doctor. I understand you've ordered they could
12 bring in the doctor if they want to, but to allow
13 them to ask the question of Dr. Cohen is to
14 accomplish exactly what they have been told they
15 cannot do, because they did not provide that to us
16 in advance.
17 THE COURT: I'm sorry. You're right.
18 I'm not going to let you go into that with
19 Dr. Cohen.
20 BY MS. HEDGEPATH:
21 Q. Without telling me what anyone has
22 told you, Dr. Cohen, please tell the court other
23 improvements that you have observed in Abbie.
24 Excuse me just a moment. I know you
25 talked yesterday about her wetting herself, you

1 discussed that, so we don't need to go back into
2 that. You've told me this morning about the
3 computer that she can play on, do the games on.
4 What else, Dr. Cohen?
5 A. Well, I said that she can communicate
6 better with us by blinking. As I said, she can't
7 talk. There are words that come out periodically.
8 I told you about that last -- most recently, it
9 was Friday night, I asked her a question, and I
10 heard her blurt out yes, because that was a
11 different voice than her mother, who was in the
12 room, and in terms of her communication abilities,
13 appropriate communication abilities, with her
14 eyes.
15 Q. When she came home to Myrtle Beach,
16 did she give you any indication that she -- either
17 by hollering out or otherwise, that would lead you
18 believe that she was in pain?
19 A. Yes.
20 Q. Has that subsided somewhat?
21 A. Dramatically.
22 Q. And if you know, tell the court to
23 what you attribute that.
24 A. Well, I believe that most of it is
25 attributable to a Baclofen pump --

1 MR. DAN SLOTCHIVER: Your Honor, I
2 object. This is going into opinion testimony as
3 an expert.
4 THE COURT: And I believe Mrs. Cohen
5 testified regarding that.
6 BY MS. HEDGEPATH:
7 Q. Dr. Cohen, is there any other
8 improvements that's been obvious to you in Abbie
9 that you would like to tell the judge about?
10 A. Nothing I can think of right now.
11 Q. Now, if Abbie were in a facility, a
12 nursing home, an assisted living, or similar
13 place, do you believe she would get the type of
14 care that she does in your home?
15 A. Absolutely not.
16 MR. DAN SLOTCHIVER: Objection, Your
17 Honor. Objection, number one, as to relevancy.
18 Number two, nobody has alleged that she should be
19 in one of these homes or that she should go into
20 one of these homes, and it's speculative. How can
21 he speculate as to what kind of care she would get
22 in one of these nursing homes? How can he do
23 that? He's not an expert in this case to give
24 that speculation. Nobody's asked that she go into
25 one of these homes.

1 MR. BOYD: Your Honor, Mr. Kachmarsky
2 presented evidence and a table that was very
3 speculative that anticipated a reduced cost of
4 care.
5 MR. DAN SLOTCHIVER: And they objected
6 to it.
7 MR. BOYD: We did, but counsel's
8 simply making a statement that's not true. The
9 argument is it's been known, it's been alluded to,
10 it's been made.
11 THE COURT: Ms. Hedgepath?
12 MS. HEDGEPATH: Your Honor, I wouldn't
13 even be talking about a nursing home had
14 Mr. Kachmarsky not compared the cost of keeping
15 her at home versus a nursing home if that thought
16 was not in his mind, oh, we could save all this
17 money for the children, not use it for Abbie.
18 We're not using all of it to take care of Abbie on
19 a daily basis. If we just stuck her in a nursing
20 home, we could accumulate this however millions it
21 was that he came up with on his schedule. That's
22 why I'm asking about the comparison of care. Yes,
23 ma'am, it costs a lot to take care of Abbie on a
24 day-to-day basis, but the care that she gets
25 cannot compare to what she --

1 MR. DAN SLOTCHIVER: Now counsel's
2 testifying, Your Honor.
3 THE COURT: I'll allow you, if you can
4 establish a foundation, for him to testify about
5 that.
6 BY MS. HEDGEPATH:
7 Q. Have you ever considered, in light of
8 the money that you could save, placing Abbie in a
9 nursing home?
10 A. No.
11 Q. Why?
12 A. This is for Abbie's benefit, for no
13 one else's, and also, we believe that Abbie would
14 get more poorer care in a nursing home than at
15 home.
16 Q. I want you to expand on that for me.
17 A. Well, at home, she's surrounded by
18 people she loves and who love her. Her caregivers
19 have been with us for a long time. They know her.
20 She's in a familiar surrounding. She's in her own
21 room, surrounded by her own things, and her
22 physical body is taken care of a lot better than
23 it would in some sort of sucky nursing home, and
24 there are no really good nursing homes.
25 MR. DAN SLOTCHIVER: Your Honor, I

1 object. I believe he's gone beyond the scope.
2 THE COURT: Yes, sir. I'll strike
3 that.
4 BY MS. HEDGEPATH:
5 Q. Dr. Cohen, when Abbie left California,
6 what was her condition? From a lay standpoint,
7 what was her condition?
8 A. Well, she was obviously still mentally
9 and physically impaired because of her physical
10 problems, that she was in constant pain, she was
11 taking six full doses a day of pain medication.
12 She required these around the clock, and these
13 continued until we got her Baclofen pump inserted,
14 and there was a much better improvement. I mean,
15 it was immediate the first night after she had it
16 inserted down at Medical University of South
17 Carolina in Charleston.
18 She required constant turning,
19 constant repositioning. All night we would be up
20 with her virtually every night with leg spasms,
21 and sometimes we didn't get any sleep, and I had
22 to work the next day. My wife and I had a
23 schedule who was on call to get up with Abbie in
24 the middle of the night, along with her caregiver,
25 and it was tough. It was real tough. And we did

1 this for two years, until we had this Baclofen
2 pump put in, and that made Abbie's life a lot
3 easier, not to mention ours.
4 MS. HEDGEPATH: Thank you, Dr. Cohen.
5 CROSS-EXAMINATION
6 BY MS. MOORE:
7 Q. Dr. Cohen, I know that we've gone over
8 a lot of information as far as medical doctors are
9 concerned, but I want to make sure that I have a
10 clear timeline of when certain doctors were
11 retained and periods of time that Abbie would have
12 been treated by various doctors, so I'm going to
13 try to go through this quick.
14 MR. DAN SLOTCHIVER: And Your Honor,
15 I'll place an objection as it relates to any
16 doctors who Ms. Moore or Ms. Hedgepath intend to
17 call, based on the court's earlier tentative
18 decision that they cannot be informed or educated
19 by the Cohens or Cohens' counsel regarding these
20 doctors. It goes right back to the heart of the
21 issue, and what I'm trying to avoid is them going
22 around and getting the same -- and they want to
23 get it through counsel by asking now on
24 examination.
25 MS. MOORE: Judge, I have all the

1 names of the people that we might want to call. I
2 simply want to place a timeline that's a little
3 more clear, because when Dr. Cohen's been
4 testifying, there's been so many objections that
5 it's been very disjointed as far as his testimony
6 has been concerned relative to her care.
7 MR. DAN SLOTCHIVER: Your Honor, once
8 again, it can't go both ways. They've already
9 said they have the doctors they want to call.
10 They told us yesterday that they had -- they
11 wanted to know for sure where we were so they
12 could know if they were going to bring them or not
13 bring them, and now they're trying to educate
14 themselves with more information from the Cohens,
15 which is exactly what we sought to block.
16 Actually, we sought a lot more than that, but that
17 was my understanding of the court's ruling is they
18 cannot speak about this with the Cohens.
19 THE COURT: Ms. Moore?
20 MS. MOORE: Your Honor, my
21 understanding of the ruling is that we could not
22 consult with them, converse with them, obtain
23 their assistance as far as developing, I guess,
24 the questions that would be posed to these
25 doctors, not for the purpose of preventing me from

1 cross-examining Dr. Cohen as to type of care that
2 was obtained for her, why he might have obtained,
3 how he got his referrals, the fact that he, as a
4 doctor, obviously participated in the care and the
5 coordination of the various medical doctors for
6 the benefit of Abbie.
7 THE COURT: I'm going to allow that,
8 Mr. Slotchiver.
9 MR. DAN SLOTCHIVER: Thank you, Your
10 Honor.
11 BY MS. MOORE:
12 Q. So Dr. Cohen, obviously, we know what
13 went on as far as California is concerned, but
14 once she came to South Carolina, from whom did you
15 seek treatment for the benefit of Abbie?
16 A. Well, she has been seen by
17 Dr. O'Connor, who works at Little River Medical
18 Center. A number of times he's made house calls,
19 just a pure examination. Most of her medical care
20 is provided by Dr. Corrine Merrill, who is also a
21 medical doctor in North Myrtle Beach, and my wife
22 communicates with her periodically.
23 Q. What type of physician is she?
24 A. She's a medical doctor. She also does
25 homeopathic treatment, as well, too.

1 Q. And let me stop you right there. The
2 ones that you have named thus far, how did it come
3 about that you sought treatment with those
4 particular physicians?
5 A. Well, I contacted Dr. O'Connor even
6 before we came back from California. And also,
7 I'm not sure how we got to Dr. Merrill. I just
8 can't recall. I'm sorry.
9 Q. That's okay. And then what other
10 physicians or other medical providers would you
11 have sought treatment for the benefit of Abbie?
12 A. Abbie had some ear problems, mostly
13 with ear wax problems, and we sought the physician
14 in Little River. He's since moved on from the
15 area, and I frankly forgot his name, but he never
16 did test her hearing. But she sees Dr. Frank Benz
17 periodically, who is a neurologist.
18 Q. And how did it come about that you
19 went to Dr. Benz?
20 A. Well, may I interject before that --
21 we're getting out of order here -- we also took
22 her down to the medical university for a
23 neurological evaluation and saw Dr. Hinson,
24 H-I-N-S-O-N, down there, and she recommended
25 Dr. Benz.

1 MR. DAN SLOTCHIVER: Your Honor, I
2 object to hearsay testimony.
3 MS. MOORE: Your Honor, for the
4 purpose of determining a diagnosis, prognosis, a
5 schedule for treatment, who he would go to as far
6 as doctors are concerned, I believe it's perfectly
7 admissible for him to indicate that because he
8 went to a doctor at MUSC, that doctor gave him a
9 referral, and that referral took him to Dr. Benz.
10 THE COURT: I'll allow it.
11 THE WITNESS: She told us to see
12 Dr. Benz on a local basis, because at that time it
13 was before we had a van for Abbie, and we had to
14 rely on an ambulance to get her back and forth,
15 and it was just a real pain to do that, so since
16 that time she's been seeing Dr. Benz, I think
17 2009, I think. I don't know exactly when. He
18 sees her periodically. Also, she had the
19 evaluation 2010 by Dr. Hays we know about from the
20 medical university.
21 BY MS. MOORE:
22 Q. And you're referring to the Dr. Hays
23 that was appointed for the court evaluation?
24 A. That's correct. She came out to our
25 house and examined Abbie. That's where everything

1 was generated from, a home visit.
2 She sees Dr. McCarthy for
3 neurofeedback. She's done some marvelous things
4 to show us what her --
5 MR. DAN SLOTCHIVER: Objection, Your
6 Honor.
7 BY MS. MOORE:
8 Q. And once again, as far as getting to
9 Dr. McCarthy --
10 MR. DAN SLOTCHIVER: I would move to
11 strike that last part of the language.
12 THE COURT: I will strike his last
13 statement regarding Dr. McCarthy.
14 BY MS. MOORE:
15 Q. As far as getting to Dr. McCarthy, did
16 you receive a referral?
17 A. Yes. He was referred -- we were given
18 his name by a speech therapist that DHEC was
19 sending out to Abbie's house, and she gave us his
20 name.
21 Q. And for what period of time have you
22 been having Dr. McCarthy on board?
23 A. I believe 2009, maybe a little bit
24 later.
25 Q. And what other types of medical

1 providers have been involved in the care of Abbie?
2 A. She also gets her pump filled by
3 Dr. Wilkins, who is a physical medical specialist
4 here in Conway.
5 Q. Now, do you oversee, in general, the
6 types of medical care that may be provided to
7 Abbie?
8 A. Well, her mother and I do.
9 Q. And have there been other types of
10 care provided to her, for example, such as
11 acupuncture?
12 A. Yes.
13 Q. For what period of time would she have
14 been receiving acupuncture? I'm not looking for a
15 specific date, it's just a general overview of
16 time period.
17 A. After she came back from California.
18 Q. And would that have been at the
19 referral request of a medical doctor?
20 A. No.
21 Q. Have you seen a benefit to Abbie from
22 the treatment she receives from the acupuncturist?
23 MR. DAN SLOTCHIVER: In his lay
24 opinion?
25 THE COURT: Yes, sir.

1 THE WITNESS: It seems to relax her,
2 at least for a little bit. I know she always
3 liked acupuncture. She was a chiropractor, she
4 believed in it, so we --
5 BY MS. MOORE:
6 Q. When you say she, you're referring to
7 Abbie?
8 A. Abbie, yes. She believed in it, so
9 we're continuing to treat her as was her beliefs
10 were.
11 Q. Now, as far as other types of therapy,
12 what type of therapy is Abbie receiving, other
13 than acupuncture?
14 A. At the current time?
15 Q. Yes, sir.
16 A. Well, she gets this craniosacral
17 therapy. I can't tell you too much about that.
18 Q. Who is that provided by?
19 A. His name is Dave Paxson. I can't
20 spell his last name.
21 Q. That's all right. And did you receive
22 a referral for Dave Paxson?
23 A. No.
24 Q. How did you come by information as to
25 his type of treatment?

1 A. I believe that she was -- we were
2 given his name by our physical therapist, who also
3 comes out to the house five days a week. Her name
4 is Heidi McGovern. Actually, her real name is
5 Harriett, but she goes by Heidi. She comes to the
6 house five days a week to give physical therapy to
7 Abbie. And she also sees Dr. Mark Dean, who's a
8 vision therapist. I think I might have already
9 mentioned him already. And she goes to speech
10 therapy to Ms. Gerace. Well, she changed her name
11 recently. It's Gaddy, G-A-D-D-Y.
12 Q. Now, as far as various types of
13 therapies, have there been therapies over the
14 years that were implemented that you felt did not
15 provide a benefit to Abbie?
16 MR. DAN SLOTCHIVER: In his lay
17 opinion, Your Honor?
18 THE COURT: Yes, sir.
19 THE WITNESS: I haven't thought about
20 that for a while. Oh, yes. Dr. McCarthy, I
21 believe -- I can't remember all these doctors,
22 keep them straight, but somebody suggested this
23 laser treatment for muscle relaxation. It didn't
24 seem to do very much, and we stopped that.
25 BY MS. MOORE:

1 Q. So you and your wife discussed whether
2 or not to continue that type therapy?
3 A. Yes.
4 Q. And decided against it?
5 A. Yes. Also, she was getting hyperbaric
6 treatments, which she got in California as well,
7 too, and that she had to take her to Charleston
8 for, and that became too -- just too hard to do.
9 We didn't think she was getting that much benefit
10 from it anyway, so we stopped that.
11 Q. Dr. Cohen, are there any other
12 therapies that you have investigated that you feel
13 would be of benefit to Abbie?
14 A. That we feel would be of benefit to
15 Abbie?
16 Q. Yes.
17 A. Therapies?
18 Q. Yes, sir.
19 A. Not that I can think of at the moment.
20 Q. Now, as far as decision-making in
21 terms of what type of therapies to participate in,
22 has that been a joint decision between you and
23 your wife?
24 A. We discuss it.
25 Q. Do you rely upon her or does she rely

1 upon you in making those types of decisions as far
2 as her medical care is concerned?
3 MR. DAN SLOTCHIVER: Objection, Your
4 Honor, as to who she relied on. I believe he can
5 testify as to what he relied on or who he relied
6 on, but he can't testify as to his wife's mental
7 state of mind.
8 THE COURT: Thank you. If you could
9 clarify that, Ms. Moore.
10 MS. MOORE: Thank you.
11 BY MS. MOORE:
12 Q. Dr. Cohen, who took the lead as far as
13 looking into the types of therapies or making
14 decisions as far as therapies were concerned for
15 Abbie? Who took the lead, you or your wife?
16 A. Decision to initiate or decision to
17 terminate or not to do it at all?
18 Q. Any of the three.
19 A. She begins, and I decide whether to
20 stop or start.
21 Q. Yes, sir. And has there ever been a
22 situation where you and your wife have disagreed
23 as to the type of treatment to be provided to
24 Abbie?
25 A. Disagreed how loudly?

1 Q. Disagreed in any fashion.
2 A. No, we've never -- we discuss, and
3 then we make a decision.
4 Q. Now, as far as improvement that you've
5 seen of Abbie, have there been any therapies or
6 treatment where you did not see an improvement
7 with Abbie, other than the two, the hyperbaric --
8 MR. DAN SLOTCHIVER: As a layperson,
9 correct, Your Honor?
10 THE COURT: As a layperson.
11 THE WITNESS: Well, and this laser
12 therapy, I didn't really see any need to do that.
13 We did have an acupuncturist who also played the
14 viola come out to the house, and while she was
15 doing acupuncture, she did that too. She seemed
16 to like that, but that's not really a medical
17 treatment.
18 BY MS. MOORE:
19 Q. So as far as the treatments that she's
20 currently receiving, do you see a benefit to Abbie
21 of her receiving these treatments?
22 A. Yes.
23 Q. Now, is there also some type of
24 program where Abbie is able to maintain viewing of
25 a movie?

1 A. Yes.
2 Q. Is that through the Eagle Eyes
3 program?
4 A. No.
5 Q. What type of program is that?
6 A. That's through Dr. McCarthy.
7 Q. And have you actually --
8 MR. DAN SLOTCHIVER: Your Honor, I
9 will object to the hearsay testimony about
10 something Dr. McCarthy would have done or
11 initiated. If they have the program, that's fine,
12 but I think they have to be able to testify as to
13 their own knowledge without interjecting something
14 that Dr. McCarthy set up.
15 MS. MOORE: He didn't say anything
16 about Dr. McCarthy setting up, other than it was
17 implemented by Dr. McCarthy.
18 MR. DAN SLOTCHIVER: Maybe I
19 misunderstood.
20 THE COURT: Yes, sir. Thank you.
21 BY MS. MOORE:
22 Q. Have you actually seen this program?
23 A. Yes. We -- right now she goes to
24 Dr. McCarthy's office, but before this, she did it
25 at our house, and he was online at the same time

1 through the Internet.
2 Q. When you say he was online, who do you
3 mean?
4 A. Dr. McCarthy.
5 Q. And what do you mean by being online?
6 A. Well, it was hooked up by computer.
7 Q. And is this the same computer that
8 Abbie utilizes for playing of the games?
9 A. No, no, it's not -- yeah. She can do
10 it through that. It's just done through a laptop,
11 that's all. It's not a special computer, but she
12 also has a different -- a bigger screen in the
13 room attached to the wall.
14 Q. And what have you actually witnessed
15 as far as the operation of the program is
16 concerned?
17 A. Can I briefly say how it's set up?
18 Q. Just as far as what you can see.
19 A. Otherwise, it's going to be impossible
20 for me to explain.
21 Q. Only as part of what you can see in
22 the program, when you say how it's set up.
23 A. Well, there are electrodes hooked up
24 to her brain which read her brain waves.
25 MR. DAN SLOTCHIVER: Objection, Your

1 Honor.
2 THE WITNESS: I can't explain it any
3 other way.
4 BY MS. MOORE:
5 Q. Dr. Cohen, let me help you. So there
6 are electrodes set up to her brain?
7 A. Yes.
8 Q. And are those electrodes connected to
9 the computer?
10 A. Yes.
11 Q. Does she look at a computer screen?
12 A. Yes.
13 Q. Does the screen show a movie?
14 A. Well, I don't -- right now it does
15 show real movies, but before that, it was more of
16 a computerized version of it.
17 Q. And what would you see the screen do
18 while Abbie is sitting in front of the laptop?
19 A. It moves.
20 Q. Moves in what fashion?
21 A. It plays out a little video.
22 Q. And are there times where the video
23 can no longer be seen or gets dimmer?
24 A. No. It just stops.
25 Q. And when you say stops, stops in what

1 fashion?
2 A. Just halts. It freezes.
3 Q. Is there anything that occurs
4 afterwards that would cause the video to
5 recommence?
6 MR. DAN SLOTCHIVER: Objection, Your
7 Honor. I don't believe he can testify as to the
8 workings of a machine. He can testify as to what
9 he sees, but not as to the basis for why a machine
10 does or doesn't do what it does.
11 THE COURT: Ms. Moore?
12 BY MS. MOORE:
13 Q. Do you see anything as far as Abbie's
14 face, her eyes, or her body before the screen
15 recommences?
16 A. No. This is all done with her mind.
17 Q. And this is a program?
18 MR. DAN SLOTCHIVER: And objection on
19 that, Your Honor.
20 THE COURT: I will strike that.
21 BY MS. MOORE:
22 Q. But there are times while Abbie is
23 sitting in front of the screen where the video
24 stops?
25 A. Yes.

1 Q. And there are times when the video
2 recommences?
3 A. Yes.
4 Q. And for what periods of time will the
5 video stay running?
6 A. It depends on Abbie's -- it depends on
7 what Abbie's doing.
8 MR. DAN SLOTCHIVER: Objection, Your
9 Honor.
10 THE COURT: I will allow that.
11 BY MS. MOORE:
12 Q. And what I'm asking for is does it
13 stay running for five minutes? 10 minutes? 20
14 minutes?
15 A. Depends on what Abbie's doing.
16 MR. DAN SLOTCHIVER: Objection.
17 THE COURT: So noted.
18 BY MS. MOORE:
19 Q. And this program is actually operated
20 or overseen by Dr. McCarthy. Is that correct?
21 A. Yes.
22 Q. For what period of time has he been --
23 strike that.
24 For what period of time has
25 Dr. McCarthy utilized this program with Abbie?

1 A. Well, I believe since about 2009. I
2 can't give you an exact date, maybe -- certainly
3 no later than 2009.
4 Q. And Dr. Cohen, obviously, I was
5 involved in the very beginning. Do you recall
6 that?
7 A. Yes.
8 Q. Now, as far as Abbie's condition then
9 versus now, and I'm talking about her physical
10 condition, what's the difference?
11 A. I mean, as you look upon her, it's
12 really hard for a layman to see the difference,
13 because she's basically trapped inside her own
14 body, even though we believe her mind --
15 MR. DAN SLOTCHIVER: Objection, Your
16 Honor. He's just testified that a layman can't
17 see the difference, and he is testifying as a
18 layman, so I would ask that he move along.
19 THE COURT: I'll strike that.
20 BY MS. MOORE:
21 Q. And Dr. Cohen, I may not have artfully
22 asked the question, but I meant as far as her
23 physical condition.
24 A. As an outsider would come in, you
25 couldn't tell the difference.

1 Q. Is she able to sit in a chair now?
2 A. Yes.
3 Q. Was she able to sit in a chair then?
4 A. In a wheelchair?
5 Q. Yes, sir.
6 A. She sits in her wheelchair.
7 Q. Is she able to lay on her bed without
8 support?
9 A. I don't know what you mean lay on her
10 bed without support. Doesn't take much to lay on
11 a bed.
12 Q. Does she have to have rolled pillows
13 fashioned around her while she is laying on the
14 bed?
15 A. Yes, in order to keep her arms
16 straight, and also to keep her legs straight.
17 Q. Back in 2006 and -7, was she allowed
18 to stay in a chair for any period of time?
19 A. It was harder for her to do so.
20 Q. Why was that?
21 A. She would go into muscle spasms and
22 cry out.
23 Q. Today is she able to stay in a chair
24 for periods of time?
25 A. She can stay in a chair for about two

1 hours.
2 Q. And in recent years --
3 A. May I say she can stay like in a
4 lounge chair for two hours easily, if not longer.
5 Q. In recent years, have you and your
6 wife begun taking Abbie out of the house?
7 A. Yes.
8 Q. Were you able to do that initially?
9 A. Well, we didn't get a van until like
10 in 2009, so we depended on ambulances. That's
11 about it. The only time she went out was for
12 doctors visits, but now she can go to other
13 places.
14 Q. And what types of other places do you
15 and your wife take Abbie?
16 A. Movies. She went to see a ballet.
17 She's been out to see plays. She has been to
18 see -- she's been on that big ferris wheel in
19 Myrtle Beach, the real big one, Brookgreen
20 Gardens. I can't think of anything right off the
21 top of my head right now. Those are the first
22 things.
23 Q. You indicated in direct testimony that
24 you had --
25 A. Oh, she likes to go to the IMAX

1 theater down at the Broadway at the Beach.
2 MR. DAN SLOTCHIVER: Objection. He
3 can testify where he took her, but he can't give
4 her personal observations.
5 THE COURT: I'll strike she likes to
6 go to.
7 BY MS. MOORE:
8 Q. You had indicated in direct
9 examination that you looked at parts of
10 Dr. Mamelak's deposition. Is that correct?
11 A. Yes.
12 Q. And you're obviously familiar with the
13 opinion that Dr. Mamelak has. Is that correct?
14 A. Yes.
15 Q. You're also familiar with the opinion
16 expressed by Dr. Hays. Is that correct?
17 A. That's correct.
18 Q. Were there other doctors' opinions
19 that you have secured upon which you rely in terms
20 of designing her therapy plan?
21 MR. DAN SLOTCHIVER: And Your Honor,
22 if these doctors' opinions have not been provided
23 to us, I would ask that he not be allowed to
24 answer this question. I don't know what the
25 answer is going to be, but if he's relying on this

1 as part of his -- as his defense of this case, we
2 should have been provided that. We've already
3 discussed this over and over. Before he answers
4 the question, I wanted to make a proactive
5 objection.
6 THE COURT: Ms. Moore?
7 MS. MOORE: Judge, a lot of the
8 discovery requests that have been asked are about
9 records and reports and whatnot that would have
10 been in the possession that have not been provided
11 to Mr. Slotchiver. I don't know what records were
12 in the possession of the parties, because I've not
13 been provided with these records, but these
14 arguments are premised on the fact that they
15 believe those records exist and are in the
16 possession of.
17 There certainly would have been an
18 opportunity to have subpoenaed the records
19 directly from the doctors. The doctors' names
20 clearly are listed in the accountings. There's no
21 question about it, no surprise as to who these
22 doctors would have been.
23 So as far as access to records, I'm
24 simply asking as far as his communications. I'm
25 not asking him based on reports of other doctors,

1 other than, of course, Dr. Hays and Dr. Mamelak.
2 I'm asking what other doctors may he have spoken
3 to, upon which he has based his decision of how to
4 conduct or how to set forth these therapies.
5 MR. DAN SLOTCHIVER: And Your Honor,
6 had he provided the names of the doctors, together
7 with the important information they had to share,
8 we wouldn't be in this position. One of the
9 things that we can't overlook is the fact that
10 they could have, in the discovery requests to us,
11 said what are your positions, what are your
12 concerns, what are your issues. They could have
13 asked voluminous discovery questions from us, in
14 which case they would have gotten a concise
15 overall grouping of everything that we were
16 possibly looking at, but they never did, and now
17 they want to come in and say that we should be
18 able to testify to things.
19 I understand Ms. Moore's question, but
20 I don't believe, based on the earlier rulings of
21 the court and based on the actions of the Cohens,
22 that he should be able to now talk about doctors
23 and their opinions that he relied on when he
24 hasn't disclosed those to us.
25 MS. MOORE: Your Honor --

1 MR. DAN SLOTCHIVER: If I could
2 finish, please. It's a continuation of the same
3 abuse that we've discussed over and over again.
4 If he can't -- she has the right to ask who he
5 went to, but she can't ask him now what advice he
6 sought or what he relied on when he hasn't
7 disclosed that to us, because that allows him to
8 testify to things that he should have shared with
9 us a long time ago if he felt them to be
10 important, and if they're not important in his
11 decision-making, then they wouldn't be relevant to
12 this matter.
13 THE COURT: Do you have your discovery
14 requests where he would have had to supply this
15 information?
16 MR. DAN SLOTCHIVER: It's the same
17 request where we asked them who their witnesses
18 are in their case and what pertinent information
19 do they have, the same ones we showed yesterday.
20 I can hand them up again, Your Honor, the same
21 request. And you looked at it yesterday, and your
22 ruling yesterday was you have to give the names,
23 and they said yes, we gave -- we said every
24 medical provider we could have used, and you
25 clarified that they have provided it.

1 THE COURT: That doesn't seem to be
2 what Ms. Moore is asking him.
3 MR. DAN SLOTCHIVER: I understand.
4 What she's asking him now is what other doctors
5 did you rely on, neurologists or other doctors.
6 He's not going to testify to doctors that he
7 relied on and the significance of why, and I don't
8 believe he can do that.
9 THE COURT: And I thought your
10 interrogatory yesterday was who are your witnesses
11 going to be, and what are they going to testify
12 to.
13 MR. DAN SLOTCHIVER: Correct.
14 THE COURT: But that's not what --
15 MR. DAN SLOTCHIVER: And who are your
16 experts, and that was a separate one. If he's
17 going to testify as to experts that we haven't
18 been identified with, it wouldn't be appropriate.
19 THE COURT: It doesn't sound like to
20 me like that that's what she's asked Dr. Cohen.
21 MR. DAN SLOTCHIVER: And Your Honor,
22 just for clarity, it wasn't who are your
23 witnesses. It was who are the witnesses. And I
24 believe, once again, it's going around the whole
25 purpose of the discovery.

1 At some point, Your Honor, maybe we
2 should take this up at another point, because this
3 case we've repeatedly argued over the discovery.
4 It's had an effect on us, which we should not be
5 placed in this position in a trial to have to deal
6 with these issues over and over again.
7 THE COURT: And Mr. Slotchiver, I
8 recognize that, and I have tried to cure that as
9 best I can by precluding the Cohens from calling
10 those witnesses that they did not identify their
11 testimony to you. I've told them that they're not
12 going to have an opportunity -- I'm going to
13 reconsider -- but initially to examine those
14 witnesses that might be called by Ms. Hedgepath or
15 Ms. Moore, Mr. Kachmarsky.
16 MR. DAN SLOTCHIVER: I understand, and
17 I understand the court's ruling, and I appreciate
18 that. That being said, we still shouldn't be
19 placed in this position, and it's been repeatedly
20 throughout the case.
21 THE COURT: And I'm not going to
22 preclude, as I ruled, the attorneys and the
23 guardian ad litem for Abbie from calling whatever
24 witnesses that they believe they need to call.
25 MR. DAN SLOTCHIVER: I understand. I

1 understand your ruling on that.
2 THE COURT: Mr. Davis?
3 MR. DAVIS: Your Honor, it's very
4 important for the court to know and to note on the
5 record that we complied fully with discovery
6 because we did not intend to bring these witnesses
7 or to rely on this testimony, because he had not
8 pled that in his pleadings, and we did not know
9 that we would need this until we were surprised at
10 trial that this was going to be an issue, so we
11 absolutely complied, Your Honor. We did not know
12 this was going to be an issue, based on his
13 pleadings, and we indicated -- we provided -- we
14 did not intend to argue this and intend to call
15 these as witnesses.
16 So we fully complied, and we're simply
17 fielding arguments that came up at trial the best
18 way we know how, Your Honor. So we're being
19 restricted, and we also in here, to be -- to cover
20 ourselves, said any medical professionals
21 referenced in the documents. So we did the best
22 that we possibly could, Your Honor. We could
23 not --
24 THE COURT: And Mr. Davis, I found
25 that you did say any of the medical professionals

1 that might be in the documents, we may call them
2 as witnesses, but you did not answer -- the next
3 question is what is the nature of their testimony,
4 what will they testify to at trial.
5 MR. DAVIS: Well, we didn't know.
6 MR. DAN SLOTCHIVER: We can mark the
7 record, Your Honor. If counsel did not intend to
8 call these people, then I think it inappropriate
9 that they listed them in response to discovery as
10 witnesses. The rules do not allow you to ambush
11 somebody with hundreds of potential witnesses when
12 you never have any inkling that you're going to
13 call them, and I believe that's what the statement
14 was just now.
15 It's one thing to say this is the
16 universe of people that I may call, but it's a
17 whole 'nother matter to say we never intended to
18 call them, but by the way, any and every doctor in
19 the 5,000 pages of documents you better look at,
20 because we could call them, even though we never
21 have any intent to do it, and I'd like the record
22 to reflect that, Your Honor.
23 MR. DAVIS: Your Honor, his discovery
24 request says any doctor who may. It doesn't say
25 any doctor who you will. I mean, I don't know

1 what --
2 THE COURT: Mr. Davis, I don't know
3 that we need to argue this again.
4 MR. DAVIS: One last question, Your
5 Honor. I'm assuming you said you'd reserve an
6 opportunity for us to argue again on this idea of
7 questioning the witnesses, but I assume we'll
8 bring it up again at that time. Is that what
9 you --
10 THE COURT: I may reconsider that.
11 I'm going to look at the motion that Mr. Boyd made
12 this morning, the cases he gave to me, asking me
13 to reconsider, and during a break, I'm going to
14 look at that. I'm just dealing with the objection
15 that I have now from Mr. Slotchiver.
16 I'm going to allow Ms. Moore to ask
17 him having to do with these medical professionals
18 that he relied on.
19 MR. DAN SLOTCHIVER: My objection, can
20 we note it on the record, Your Honor?
21 THE COURT: It is noted. Thank you.
22 BY MS. MOORE:
23 Q. Do you remember the question,
24 Dr. Cohen?
25 A. No.

1 Q. I had asked you what other doctors did
2 you rely upon in making the decision about the
3 type of therapies to provide to Abbie?
4 A. I forgot who I mentioned right now.
5 I'll have to take myself back to the beginning.
6 There's Dr. Merrill and Dr. McCarthy, Dr. Dean,
7 Dr. Benz, Dr. Wilkins, who fills her pump. I
8 can't think of anybody else right now off the top
9 of my head.
10 Q. Would you agree that in making your
11 decisions, you discounted Dr. Mamelak's opinion?
12 A. Discounted his opinion? Well, as a
13 layperson?
14 Q. Yes, sir, in your position as
15 guardian, trustee, and father.
16 A. I believe that she was at a little
17 higher level of functioning than he said. Now,
18 I'm not saying she couldn't have been that way in
19 2006, but she wasn't that way later on.
20 MR. DAN SLOTCHIVER: Your Honor, I
21 object that this is an opinion of an expert, and I
22 don't believe he has an opinion to differentiate
23 between her condition, other than as a layperson.
24 THE COURT: As a layperson.
25 MR. DAN SLOTCHIVER: But this person

1 he's measuring -- he can testify as to his opinion
2 about her as a layperson, but I don't believe he
3 has the ability to interpret or question or
4 disagree with a medical doctor's opinion, and
5 that's what he's doing at this point.
6 THE COURT: I think as a layperson,
7 I'll allow him to testify.
8 THE WITNESS: I was asked as a father,
9 not as a doctor, so as a parent, I believe that
10 she was at a higher level of functioning than
11 Dr. Mamelak's report indicated at a later period.
12 BY MS. MOORE:
13 Q. And did that belief direct your
14 decision-making as far as the types of doctors to
15 be seen or the types of therapy for Abbie to be
16 involved in?
17 A. Yes.
18 MS. MOORE: That's all I have, Your
19 Honor.
20 THE COURT: Thank you.
21 Mr. Kachmarsky?
22 CROSS-EXAMINATION
23 BY MR. KACHMARSKY:
24 Q. Dr. Cohen, the last exhibit that was
25 handed up, the judgment, would you turn to what

1 would be, I guess, Page 1, which is the third page
2 of that document?
3 MS. MOORE: Which exhibit are you
4 referring to?
5 MR. KACHMARSKY: I'm referring to the
6 judgment that they handed up, the very last one.
7 THE COURT: Respondent's 15, I
8 believe.
9 BY MR. KACHMARSKY:
10 Q. Would you agree or disagree with me
11 that the agreement, starting on Line 4: The
12 parties acknowledge that the court issued a
13 statement of decision on April the 7th, 2011. The
14 parties hereby agree that the court's statement of
15 decision shall be adopted by the court as the
16 findings of this court.
17 Do you agree or disagree with me that
18 this document has been incorporated? We're
19 talking about the statement of decision in this --
20 MR. DAVIS: Your Honor, not to stretch
21 this out, the document speaks for itself. I
22 believe the court could read that. I was
23 admonished a number of times not to read from the
24 documents.
25 THE COURT: I'm going to -- I'll allow

1 him to question him about that. Thank you.
2 THE WITNESS: Could you repeat the
3 question?
4 BY MR. KACHMARSKY:
5 Q. Yeah. I just want to know if you'd
6 agree or disagree if the statement of decision is
7 incorporated in this document?
8 A. Well, I'd like to read the paragraph
9 first. I don't know what a pendente lite means.
10 Q. Pardon me?
11 A. I don't know what a pendente lite
12 means.
13 Q. I'm not sure I do either.
14 A. How can I interpret it if I don't know
15 what a word means?
16 THE COURT: Did you read the
17 paragraph? I don't have a copy of that.
18 MR. KACHMARSKY: I'll read it into the
19 record. The parties hereby agree that the court's
20 statement of decision, confidential and public
21 versions, shall be adopted by the court as the
22 final findings of this court on custody and
23 visitation, and therefore, those findings as set
24 forth in the statement of decision are
25 incorporated herein --

1 THE WITNESS: You missed the first
2 sentence where it says: The parties acknowledge.
3 You started at the second sentence. You said
4 Line 4, and you started at Line 5.
5 MR. KACHMARSKY: Your Honor, I'm just
6 asking -- would you ask the witness to please just
7 answer the question? I'm asking him, very simply,
8 if he agrees or disagrees that this judgment
9 incorporates the judgment of decision dated April
10 the 7th, 2011, into this order.
11 THE WITNESS: I didn't have time to
12 read the paragraph. I stopped at the second line.
13 BY MR. KACHMARSKY:
14 Q. You can agree, disagree, or just tell
15 me you don't know. Any of those are fine.
16 A. Probably in general, but again, I
17 don't know what some of these words mean.
18 Q. I'll take that as an I don't know, and
19 that's fine.
20 THE COURT: Thank you.
21 MR. KACHMARSKY: Can I have No. 86,
22 please? Do you have a copy of the statement of
23 decision?
24 THE COURT: 86?
25 MR. KACHMARSKY: That's the one that's

1 missing.
2 THE COURT: I have a copy, hasn't been
3 marked, but I do have a copy from the court's
4 record previously. No. 86, statement of decision.
5 BY MR. KACHMARSKY:
6 Q. I'm going to ask you to look at what
7 would be -- we're going to go to Page 2. We had
8 talked about -- you'd made some comments about
9 Dr. Hays previously.
10 THE COURT: Go ahead, Mr. Kachmarsky.
11 BY MR. KACHMARSKY:
12 Q. We have what would be the second new
13 paragraph on that page. It begins: In
14 determining Abbie's degree of disability.
15 THE COURT: Give me the page number
16 again, Mr. Kachmarsky.
17 MR. KACHMARSKY: Page 2, looking at
18 the second full paragraph on that page. It
19 begins: In determining Abbie's degree of
20 disability.
21 BY MR. KACHMARSKY:
22 Q. Do you see that, Dr. Cohen?
23 A. Yes.
24 Q. I'm going to start on the last word of
25 the third line.

1 A. The last word of the third line.
2 Q. It begins: The videotape deposition
3 of Abbie Dorn and the testimony of Abbie's
4 evaluating neurologist, Dr. Hays, must be viewed
5 under the preponderance of the evidence standard.
6 Given this standard, the court concludes that it
7 is more likely than not that Abbie Dorn does not
8 have any significant cognitive function, that her
9 eye blinking and smiling and movements are
10 involuntary movements described by Dr. Hays as
11 brainstem reflexes.
12 Do you agree or disagree with that
13 statement?
14 A. I disagree with what the judge found,
15 but that was the judge's statement.
16 MR. DAN SLOTCHIVER: Your Honor,
17 should we re-mark this as a new 86 until we find
18 the other one?
19 MS. MOORE: Let me make sure I didn't
20 take it.
21 THE COURT: We'll look for it during
22 the break, and if necessary, we'll certainly
23 re-mark it.
24 MR. DAN SLOTCHIVER: I'll leave this
25 with the reporter in case we need it, so we won't

1 have that issue.
2 BY MR. KACHMARSKY:
3 Q. This is a copy of Dr. Mamelak's
4 deposition. I'm going to make this very brief. I
5 just want to ask you three or four questions in
6 it, okay.
7 Would you please turn to Page 17? Are
8 you there?
9 A. Yes.
10 Q. I'm down on Line 16, and I'm asking
11 you if you would agree or disagree with the
12 statement that: The damage is so severe, so
13 global, that it would be exceptionally unlikely,
14 if not essentially impossible, for her to regain a
15 conscious function.
16 Do you agree or disagree with that?
17 A. I'm not an expert witness. I can't
18 testify to this.
19 Q. I'm asking you as a layperson whether
20 you agree or disagree.
21 A. As a layperson, it would be hard to
22 know this.
23 Q. You don't know?
24 A. No.
25 Q. That's fine, and that's okay.

1 Would you please turn to Page 26? Are
2 you there?
3 A. Yes.
4 Q. Down on Page -- or Line 21, would you
5 agree or disagree that: Abbie developed the
6 classic findings of a vegetative state: Roving
7 eye movements, blinking eyes, mouth movements,
8 moving of her tongue a little bit.
9 Do you agree or disagree with that?
10 A. When he examined her -- may I state a
11 timeline for this, please?
12 Q. Sure.
13 A. When he would have examined her, I
14 wasn't there, I was not in California, and the
15 last time he saw her would have been
16 September 2006.
17 Q. That's correct. And just to clarify
18 for the record, this examination, the last time he
19 did see her, was in 2006?
20 A. Yes. I was not in California at the
21 time, so I couldn't say what he saw, what he
22 didn't see.
23 Q. Would you please turn to Page 61? I'm
24 down on Line 10. Basically, he is opining that 60
25 to 75 percent of her brain functioning was

1 essentially destroyed, and on Line 13, he says
2 that: Yes. I'm being generous.
3 Do you agree or disagree with that?
4 A. As a layperson or as an expert
5 witness?
6 Q. As a layperson.
7 A. I don't know -- I don't know how you
8 make that determination as a layperson, how you do
9 60 or 75 percent as a layperson. There's no way I
10 could tell. There's no way any layperson could
11 tell.
12 Q. So you don't know?
13 A. I don't know.
14 MR. DAVIS: Your Honor, I object. He
15 clearly knows. He's being put in a difficult
16 position. He knows the answer, but he's been --
17 THE COURT: Yes, sir. He's
18 restricted. Thank you.
19 MR. KACHMARSKY: I've asked him as a
20 layperson.
21 THE COURT: Yes, sir. I understand
22 that.
23 MR. KACHMARSKY: And he can answer if
24 he agrees or disagrees or he can answer he doesn't
25 know.

1 THE WITNESS: I don't know how to --
2 as a layperson, I don't know how to make an
3 estimation of how much brain function is lost.
4 BY MR. KACHMARSKY:
5 Q. I understand. Let's go to Page 84.
6 I'm at the bottom paragraph, starting with
7 Line 22: And the difficulty of medicine in
8 general and underlies the difficulty in this case
9 is you can never say zero one way or another. You
10 have to give what's the highest probability
11 opinion.
12 Do you agree or disagree with that as
13 a layperson?
14 A. Well, that's what all doctors do to
15 give you the highest probability of opinion, more
16 likely than not, ABC is going to happen.
17 Q. Please answer the question. You can
18 agree, disagree, or just tell me you don't know.
19 A. In general, that's probably true.
20 Q. Is that agree?
21 A. That's as best as I can tell you. I
22 could give a qualified yes.
23 Q. Thank you. Page 85, top paragraph:
24 In the highest statistical probability, a person
25 who's shown no response at a year has, well, less

1 than a 1-percent chance of ever gaining conscious
2 behavior.
3 MR. BOYD: Excuse me, Your Honor.
4 Counsel, did you say Page 85?
5 MR. KACHMARSKY: Yes.
6 MR. DAVIS: Your Honor, I would object
7 also. Yesterday, you prohibited me from going
8 into detail about this deposition, a number of
9 objections made by Mr. Slotchiver, and I'm not
10 sure Mr. Kachmarsky's afforded the opportunity to
11 do what I was not afforded the opportunity to do
12 yesterday, Your Honor.
13 MR. KACHMARSKY: I think I'm asking
14 him a question that he can answer -- I'm asking
15 him a very simple question that he can answer
16 without opining as an expert.
17 MR. DAVIS: That was my attempt as
18 well, Your Honor, yesterday, and I was pretty much
19 cut off and handcuffed and said -- I believe the
20 court said it would read the deposition, limited
21 my questioning, and said: Move along, Mr. Davis.
22 MR. KACHMARSKY: I believe I'm
23 phrasing my questions in a way that can be asked.
24 THE COURT: I agree. I think
25 Mr. Kachmarsky can go forward with this.

1 MR. BOYD: Could counsel please
2 restate the line number and the paragraph that
3 he's reading from?
4 MR. KACHMARSKY: I'm on Page 85. I'm
5 on the first -- Line 1.
6 Did we get an answer to that last
7 question?
8 THE COURT: I don't believe so.
9 THE WITNESS: What was the question
10 again?
11 MR. KACHMARSKY: Would you repeat the
12 last question, court reporter, please?
13 (The Court Reporter read the question
14 commencing on Page 1448, Line 22.)
15 BY MR. KACHMARSKY:
16 Q. Would you agree, disagree, or do you
17 not know as a layperson?
18 A. As a layperson, I wouldn't know,
19 except that statistically, as a layperson, if
20 you're that 1 percent patient, it's 100-percent
21 improvement for you.
22 Q. Page 86, on Line 23, this is a
23 question asked to Dr. Mamelak. He asked: First
24 of all, is locked in the same as what lay people
25 commonly hear as trapped inside your own body?

1 And his answer to that is: Correct.
2 In your previous testimony, you made
3 reference to Abbie as being trapped inside her own
4 body. Is that correct?
5 A. Yes.
6 Q. I'm going to direct you now up to
7 Line 7, and Dr. --
8 A. Line 7?
9 Q. Yes. Dr. Mamelak is being asked: Is
10 it possible that Abbie is locked in? And on
11 Line 8, the answer to that question is --
12 MR. BOYD: I think we need to renew
13 our objection just for the record. I don't
14 believe this is an appropriate use of deposition
15 transcript at trial, particularly when we don't
16 have the original transcript, and he's effectively
17 using this testimony in an improper fashion.
18 MR. DAN SLOTCHIVER: And I would
19 object, Your Honor, to counsel. They've
20 exchanged -- seems like every other time, a
21 different one stands up to object. I believe this
22 is Mr. Davis's witness. He testified earlier in
23 the proceeding yesterday it was his witness, he
24 would make any objections, and I would object to
25 Mr. Boyd making those objections.

1 THE COURT: Sustained. I'm happy to
2 hear from Mr. Davis.
3 MR. DAVIS: Your Honor, again, my
4 attempt yesterday was to go to parts in the
5 deposition that would be helpful to explain the
6 likelihood that Abbie has made improvement, and I
7 attempted to do that and see if he agreed with
8 that as a layperson in his opinion, and I
9 understand now -- and I was not allowed to do
10 that.
11 I now understand that Mr. Kachmarsky
12 is finding parts in the deposition where he wants
13 to prove or indicate that Abbie is essentially
14 brain dead and cannot get better, and I was trying
15 to ask those questions as to Dr. Cohen as a
16 layperson and to elicit a response.
17 So he's trying to do exactly the same
18 thing that I was trying to do yesterday, Your
19 Honor, and you told me that I could not do that
20 and told me to move along. So again, I don't -- I
21 believe it's a misuse of the deposition, and I'm
22 confused, Your Honor, why we're both on
23 cross-examination, we're in the same posture, the
24 same position, and I was attempting to do what
25 he's being allowed to do right now.

1 I realize it was late in the night, we
2 were trying to move things along, but it was very
3 important to me to establish parts in the
4 deposition where it clearly indicates that it is
5 certainly possible for Abbie to make improvement,
6 and I was unable to do that, Your Honor.
7 MR. KACHMARSKY: I think Mr. Davis was
8 trying to solicit testimony from Dr. Cohen last
9 night. I'm not trying to solicit anything but
10 whether or not he agrees or disagrees to what I'm
11 asking him. I'm not trying to get him to opine as
12 an expert. I'm not trying to lead him. I'm not
13 trying to get him to say anything other than
14 whether he simply agrees or disagrees with
15 findings, I say, with the opinions of an
16 neurologist in a deposition that has been --
17 THE WITNESS: Dr. Mamelak's a
18 neurosurgeon, sir.
19 MR. KACHMARSKY: Neurosurgeon, you're
20 correct. And I've got one more question, then I'm
21 done.
22 THE WITNESS: What was the last
23 question?
24 THE COURT: I'm going to overrule the
25 objection and allow him to ask his last question.

1 THE WITNESS: What was the last
2 question?
3 THE COURT: I do see there is a
4 difference, Mr. Davis, in what Mr. Kachmarsky's
5 doing versus your questioning of Dr. Cohen last
6 night. You seemed to be getting more into him
7 giving an opinion as to what Mr. -- excuse me,
8 Dr. Mamelak, his diagnosis. He's asking simple
9 questions, do you agree with what he said here or
10 not. I do see a distinction there.
11 MR. DAVIS: Thank you, Your Honor.
12 THE COURT: Thank you.
13 BY MR. KACHMARSKY:
14 Q. Again, going back to Line 7, the
15 question that is asked of Dr. Mamelak is: Is it
16 possible that Abbie is locked in? And I'm going
17 to ask you beginning on Page -- I'm sorry, Line 8,
18 with the statement that he makes, whether you
19 agree or disagree with it. His response is: So
20 it is not possible that Abbie is locked in? To be
21 locked in means that you have the exact opposite
22 of what Abbie has. To be locked in, you have no
23 spinal cord function, but normal cerebral brain
24 function.
25 Do you agree or disagree with that, or

1 do you not know?
2 A. I'm a layperson. How could I
3 interpret that?
4 Q. You do not know?
5 A. I do not know.
6 MR. KACHMARSKY: Thank you. I have
7 nothing further, Judge.
8 THE COURT: Mr. Slotchiver?
9 MR. DAN SLOTCHIVER: Very brief, Your
10 Honor.
11 THE COURT: Very briefly. Thank you.
12 MR. DAN SLOTCHIVER: Maybe three
13 questions.
14 THE COURT: Okay. Good.
15 REDIRECT EXAMINATION
16 BY MR. DAN SLOTCHIVER:
17 Q. Dr. Cohen, are you familiar with the
18 term heter mer rabanan?
19 A. What? What did you say?
20 Q. Are you familiar with the term heter
21 mer rabanan?
22 A. I think it's mea heter rabanan.
23 Q. Are you familiar with the term?
24 A. Yes. And it's rabanan, not rabanan.
25 Q. Thank you for your correction. That's

1 your understanding of it.
2 Do you understand that to be a
3 religious procedure that Dan Dorn needed to get
4 before he could move on and date or marry?
5 MR. DAVIS: Your Honor, I object. Is
6 he asking him now as an expert in the Jewish
7 faith? I mean, that's the same objection he's
8 made to me. He's asking --
9 MR. DAN SLOTCHIVER: There's a
10 difference in being a -- having knowledge of
11 Judaism and customs as a Jewish person than being
12 a doctor or a professional who needs to be sworn
13 as an expert. I don't believe I've ever heard of
14 anybody being sworn as an expert in Judaism or in
15 any religion, and I'm not asking him as an expert.
16 He testified he knows what the term is, and I want
17 to ask him some questions because it's relevant to
18 the examination he was giving yesterday.
19 THE COURT: Overruled.
20 BY MR. DAN SLOTCHIVER:
21 Q. Are you familiar with the fact that
22 before Dan could remarry/date, he needed to get --
23 obtain one of these?
24 A. Yes.
25 Q. And are you familiar with the fact

1 that in order to get one of these, he needed over
2 100 rabbis to approve it?
3 A. I think he needed 100. It's 100 in
4 Hebrew.
5 Q. And are you familiar with the fact
6 that it takes quite some amount of time to obtain
7 that?
8 A. I have no idea how long it takes.
9 Q. Do you know that it took him a
10 year-and-a-half after he began the process?
11 A. I have no idea how long the process
12 takes.
13 Q. Do you understand that until the
14 divorce took place, he couldn't even begin that
15 process?
16 A. Until the divorce took place. You
17 mean the civil divorce?
18 Q. The dissolution of marriage, yes, sir.
19 MR. DAVIS: Your Honor, I would
20 object. He's asking leading questions. I'm not
21 sure -- I believe this was his witness on direct
22 examination. He's placing all the information and
23 just asking him a yes or no question. I believe
24 that's a leading question. This is his witness on
25 direct examination.

1 MR. DAN SLOTCHIVER: Your Honor, I
2 don't believe I'm getting any gainful edge, number
3 one, number two is we've already asked Your Honor
4 to allow him to be treated as a hostile witness,
5 but this is very basic questions about a procedure
6 and his knowledge about it.
7 THE COURT: In an effort to move this
8 along so that we can get to our expert witnesses,
9 I'm going to allow him to -- a little bit of
10 latitude to ask leading questions. He said he had
11 three or four questions, so we can finish this,
12 Mr. Davis.
13 THE WITNESS: I'm not expert on Holaka
14 Jewish law, and I have no idea.
15 BY MR. DAN SLOTCHIVER:
16 Q. Fair enough. Was there ever a time
17 when the proposition of using LegalZoom was
18 suggested to you or your wife for the divorce
19 procedure?
20 A. Not to me, but it could have been
21 directed to my wife, but it was not in my
22 presence, so I couldn't say yes or no.
23 Q. Was there ever a time when you would
24 have told Dan Dorn: You need to get a lawyer?
25 A. I'm not sure I used that terminology.

1 I visited a lawyer, and I gave him her card, and I
2 said: This is the lawyer who we visited.
3 Q. And that was before any filings took
4 place?
5 A. I think you have to -- what filings?
6 Q. Any filings, for divorce, for
7 dissolution.
8 A. Well, you have to go to a lawyer for
9 that first. That was before anything else
10 happened. That's just the preliminaries.
11 Q. You've testified earlier today on
12 cross-examination about a bunch of doctors who
13 Abbie treated with, and you've even given the time
14 frame, based on Ms. Moore's questions. Do you
15 recall that?
16 A. Yes.
17 Q. And you've testified about a variety
18 of procedures that Abbie was -- or that you
19 believe Abbie was able to undertake, such as the
20 video-type games and eye tracking-type procedures?
21 A. That is not a medical -- you mean what
22 I described, the Eagle Eyes?
23 Q. As a layperson, you testified you
24 believe that she benefited from it?
25 A. Yes.

1 Q. And that she could utilize these
2 programs?
3 A. Yes.
4 Q. And I believe you testified that these
5 go back to perhaps as late as -- or as early as
6 2009. Is that correct?
7 A. I don't believe that we got that in
8 2009. It's been no more than a year-and-a-half,
9 maybe. I just don't know.
10 Q. I believe the record speaks for
11 itself.
12 A. I really don't know for sure, sir.
13 Q. Fair enough. Dr. Cohen, the programs
14 and the doctors, these types of things have been
15 going on for several years, correct?
16 A. Some, yes, some of them longer, some
17 of them shorter.
18 Q. Including your testimony pertaining to
19 Abbie's ability to blink responsively?
20 A. Yes.
21 Q. And do you agree with me, sir, that
22 all of this information was something that you
23 had -- I don't want to cross the attorney-client
24 privilege, but you had the ability to provide to
25 your counsel in the California case?

1 A. I'm not sure what was provided to them
2 in terms of medical documentation.
3 Q. You're familiar that -- you've read
4 the court's order and the statement of decision,
5 correct?
6 A. Yes.
7 Q. And you're familiar that the statement
8 of decision which was incorporated as part of the
9 court's order actually spoke about having viewed
10 evidence submitted of Abbie wherein she
11 purportedly was responding affirmatively or
12 negatively. Are you familiar with that?
13 A. I believe that was her so-called
14 deposition, yes.
15 Q. And are you familiar with the fact
16 that the court found no credence in the argument
17 set forth before it, not only in the records, but
18 also having viewed the physical evidence, and they
19 specifically stated in the order that they don't
20 find it. They said as much as they understand the
21 desire and the wish and the hope that people have,
22 they don't find it to be credible. Are you
23 familiar with that?
24 A. Yes.
25 Q. And do you concur with the fact that

1 despite all that and despite the findings in the
2 order and the statement -- or the findings in the
3 statement of claim, you, as a trustee, as a
4 conservator in this matter, agreed to conclude the
5 California action with those findings rendered by
6 the court?
7 A. Yes.
8 MR. DAN SLOTCHIVER: I've got nothing
9 further.
10 THE COURT: Thank you.
11 Mr. Davis, anything else from you for
12 the witness?
13 MR. DAVIS: One question, Your Honor,
14 if I may ask it from here.
15 THE COURT: Yes, sir.
16 RECROSS-EXAMINATION
17 BY MR. DAVIS:
18 Q. Dr. Cohen, there's been a lot of
19 discussion about levels of consciousness. I
20 believe the last discussion from Mr. Slotchiver
21 was conscious level, which is where we are all in
22 now. Do you understand -- is it your
23 understanding that a person has to be conscious to
24 have the benefit from visitation with their
25 children?

1 MR. DAN SLOTCHIVER: Your Honor, it's
2 actually asking for a legal conclusion.
3 MR. DAVIS: I'm asking for his
4 understanding, Your Honor.
5 MR. DAN SLOTCHIVER: It's actually
6 calling for a legal conclusion, Your Honor. He's
7 asking if in order to have visitation with the
8 children, which is a legal issue that's heard
9 before a family court, you have to have certain
10 qualifications. It's asking for a legal -- not
11 even a medical, but at this time a legal
12 conclusion. I would object.
13 MR. DAVIS: I have not tried to get
14 him sworn as a legal expert or a medical expert.
15 He's simply a trustee, co-trustee, co-conservator,
16 and co-guardian. I've been allowed latitude to
17 ask about his understanding with no limitations
18 that --
19 THE COURT: I'll allow it.
20 BY MR. DAVIS:
21 Q. Dr. Cohen, there's been discussion
22 about the levels of consciousness, about the
23 persistent vegetative state mentioned in
24 Dr. Mamelak's report, about the minimally
25 conscious state mentioned in Dr. Hays's report,

1 also been reference to a conscious state of mind.
2 Do you believe that it's necessary to have a
3 conscious state of mind to receive a benefit from
4 visitation with the children?
5 A. As a layperson, my understanding would
6 be you can still derive benefit from -- you don't
7 need to be fully conscious to understand the
8 benefit -- to get benefit from visitation.
9 MR. DAVIS: Thank you, Your Honor.
10 THE COURT: Thank you.
11 Ms. Hedgepath, Ms. Moore, anything
12 else for the witness?
13 MS. HEDGEPATH: Nothing, Your Honor.
14 MS. MOORE: Nothing further.
15 THE COURT: Mr. Kachmarsky?
16 MR. KACHMARSKY: Nothing.
17 THE COURT: The witness can step down,
18 then.
19 We're going to take ten minutes, if
20 that would be sufficient time. Thank you.
21 (A recess transpired from 10:42 AM to
22 11:12 AM.)
23 THE COURT: We're back on the record
24 in the Abbie Dorn matter.
25 Mr. Slotchiver?

1 MR. DAN SLOTCHIVER: Thank you, Your
2 Honor.
3 We referred to the Paul Cohen
4 deposition. We opened the transcript when we
5 impeached his testimony. We had that information
6 read into the record, but if it's acceptable, I'd
7 like to go ahead and put it into the evidence so
8 the court will have the original.
9 THE COURT: Thank you.
10 Any objection?
11 MR. BOYD: No objection, Your Honor.
12 THE COURT: Thank you.
13 MR. DAN SLOTCHIVER: Your Honor, at
14 this point we would like to call Professor
15 John Freeman.
16 THE COURT: And I'm sorry. Do we know
17 what number that is, then?
18 MR. DAN SLOTCHIVER: 110.
19 (PLF. EXH. 110, Deposition of Paul
20 Cohen, was marked for identification.)
21 MR. DAN SLOTCHIVER: Your Honor, I
22 think I speak loud enough not to have to use this.
23 Is that okay?
24 THE COURT: Sure, yes, sir.
25 MR. DAN SLOTCHIVER: I don't like to

1 use this.
2 THE COURT: I think you do. No
3 offense.
4 MR. DAN SLOTCHIVER: None taken.
5 PROFESSOR JOHN P. FREEMAN
6 being first duly sworn, testified as follows:
7 DIRECT EXAMINATION
8 BY MR. DAN SLOTCHIVER:
9 Q. Professor, would you please state your
10 name and address for the record?
11 A. John Patrick Freeman, F-R-E-E-M-A-N,
12 2329 Wilmot, W-I-L-M-O-T, Avenue, Columbia, SC,
13 29205.
14 Q. And would you please describe your
15 educational background?
16 A. Graduated from Notre Dame with a
17 bachelor's degree in accounting, and I received a
18 BBA, Bachelor in Business Administration. In
19 1967, went to law school at Notre Dame. 1970, got
20 my JD. I subsequently received an LLM from the
21 University of Pennsylvania in Philadelphia.
22 Q. What did you do after law school?
23 A. Went to work with the Jones Day law
24 firm, which is a large law firm headquartered in
25 Cleveland, and worked there for a couple years.

1 And then I went and took a fellowship to the
2 University of Pennsylvania, and I received my LLM
3 from that work at Pennsylvania studying money
4 management.
5 And then I came to South Carolina in
6 1973 to begin as a young professor and assistant
7 professor of law, and I started teaching at the
8 law school in '73 and continued on at the law
9 school until 2008, when I retired. In the
10 meantime, I had worked for the Securities and
11 Exchange Commission, also taught at the University
12 of Texas Law School in Austin and Loyola Law
13 School in Chicago.
14 Q. My understanding is that you're
15 retired now?
16 A. True.
17 Q. What was your rank when you retired?
18 A. I was a -- I had the John Campbell
19 chair in business and professional ethics, and
20 that was -- I was a chaired professor of law.
21 Q. Professor, can you explain to me what
22 it means to have a chair?
23 A. Sort of like being a bird colonel in
24 the military. You're not quite a general. I
25 wasn't a dean, but you're not an associate

1 professor, you're not an assistant professor,
2 you're not an instructor, so it's the highest you
3 can be without becoming a dean of the law school,
4 either an associate dean or the actual dean.
5 Q. Thank you, sir. What courses did you
6 teach?
7 A. Taught various courses. The main
8 courses I taught year in and year out were --
9 started out as business association, which is
10 agency/partnership/incorporations folded into a
11 four-hour block. That became corporations -- the
12 name of it was corporations, but it had the same
13 basic content, and also, when LLCs came along,
14 that got folded into that, so that was a major
15 course that I taught for well over 30 years.
16 I also taught, almost every single
17 year, professional responsibility, sometimes
18 multiple times a year, and that, of course, is a
19 legal ethics/law office/malpractice kind of
20 course.
21 I also taught legal accounting for
22 over 20 years, starting with my first year at the
23 law school, and I taught business planning,
24 corporate finance.
25 And toward the end, I did a couple

1 things. One is got in the area of legal
2 malpractice, which is part of another course, but
3 I taught the legal malpractice section of that
4 course, and then also taught business crime for
5 about ten years, which sort of takes the business
6 aspects and money management aspects and takes a
7 look at that from the criminal side.
8 Q. You mentioned that you taught legal
9 accounting. Could you please tell us what the
10 legal accounting course covered?
11 A. Sure. Legal accounting course was
12 principally designed to help our law students, who
13 had been, oftentimes, liberal arts majors, never
14 took a business course, were afraid of business
15 courses, afraid of finance, and that kind of
16 thing. Suddenly, they're on the verge of becoming
17 lawyers, and they need to come to grips with that.
18 And so that was to help them ramp up
19 to understand how books are kept, the importance
20 of financial statements, how accountants interact
21 with business people, how accountants interact
22 with lawyers, and as sort of a -- it's a great
23 course, really, because it was designed not for
24 kind of high thinking kind of literary emphasis,
25 but basically, this is what you got to know in

1 order to make it in the real world, so I enjoyed
2 teaching that.
3 Q. And how long did you teach that course
4 for?
5 A. I would say around 20 years, could
6 have been over 20 years, but around 20 years.
7 Q. Professor, what experience have you
8 had in accounting?
9 A. Well, besides being an accounting
10 major and besides being a member of Beta Alpha
11 Psi, which is an honorary accounting fraternity, I
12 also worked for an accounting firm, the McGladrey
13 firm, and I taught it. And to be honest with you,
14 a lot of the matters that I've had to deal with,
15 legal matters, since the time I became a lawyer in
16 1970, in some form or fashion, have accounting
17 issues, financial issues in them.
18 Q. Have you received any awards or honors
19 for your teaching?
20 A. Yes. I was voted the best teacher
21 four times by the students at the law school.
22 Q. Thank you, sir. Have you worked
23 anywhere else?
24 A. Well, yeah. I worked at -- I
25 mentioned the SEC, Securities and Exchange

1 Commission, studying issues of investment managers
2 handling investment money and fees. I also --
3 that was two summers at the SEC while they were
4 doing an intensive study in an area where I have
5 some skills.
6 I also, as I said, worked at Texas Law
7 School, where I taught the corporations course,
8 taught corporations and securities at Loyola, and
9 from time to time, I've also been involved as a
10 lawyer in legal matters.
11 Q. In your teaching capacity, did your
12 activities include any focus on the topics of
13 fiduciary obligations or the scope of authority?
14 A. Yes, because sometimes I tell the
15 students that basically -- for instance, the
16 corporations course, agency/partnership/
17 corporations/LLCs, essentially, that is all about
18 fiduciary duties, because agents are fiduciaries,
19 principles are in a fiduciary relationship,
20 corporate directors are, officers are, members of
21 LLCs, if they're managing members for sure, are,
22 partners are, general partners are, and so you've
23 got all these stirring together of these fiduciary
24 obligations.
25 Likewise, in PR, lawyers are going to

1 be a fiduciary, a lawyer handling money is going
2 to be a fiduciary, accounting to clients or not
3 accounting to clients. So yeah, it was -- pretty
4 much everything that I dealt with had fiduciary
5 overtones.
6 Q. And a little further with it,
7 Professor. In your teaching, did you have a focus
8 on the duties that fiduciaries owe when handling
9 and managing money?
10 A. Sure. Lawyers, for example, I mean,
11 we talk about trust accounting and the need to
12 keep things straight in the business area, the
13 same thing, the duty to account, accounting
14 proceedings in a partnership setting, and on and
15 on.
16 Q. Outside the classroom, have you, as a
17 lawyer, focused on the duties that fiduciaries owe
18 when handling and managing monies?
19 A. Sure.
20 Q. Can you describe that, please?
21 A. Well, for one thing, I've written
22 about it. For instance, there was an article I
23 did back in my SEC days. One of the key things I
24 looked at for the SEC was the ability of managers
25 of mutual funds, the investment adviser, who is a

1 fiduciary as to the fund itself -- Fidelity, for
2 example, sets up a Contrafund, which is a Fidelity
3 fund -- the duties of the adviser in managing that
4 money and spending that money, for example, using
5 some of that shareholder money to generate new
6 sales of fund shares and the propriety of that.
7 It's a really difficult issue, simply
8 because nobody's ever really shown that selling
9 additional fund shares benefits the shareholders.
10 So if you take their money, who's being benefited?
11 It's the investment adviser who benefits by the
12 fund growing, so there's a fiduciary duty issue
13 there that I've written about at considerable
14 length.
15 I wrote about it in the 70s, I wrote
16 about it with two major articles in the last eight
17 or ten years, and as a result of that, for
18 example, I ended up testifying before the US
19 Senate on money management/fiduciary duty issues.
20 Q. Other than your experience as an
21 author for the articles you've written, have you
22 ever, as an expert or a litigation consultant,
23 focused on the duties that fiduciaries owe when
24 handling and managing monies?
25 A. Sure.

1 Q. Can you tell me about that?
2 A. Well, the mutual fund investigations
3 that I made led to some -- a lot of cases,
4 actually, and I ended up as a litigation
5 consultant in various cases attacking the
6 fiduciary behavior of investment advisers really
7 around the country, and so that would be one
8 thing. In terms of being a litigation consultant
9 in other types of cases, I think it's been pretty
10 much in the mutual fund area.
11 Q. Do you give lectures on fiduciary
12 duties?
13 A. Sure.
14 Q. When was your most recent lecture?
15 A. About two weeks ago.
16 Q. Can you tell me briefly about that?
17 A. Right. There was a series of
18 lectures. There was three of them. They started
19 in December, then there was one in January, and
20 then one in February, I think it was
21 February 12th, or thereabouts, maybe three weeks
22 ago, at the Bar headquarters.
23 And the focus of these lectures was on
24 the duties that lawyers would owe in dealing with
25 vets, because a lot of veterans, for example, may

1 be elderly, and you're trying to accomplish
2 something for them, their needs of dealing with
3 family, their needs of dealing correctly with the
4 government. And so that was three hours. The
5 most recent hour was vets and their families and
6 how you coordinate. And it's all -- the lawyer is
7 a fiduciary because that's what you are as to the
8 vet and as to the family dealing with these money
9 problems.
10 Q. What do you do to stay current in the
11 area of fiduciary duties?
12 A. One thing I do is answer my phone,
13 because I get calls all the time, usually multiple
14 times a day, from lawyers who have issues,
15 oftentimes money-related. But also, when you
16 write about it or when you lecture about it, that
17 forces you to learn about things.
18 Also, for example, periodically, I
19 would say once every three or four weeks, you get
20 a call from a reporter who wants to know about
21 some new thing, and you learn from -- put it this
22 way: Usually when people call, it's not an easy
23 question, particularly when it's lawyers. It's
24 something that if they knew the answer, they
25 wouldn't need to call me, or if they were

1 100-percent sure, they wouldn't need to call me,
2 so you learn from that, that interaction.
3 Q. Have you ever been involved in
4 lawsuits involving challenges to the
5 reasonableness of fees charged in a fiduciary
6 setting?
7 A. Sure.
8 Q. Can you describe your experience in
9 that?
10 A. Well, I mentioned all those mutual
11 fund cases. Also, I've been involved in cases
12 involving the lawyers and how they handle money
13 and how they handle fees. I've been involved in
14 numerous cases where the issue was the
15 reasonableness of the lawyer's fees and the
16 lawyer's behavior.
17 Oftentimes, in a large class action,
18 for example, there are issues as to the
19 reasonableness of the behavior, i.e., the
20 settlement, and as to the fee that's being
21 charged, and I've testified many times in those
22 cases, and periodically, I've also been involved
23 in litigation against trustees who have failed to
24 handle their fiduciary obligations properly.
25 Q. Have you ever written about

1 fiduciaries' obligations in handling money
2 belonging to others?
3 A. Sure. That's -- for instance, all my
4 mutual fund stuff is along that line.
5 Q. And have you ever sued fiduciaries for
6 their misconduct in the handling of their
7 fiduciary duties?
8 A. Sure. I mentioned a couple cases
9 against large banks -- SCN was one and Bankers
10 Trust of New York was another -- and they failed
11 as fiduciaries, and they got sued.
12 Q. Professor, are you here today to
13 express legal conclusions?
14 A. No, I am not.
15 Q. What are you here to do today?
16 A. I'm here to express my opinions as an
17 expert in the area of fiduciary obligations and
18 handling money, about the reasonableness of
19 actions and decisions taken by the Cohens and the
20 extent to which that those -- in my judgment,
21 those behaviors were within the scope of their
22 authority.
23 MR. DAN SLOTCHIVER: Your Honor, at
24 this time I move to submit Professor Freeman as an
25 expert in the field of fiduciary obligations and

1 the handling of money and making business
2 decisions that have affected the Abbie Dorn
3 Special Needs Trust.
4 THE COURT: Mr. Boyd?
5 MR. BOYD: Your Honor, we think for
6 the limited area of fiduciary obligations, that we
7 would concede that Mr. Freeman has an impressive
8 CV and background, but we just would note that
9 there's been little said about the actual types of
10 trusts that are involved in this case, but with
11 the limited -- with the specification that counsel
12 provided, we have no objection.
13 THE COURT: Thank you.
14 Ms. Hedgepath, Ms. Moore, anything?
15 MS. HEDGEPATH: I concur with
16 Mr. Boyd.
17 MS. MOORE: Same.
18 THE COURT: Mr. Kachmarsky?
19 MR. KACHMARSKY: No objection.
20 THE COURT: Mr. Boyd, you mentioned
21 with the limited area of fiduciary obligation --
22 Mr. Slotchiver, if you could step
23 aside, just so I can see Mr. Boyd.
24 MR. DAN SLOTCHIVER: Yes. I'm sorry,
25 Your Honor.

1 THE COURT: I think Mr. Slotchiver
2 asked that he be qualified as an expert in the
3 area of fiduciary obligation and handling money.
4 MR. BOYD: Well, Your Honor, I would
5 object to -- I'm not sure if handling money is a
6 legal term of art or not. I'm not familiar with
7 that. I think that's an overly broad
8 characterization of Mr. Freeman's expertise.
9 Handling money --
10 THE COURT: As a fiduciary?
11 MR. BOYD: Everything involved, but if
12 it's simply an expert as to fiduciary standards,
13 we're not going to contest his qualifications.
14 THE COURT: Is that -- there's some
15 limitation?
16 MR. DAN SLOTCHIVER: Perhaps I can ask
17 Professor Freeman another question.
18 THE COURT: Yes, sir.
19 BY MR. DAN SLOTCHIVER:
20 Q. Professor Freeman, have you been
21 qualified as an expert before in other cases in
22 the field of fiduciary obligations in the handling
23 of monies?
24 A. Yes.
25 Q. Any idea as to how many times?

1 A. Multiple times. For example, one of
2 the problems that you run into in the investment
3 area is investment advisers are broker/dealers,
4 abusing their clients by gouging on fees or
5 misapplying money, been involved in cases where
6 lawyers have done the same thing and testified --
7 you're asking for a number -- 15 times or more.
8 Q. I'm assuming you've never not been
9 qualified?
10 A. No. I've never been found unqualified
11 to testify about that.
12 MR. DAN SLOTCHIVER: Your Honor, I
13 would move once again, understanding the objection
14 of Defendant Cohens' counsel.
15 THE COURT: I will qualify Professor
16 Freeman in the area of fiduciary obligation and
17 the handling of money.
18 MR. DAN SLOTCHIVER: Thank you.
19 THE COURT: Thank you.
20 MR. DAN SLOTCHIVER: And we had added
21 to it, Your Honor, unless you're not going to
22 include them, but also in making business
23 decisions affecting the Abbie Dorn Special Needs
24 Trust.
25 MR. BOYD: Your Honor, I didn't

1 understand that to be a specific qualification of
2 Mr. Freeman's expertise.
3 MR. DAN SLOTCHIVER: Actually, it was.
4 It was verbatim to what I quoted before, Your
5 Honor.
6 THE COURT: Maybe you can explore that
7 just a little bit further with Professor Freeman.
8 MR. DAN SLOTCHIVER: Be happy to.
9 BY MR. DAN SLOTCHIVER:
10 Q. Professor Freeman, have you been
11 involved in cases wherein you've been qualified as
12 an expert in the making of business decisions
13 affecting financial matters?
14 A. Sure.
15 Q. And is the manner in which or the
16 substance in which I am putting you up to be an
17 expert consistent with other matters that you have
18 been authorized by the court to speak on as an
19 expert?
20 A. Yes.
21 THE COURT: So would that be a
22 qualification in the area of making business
23 decisions as a fiduciary?
24 MR. DAN SLOTCHIVER: Well, in this
25 case, it's affecting the special needs trust, but

1 it would be as a fiduciary.
2 THE COURT: Mr. Boyd?
3 MR. BOYD: Your Honor, I just want to
4 point out, I know it runs contrary to the view of
5 the case held by other counsel in the room, but
6 the Abbie Dorn Special Needs Trust is not a
7 business, Your Honor. It's not in existence for
8 the purpose of returning value to shareholders.
9 It is not a business, Your Honor. It is a special
10 needs trust specifically established for the
11 benefit both under the law, the Medicaid
12 provisions, and by its own terms for the benefit
13 of one person, Your Honor.
14 MR. DAN SLOTCHIVER: And we'll address
15 that, Your Honor.
16 THE COURT: Thank you.
17 Then I will qualify Professor Freeman
18 as an expert to testify with regards to the
19 fiduciary obligation and the handling of money and
20 also in making business decisions as a fiduciary.
21 MR. DAN SLOTCHIVER: Thank you, Your
22 Honor.
23 BY MR. DAN SLOTCHIVER:
24 Q. Professor Freeman, what have you done
25 to prepare to testify here today?

1 A. Besides consult with counsel, I
2 have -- and reading the transcript for the last
3 however many days as we have had a court reporter
4 putting that out on the Internet, just to keep
5 myself informed as to what's been going on in the
6 courtroom. But as I testified at my deposition,
7 and that's one of the things I've done is been
8 deposed in this case, I have read the depositions
9 of the Cohens, Dan Dorn's deposition, I've read
10 Dr. Mamelak's deposition. I have reviewed legal
11 bills. I think there's around 413 pages of legal
12 bills. I have reviewed material pertaining to
13 Mr. Jeffrey Cohen and his activities and his
14 billings. I have reviewed certainly the trusts
15 and fiduciary duty authorities. And let's see if
16 I left anything out. Of course, the pleadings in
17 the case, general ledger, California decisions,
18 Mr. Kachmarsky's pleadings, his fee petition, I
19 read various transcripts, done what I could to try
20 to stay abreast of these facts.
21 Q. Thank you, Professor. In your
22 preparation, have you conducted the kind of
23 investigation that is common for experts in your
24 field testifying in cases such as this?
25 A. I have.

1 Q. Please describe what you have done to
2 prepare for your testimony.
3 A. Well, again, I've reviewed material
4 which is standard for an expert of my type, I have
5 formulated opinions, I have formulated reasons for
6 those opinions, I have presented myself at a
7 deposition and been deposed, my views are a matter
8 of record, and I come into the courtroom today to
9 share those opinions and reasons with the court.
10 Q. Thank you, sir. Have you conducted an
11 investigation concerning the trust on payments of
12 the Cohens as trustees to their son Jeffrey for
13 accounting fees?
14 A. Yes.
15 Q. And what did your investigation
16 consist of?
17 A. Well, there's a report on his fees,
18 which is already in evidence. It's been referred
19 to, I know, in the transcript at various points.
20 It's a three-page summary of different billings by
21 Jeffrey. It's got a third page with a total
22 amount of $88,917.41. I looked at that, reviewed
23 that. I also had a wealth of financial
24 information about expenditures by the trust,
25 different checks that were cut that were charged

1 against the trust. Typically, the checks were
2 made out by Mrs. Cohen.
3 I reviewed a payroll register prepared
4 by the AccuChex. I reviewed tax returns prepared
5 by Webster Rogers. I conducted some investigation
6 into the issue of exactly what is the market for
7 bookkeepers and how are bookkeepers paid and came
8 up with data on what seems to be the going
9 payment, annual salary, or charge for bookkeepers,
10 and that's a summary of where I looked in order to
11 evaluate Jeffrey Cohen's behavior as a bookkeeper.
12 Q. Thank you, sir. Professor Freeman,
13 I'm going to hand you a copy of Mrs. Cohen's
14 deposition. Did your investigation include
15 reviewing this?
16 A. It did. I've got some pages from her
17 deposition with me today.
18 Q. Did you note Mrs. Cohen's testimony
19 about hiring her son to do an accounting for the
20 trust?
21 A. Yes. And specifically, I noted her to
22 say, quote: My son is an accountant. That's on
23 Page 46, Line 5.
24 I noted her to say on Page 51,
25 question, Line 19: His job description, is that

1 as a bookkeeper? That's a question. Answer:
2 Right. That's primarily what it is.
3 And she also -- I also gleaned from
4 there information about payment and why he was --
5 why he was hired. On Page 50, Line 2, quote: I
6 was paying my firm here $95 an hour, so he
7 initially didn't want to take any money. I wanted
8 him to take at least that an hour, was her
9 testimony.
10 Later on -- that kind of puzzled me
11 later on when I read it, because Page 52, Line 8,
12 she says: Well, I had Webster Rogers. They were
13 charging me $95 an hour. That's why I said I need
14 somebody. I can't pay $95 an hour, which was
15 confusing to me and more confusing when I saw her
16 testimony at trial that he only gets paid $25 an
17 hour. But that's her testimony here in this
18 courtroom that this man is paid $25 an hour, okay.
19 I took that into account in evaluating his hiring
20 and his work.
21 Q. Have you sought out to determine how
22 he was paid?
23 A. Yeah. It's shown on -- it was
24 Deposition Exhibit 8. I don't know what the
25 number is in the court file for this Jeffrey

1 Cohen --
2 Q. I'll be happy to get it for you, if
3 you'd like.
4 A. Just so the record is clear on what
5 I'm referring to. Your Honor, I think,
6 understands what I'm referring to.
7 THE COURT: Yes, sir. I believe that
8 has been admitted, hasn't it?
9 THE WITNESS: Yes, it has. It's been
10 discussed by various people.
11 Anyhow, I took this into account. I
12 took also the AccuChex numbers into account,
13 because they show the money going out to Jeffrey
14 every two weeks, and I reached certain conclusions
15 based on this evaluation.
16 BY MR. DAN SLOTCHIVER:
17 Q. Can you tell us those conclusions?
18 A. Yeah. I think there's a waste of
19 assets here. I think there's a breach of
20 fiduciary duty and severely improperly handling of
21 this by the Cohens as fiduciaries. And I have
22 reasons for this, and I want to give my reasons.
23 Q. If you would, please.
24 A. First of all, if you look at the chart
25 of Jeffrey's payments, they start off what seems

1 to be some kind of hourly system, and you have
2 different numbers for 2008. It says hourly, and
3 they add up to $5,500. And when you get into the
4 middle part of 2009, it shoots up to $1,500 every
5 two weeks.
6 Q. And not to interrupt you, Professor,
7 but just to make sure we're on the same page, I
8 believe this is Exhibit 88. Let me hand you the
9 exhibit so we have clarity for the record. Is
10 this the document you're referring to?
11 A. It is.
12 Q. Thank you, sir.
13 A. Well, middle of 2009, the 400, 500,
14 600, 900, 600 numbers suddenly become stabilized
15 exactly at $1,500 every two weeks. That's $3,000
16 a month, and that continues on that way for the
17 better part of two years, exactly $3,000 a month.
18 It turns out to be a little bit more than that,
19 because 26 times $1,500 comes out, I think, to
20 $39,000, not 36, say $39,000 a year.
21 My evaluation is that's high for a
22 bookkeeper to begin with, assuming that that's
23 really what the man is, which is what he under
24 oath was presented as at Mrs. Cohen's deposition.
25 And here's why I have problems, big

1 problems, with this behavior. What is he
2 accounting for? He's not accounting for payroll.
3 That's AccuChex. That's a separate vendor.
4 They're being paid separately. He's not even
5 accounting for his own payroll or his own expense.
6 AccuChex is doing all that for him and the other
7 healthcare providers. As far as I can see, he's
8 not doing the taxes, because Webster Rogers, who
9 supposedly bills too much, they seem to be keeping
10 on as the tax accountant. So that's fine.
11 And then when you look at the
12 financial statements, and you look for accounting,
13 what are we paying for accounting or bookkeeping?
14 Bookkeeping isn't there. Jeffrey isn't there.
15 You have a charge for accounting, but it's only
16 about $7,000 a year. So where is this $39,000 or
17 $36,000 number, and what is being done for that by
18 this man who is a supposed bookkeeper?
19 Well, there can't be much, because
20 payroll's AccuChex, taxes are Webster Rogers.
21 That would leave something like data entry to put
22 in the bookkeeping process the data that -- what
23 data is there? And the answer is, well,
24 Mrs. Cohen is writing checks. That's what she's
25 doing, and she is, and I've seen the bank

1 statements, and I've seen the canceled checks, and
2 I didn't see any checks written by Jeffrey. I saw
3 checks written by her.
4 Well, what about these checks? There
5 are not that many of them. If you total up the
6 number of checks on a monthly basis, you might
7 have a month that's got 75, might have a month
8 that's got 80, you might have a month that's got
9 90. I don't remember seeing any month where there
10 was 100 checks, but there could have been.
11 Why is that significant? Well, over a
12 period of time, you've got -- if you've got 100
13 checks a month, and you're paying somebody $25 an
14 hour, and they're earning this kind of money, they
15 would be working a lot of hours in a given month,
16 okay, to make that kind -- so you got to work four
17 hours to make $100. You got to work 60 hours to
18 make $1,500. That gets you for the first two
19 weeks, and then double it, so you're at 120 hours
20 for the month at $25 an hour for that kind of
21 money.
22 Now, okay, so what do you do to earn
23 that kind of money as the bookkeeper? Well,
24 you're going to keep the books, okay. Fine.
25 There are about 100 checks a month. That would be

1 generous. There'd be usually fewer than that.
2 But say there's 100 checks, and you've got 150
3 hours that you're working that month. Well, the
4 checks are all credits to cash, so debits and
5 credits, that part of the equation you don't have
6 to worry about. All you got to do is write down a
7 debit. Works out to maybe, let's say, four checks
8 a day or five checks a day, max, for your $3,000
9 plus a month.
10 How on earth do you spend that amount
11 of time -- you show up at work at 9:00. You have
12 four checks to enter on the books, one for
13 prescription, one for equipment, one for half
14 payment of the rent, so forth. You do that. That
15 takes you a minute, five minutes if you're really,
16 really slow, and then what do you do for the rest
17 of the day as this full-time bookkeeper with that
18 work? And the answer is you're not bookkeeping,
19 because there's no work there for a bookkeeper,
20 okay.
21 To enter, let's say, 100 checks a
22 month, 12 months a year, that's 1,200. Checks, to
23 enter those checks onto the books couldn't take
24 you more than 20 hours, so that's not even really
25 half of your first week, and you're being paid

1 $39,000 a year.
2 So that's very suspicious to me,
3 because the fact is he can't be doing the
4 bookkeeping and getting paid that kind of money.
5 That is a waste of assets. That is throwing money
6 away.
7 Now, I looked high and low for
8 evidence of what Jeffrey is doing to earn that
9 money. I couldn't find it. It's not in the tax
10 return. There's no -- it's not -- I just couldn't
11 find it. I could see the money going to him, but
12 in terms of him being this bookkeeper, doing it --
13 you know, being paid $39,000 for a 20-hour-a-year
14 job is ridiculous, so I got a huge problem with
15 that.
16 Now, I understand that lately there's
17 a claim that he's not the bookkeeper, per se, he
18 reads to Abbie, or he somehow is a value to
19 Mrs. Cohen as a sounding board or something like
20 that. I mentioned that at my deposition. I'm
21 glad that he loves his sister. I'm glad that he
22 loves his mother. I'm glad that he's there for
23 them. But that's called being a son. That is not
24 a bookkeeper, and you don't -- to be paid $25 an
25 hour to read a book to somebody, I'm not sure that

1 that's a good use of assets.
2 It looks to me like we're kind of
3 inventing things, and I have a big problem with it
4 because this man is a relative. This is what's
5 called a related party transaction where there's a
6 conflict of interest, and these transactions,
7 typically, in the fiduciary area, are scrutinized
8 very closely. And you would expect if there's
9 $39,000 going to Mr. Cohen, that there would be
10 documentation, clear-cut, explaining why this is
11 good for the trust and good use of funds and so
12 forth.
13 This is roughly one-tenth of annual
14 trust money going out to Jeffrey. For what?
15 Can't be for bookkeeping. It has to be -- in my
16 judgment, if it is for bookkeeping, it's wildly
17 gross overpayment for bookkeeping, and if it's for
18 being a son or being a good family member, I'm not
19 sure that that's compensable, and if it is
20 compensable, I don't believe it should be
21 compensable at $25 an hour, $39,000 a year. There
22 are a lot of people who would like to work real
23 hard for $39,000 a year.
24 So I've got serious problems with all
25 of the Jeffrey payments, simply because I don't

1 find any substantiation, and the facts seem to
2 kind of waver in front of you. It's $95, I wanted
3 him to take more, and then this. This is also in
4 Mrs. Cohen's deposition repeatedly. Jeffrey said
5 he'd do it for free. Well, you know, that's fine.
6 If he'd do it for free, he has got a pretty good
7 idea of what his time is worth. It's not worth
8 very much to be a bookkeeper --
9 MR. BOYD: Your Honor, I object to
10 that testimony. There's no basis for that
11 statement.
12 MR. DAN SLOTCHIVER: He's an expert
13 giving his opinion, Your Honor.
14 THE COURT: I'm going to allow it.
15 THE WITNESS: Jeffrey didn't want any
16 money. If I was a fiduciary operating with an eye
17 single to the trust and to Abbie Dorn's needs and
18 had somebody who didn't want money, I would not be
19 chasing them around trying to stuff it in their
20 pockets.
21 MR. BOYD: Your Honor, again, I have
22 to object to the witness's statement. There's no
23 basis in evidence that I'm aware of for the
24 count -- for the witness's statement that Jeffrey
25 didn't want any money. Mrs. Cohen has

1 testified --
2 MR. DAN SLOTCHIVER: That he didn't
3 want any money.
4 THE COURT: I think she testified that
5 he didn't want any money initially, so I'm going
6 to allow it.
7 THE WITNESS: I just want to be clear
8 on this, in light of what has been said more than
9 once, but here on 53, Line 15 of her deposition --
10 well, starting on 12. Did he determine the
11 $36,000? Answer: No. Question: Or was that
12 your determination? Answer on Line 15: That was
13 my determination. This is Susan Cohen. He didn't
14 want to take any money from me. He said: Please
15 just let me do it for you. And I said: No. I
16 would feel guilty calling you so many times a day.
17 So that, to me, is not good behavior
18 for a fiduciary. It's overpayment, assuming he's
19 doing any work, and it doesn't have the -- it
20 doesn't have the earmarks of an arm's length
21 bargain at all. I think it's unfair to the trust,
22 waste, a serious breach of trust by the
23 fiduciaries.
24 BY MR. DAN SLOTCHIVER:
25 Q. Are you familiar with the term

1 self-dealing?
2 A. Yes.
3 Q. Would that apply to this issue?
4 A. I already said it did. It applies
5 to -- it applies to this because it's a family
6 member, it's a close family member getting the
7 money.
8 Q. Professor Freeman, did you notice
9 where it was that the payments to Jeffrey were
10 listed?
11 A. They're in the AccuChex report.
12 Q. And where in the AccuChex report were
13 they listed?
14 A. With the help, the helpers who come in
15 on a daily basis.
16 Q. Was there a place they could have been
17 listed in the accounting section?
18 A. Sure. For example, you could have
19 listed it as an accounting expense or a
20 bookkeeping expense. It was never there.
21 Q. Does it surprise you that a bookkeeper
22 would not be listed as an accounting expense?
23 A. It does surprise me. I would think
24 that that would be the accurate way to do it if
25 he's actually a bookkeeper, as she said he was.

1 Q. So the record is clear, Professor
2 Freeman, do you, as an expert, deem that the
3 Cohens' conduct concerning the hiring and paying
4 many thousand of dollars to their son Jeffrey for
5 so-called accounting services to be reasonable or
6 unreasonable?
7 A. Unreasonable.
8 Q. And can you explain that opinion?
9 A. Your Honor, I incorporate by reference
10 my previous testimony. I just -- there isn't
11 enough work there for him to do, just entering
12 those checks, assuming that he does that. It's
13 purely what to debit. You make that decision a
14 thousand times. Fine. That might take you a day,
15 but it doesn't take you a year for $39,000 to make
16 that decision a thousand times. It's just
17 ridiculous.
18 Q. Focusing on fiduciary obligations,
19 what conclusions do you draw concerning the
20 Cohens' behavior from these facts?
21 A. As to Jeffrey, it's poor behavior for
22 a fiduciary. It doesn't stand -- in my judgment,
23 particularly since it's a related party
24 transaction, doesn't stand the light of day,
25 doesn't have the hallmarks of arm's length

1 dealings. I just think it's wrongful, and you
2 just can't necessarily, as a fiduciary, do things
3 that you want to do, just because you want to do
4 them.
5 Q. Thank you, sir. Professor, have you
6 conducted an investigation concerning the trust
7 fund payments by the Cohens as trustees to legal
8 counsel litigating the issue of visitation
9 concerning Abbie Cohen's children?
10 A. Yes.
11 Q. And what facts did your investigation
12 produce?
13 A. Well, it's been referred to many
14 times. There's a decision out of California that,
15 in essence, the judge out there reached a
16 conclusion that the visitation issue that was
17 before the judge out there in the Dorn dissolution
18 case, the visitation issue, had a lot of the
19 hallmarks of being a disguised parental
20 visitation.
21 MR. BOYD: Your Honor, I object to the
22 testimony to the extent counsel is stating a legal
23 conclusion.
24 MR. DAN SLOTCHIVER: He's giving his
25 opinion, Your Honor.

1 THE WITNESS: My interpretation of
2 what the judge held.
3 THE COURT: I will allow it.
4 THE WITNESS: In my interpretation,
5 again, this -- I've got the order here. I'm
6 referring to the April 7th, 2001, order. There's
7 an earlier order that's got the same language in
8 it. And I hesitate to even take up the court's
9 time in reading it. The court's heard this
10 numerous times.
11 BY MR. DAN SLOTCHIVER:
12 Q. Are we referring to No. 86, what's
13 been introduced as No. 86?
14 A. Yes.
15 Q. Thank you, sir.
16 A. But I want to reference that there's
17 an earlier order by the same judge, and it's got
18 the same findings in it.
19 MR. BOYD: Objection, Your Honor.
20 He's referring to a document that has not been
21 entered into evidence.
22 THE WITNESS: It's part of my
23 investigation as an expert.
24 MR. DAN SLOTCHIVER: He can testify as
25 to his investigation, Your Honor.

1 MR. BOYD: Nor was it produced at his
2 deposition, Your Honor.
3 THE WITNESS: Sure was. I resent
4 that. It was absolutely produced, right here, Cal
5 orders.
6 MR. BOYD: Dan, is he holding 86? May
7 I approach, Your Honor?
8 THE COURT: Yes, sir.
9 THE WITNESS: No, I'm not holding 86.
10 This was part of the visitation stack.
11 MR. BOYD: I think what the witness is
12 referring to, Your Honor, is what's been marked as
13 Exhibit 86, which is not a prior order of the
14 California --
15 THE WITNESS: No, sir. If you will
16 come back here, I will show you the prior order is
17 attached to it, right here. And this was with me
18 at my deposition. It was handed over to the court
19 reporter. It was copied.
20 MR. DAN SLOTCHIVER: Your Honor, so
21 the record reflects, the court reporter took his
22 entire file and copied it. This was -- what he's
23 brought with him, I understand, is a copy of
24 what -- or is exactly what the court reporter had.
25 THE WITNESS: As it was returned to me

1 by the court reporter.
2 THE COURT: I'll allow it.
3 THE WITNESS: Do you have a question
4 for me?
5 BY MR. DAN SLOTCHIVER:
6 Q. I had asked you if you'd conducted an
7 investigation concerning the trust fund payments
8 of the monies. You were stating that you had
9 looked at it, and you were referring to the order
10 and the language in the order, and then you were
11 going to refer again to the order in the previous
12 order -- or the language in the previous order.
13 A. Yeah, but it's the same language, and
14 again, the court knows about the language, the
15 court's heard about the language multiple times on
16 this record, because I've seen transcripts, so I
17 don't see that I should have to read it to the
18 court.
19 THE COURT: Thank you.
20 BY MR. DAN SLOTCHIVER:
21 Q. Professor, focusing on the fiduciary
22 obligations, what conclusions do you draw
23 concerning the Cohens' behavior from the facts
24 that you discussed?
25 A. I believe that as I testified at my

1 deposition, that what the California court found
2 was correct, that a key issue was visitation, a
3 much litigated issue was visitation, that there
4 was an issue as to ulterior motive on the part of
5 Mrs. Cohen, that the court credited Dan's belief
6 as to that and followed through with it by barring
7 Susan Cohen from participating in the visitation.
8 The court also, after reviewing the
9 medical evidence, concluded that if anybody was
10 going to be a beneficiary of the visit, it would
11 be the children, who might be able to benefit by
12 being with their mother, and for that reason,
13 limited visitation was permitted.
14 But in the meantime, as the court is
15 extremely well aware, hundreds of thousands of
16 dollars were spent litigating this visitation
17 issue, and my concern over that is really directed
18 to the court's findings out in California, with
19 the court finding that this was essentially for
20 Susan's benefit more so than anybody else's.
21 Q. So the record is clear, Professor, do
22 you, as an expert, deem that the Cohens' conduct
23 concerning their hiring and paying the hundreds of
24 thousands of dollars to litigate the visitation
25 issue to be reasonable or unreasonable?

1 A. Unreasonable.
2 Q. And would you explain that?
3 A. Yeah. It's an enormous amount of
4 money being spent, according to the court out in
5 California, principally to benefit -- or an
6 attempt to convey a perceived benefit on Susan
7 Cohen, where she is not a beneficiary of the
8 trust, and she is not the person to receive the
9 benefits at all. It would be Abbie. And any
10 benefit to Abbie, I just didn't see the court
11 focusing on Abbie getting any benefit, in light of
12 her medical condition.
13 So again, it's a form -- to me,
14 analyzed in that light, it becomes a form of
15 self-dealing where you're spending -- taking money
16 from a trust as a fiduciary, you are a fiduciary,
17 and spending it for personal purposes, and I have
18 a problem with that.
19 Q. Professor, in South Carolina, in your
20 professional opinion, what needs to be shown to
21 establish a case for breach of fiduciary duty?
22 A. Duty owed, be in a fiduciary
23 relationship, which clearly the Cohens were, duty
24 owed, duty breached, damages proximately caused.
25 Q. And do you have an opinion, based on

1 your investigation, as to whether such a showing
2 has been made on this record?
3 A. In my opinion, yes.
4 Q. And what is that?
5 A. That a showing has been made both as
6 to the Jeffrey Cohen spending and the spending on
7 visitation in light of the findings out in
8 California.
9 Q. Professor, in South Carolina, in your
10 professional opinion, what needs to be shown to
11 establish a case for removal of a trustee?
12 A. Severe breach of trust would be such a
13 hallmark.
14 Q. Do you have an opinion whether the
15 conduct of the Cohens in the payment to Jeffrey
16 Cohen for purported bookkeeping services
17 constitutes a severe breach of trust?
18 A. Yes.
19 Q. What is that opinion?
20 A. The opinion is yeah, because of -- I
21 think it puts the trustees in a very bad light.
22 He's a bookkeeper, okay. Well, let's take a look
23 at that. Well, he's not so much a bookkeeper.
24 He's something else. I just -- money was wasted,
25 and it was grossly wasted, and I don't think

1 there's any other way around it.
2 As to visitation, a lot of money was
3 spent on both sides. Susan's wishes evidently
4 were found objectionable by the court. I take
5 that into account. The court made a decision
6 based on the full record in front of it. To me,
7 that shows serious breach of trust.
8 And there's one other aspect, too,
9 that I'll mention, and that is -- it's in the -- a
10 recent case came down with the James Brown Estate
11 with the issue being the trustees have been
12 removed and whether they should be reappointed or
13 whatever. And Bob Buchanan was one trustee, Adele
14 Pope was another. Quite a lengthy decision. I
15 don't even think it's ten days old. This is
16 recent.
17 And one of the things the court
18 pointed out about putting these people back in
19 place as trustees, they said the rancor and the
20 kind of -- there's a poisonous atmosphere between
21 the participants, and they're not willing to --
22 even though they may technically deserve to be
23 reappointed as trustees, in light of kind of a
24 perpetuation of turmoil and bitterness and anger
25 on the part of everybody involved in the trust,

1 just not going to do it, court refused to do it,
2 and I think that's a factor too.
3 Q. I think perhaps the language or the
4 word you're looking for may be discord?
5 A. It was extreme unpleasantness. And I
6 see that same discord here, which is a reason why
7 I believe that, frankly, that Abbie would be
8 better off, her children would be better off, if
9 an independent, competent, first-class fiduciary
10 was appointed to handle the Abbie Dorn trust and
11 maybe stop some of the poisonous atmosphere that
12 has enveloped around this case.
13 Q. The opinions that you've given today,
14 do you hold the professional opinions you have
15 expressed today to a reasonable degree of
16 professional certainty?
17 A. Yes.
18 Q. Thank you, sir. Was there something
19 else you wanted to add?
20 A. The one other thing I'd want to add is
21 that frankly, under the terms of the trust,
22 particularly famous Paragraphs 10 and 12, as I
23 testified at my deposition, it's my view that
24 prior court approval was needed. It's
25 inconvenient, maybe, it may be frustrating to get

1 it, but it's just needed before any money is
2 spent.
3 Q. And having reviewed -- let's go into
4 that for a moment. Having reviewed all the
5 documents that you've testified to, is it likewise
6 your opinion that there was no basis to do -- to
7 have the expenditures related to the litigation
8 that weren't approved specifically by the court at
9 the order of transfer, is it your opinion that
10 they were unauthorized, as such?
11 A. Fees that have been explicitly
12 approved I think are properly paid.
13 Q. Other than those explicitly approved.
14 A. Otherwise, I think the trust document
15 controls, and it was a mistake not to adhere to
16 the trust document.
17 Q. Thank you, sir.
18 MR. BOYD: Your Honor, can I request
19 just a short recess of about five minutes to get
20 ready for questioning?
21 THE COURT: Five minutes.
22 MR. BOYD: Thank you.
23 (A recess transpired from 12:07 PM to
24 12:15 PM.)
25 THE COURT: We're back on the record

1 in the Abbie Dorn matter.
2 Mr. Boyd?
3 MR. BOYD: Thank you, Your Honor. May
4 it please the court?
5 THE COURT: Yes, sir.
6 CROSS-EXAMINATION
7 BY MR. BOYD:
8 Q. Good afternoon, Professor Freeman.
9 A. Good afternoon.
10 Q. I just have a few questions for you,
11 sir.
12 Professor Freeman, in your direct
13 questioning by Mr. Slotchiver, you mentioned
14 several areas of expertise, and I just want to
15 briefly review some of the specific items that you
16 mentioned.
17 You talked about fiduciary duties,
18 money management, I heard about corporate issues,
19 I heard a lot about investment advisers,
20 broker/dealers, dealing with vets, mutual fund
21 cases, lawyers and how lawyers handle their fees,
22 cases against large banks and corporate
23 fiduciaries, we heard about lawyers handling fees
24 in large class-action litigation, but I didn't
25 hear anything about the type of trust that's

1 involved here.
2 Let me ask you this question: Have
3 you ever been involved in a case involving a
4 special needs trust?
5 A. I've been involved in litigation --
6 well, I've been involved in giving advice
7 concerning the handling of proceeds from a lawsuit
8 and the need for a special needs trust, yes.
9 Q. Do you consider yourself an expert
10 specifically in the area of d4A special needs
11 trusts?
12 MR. DAN SLOTCHIVER: Your Honor, he's
13 already been qualified as an expert. Are we now
14 trying to unqualify him as an expert or to further
15 question him on his ability to be an expert, or
16 are we going to address the opinions that he's
17 given? My understanding is once someone's
18 qualified as an expert, we go straight to the
19 opinions.
20 THE COURT: I think he can delve into
21 this testimony as to his experience in special
22 needs trust matters.
23 MR. DAN SLOTCHIVER: Thank you.
24 MR. BOYD: Thank you, Your Honor.
25 BY MR. BOYD:

1 Q. So again, sir, I would ask you, have
2 you ever specifically been qualified as an expert
3 in a case looking at the fiduciary activity of the
4 trustee for a d4A special needs trust?
5 A. This is the first time for a d4A
6 special needs trust, looking at the fiduciaries'
7 behavior.
8 Q. Thank you, sir. You also in your --
9 what I'll call your introductory questioning,
10 Professor Freeman --
11 MR. BOYD: And again, I'm not -- I
12 understand he's been qualified as an expert, I'm
13 not trying to go back on that, but I do just want
14 to clarify a couple of points.
15 BY MR. BOYD:
16 Q. You mentioned you spent a significant
17 amount of time at the law school. You spent some
18 time in private practice. You mentioned the
19 courses that you taught. Again, we heard about
20 PR, corporations, various areas.
21 A. Accounting.
22 Q. Accounting, yes, sir. Excuse me. Did
23 you ever teach in the area of probate law?
24 A. Did not teach a probate course.
25 Q. Did you ever teach in the area of

1 estate law?
2 A. Did not.
3 Q. Did you ever teach in the area of
4 trust law?
5 A. Not trust law as a field. However, in
6 the PR course, you deal with trust accounts and
7 trust accounting, and there's some of that as well
8 in the other courses.
9 MR. BOYD: Your Honor, I'm going to
10 hand up -- I've got a copy of Mr. Freeman's
11 deposition, which is a sealed transcript. Without
12 objection, I'll offer it into evidence, and I'm
13 going to open it.
14 MR. DAN SLOTCHIVER: Your Honor, I do
15 object. I believe the rules are that if you're
16 going to impeach somebody for their testimony in a
17 deposition, first you have to ask them a question,
18 get an answer inconsistent with what they already
19 said, and then you get to open the deposition and
20 talk about it.
21 MR. BOYD: Your Honor, I'll withdraw
22 the offer. I'll continue with my questioning.
23 THE COURT: Thank you.
24 BY MR. BOYD:
25 Q. Mr. Freeman, in your consulting

1 practice, is it fair to say that you spend, I
2 believe you testified, approximately 80 percent of
3 your time attacking the actions of fiduciaries?
4 A. In civil cases, that would be true.
5 Q. Are there other cases you participate
6 in that would change that percentage?
7 A. By the way, that's what I thought you
8 were talking about at my deposition. The only --
9 there are, and the other cases would be
10 disciplinary cases where I assist lawyers on a
11 regular basis in defending grievances, and I do
12 that frequently. Those tend to be small matters.
13 Typically, it's one client that's mad about one
14 little thing, but the lawyer is a fiduciary and
15 oftentimes is being attacked for what, if it were
16 true, would be a breach of fiduciary duty. I
17 consider that separate from consulting work, paid
18 consulting work, because I, as a rule, don't
19 charge for helping lawyers.
20 Q. Fair enough. You don't charge for
21 representing lawyers?
22 A. Helping lawyers on disciplinary
23 matters.
24 Q. I'll keep that in mind.
25 A. You won't be the only one.

1 Q. So setting that wonderful work
2 defending the faithful aside --
3 A. I call it public service --
4 Q. Public service, pro bono.
5 A. -- to my brothers and sisters in the
6 Bar.
7 Q. Understood, Professor, understood, and
8 appreciate it.
9 Setting that work aside, let me reask
10 or restate the question. Is it fair to say in
11 your consulting practice otherwise that you spend
12 approximately 80 percent of your time attacking
13 the work of fiduciaries?
14 A. I think that's fair. That's a
15 ballpark. It could be 75 percent, it could be 70,
16 it could be 82 percent. It's in that range.
17 Considerably more on the plaintiff's side than the
18 defense.
19 Q. Let's turn to Jeffrey Cohen. I'm
20 going to try to adjust my flow here, Mr. Freeman,
21 to follow the course of your direct questioning.
22 Just bear with me one second.
23 At your deposition, Professor Freeman,
24 you did render an opinion, correct, about whether
25 or not it was appropriate, and you've reiterated

1 that opinion today, for the Cohens to employ their
2 son Jeffrey in service of the trust. Is that a
3 fair statement?
4 A. I rendered an opinion about their
5 employment of Jeffrey. It wasn't specifically is
6 it okay for a trustee to employ somebody who is
7 related. It was much more specific to the facts
8 here, under these circumstances, was it
9 appropriate for them to hire Jeffrey and pay him
10 this way.
11 Q. Would you agree -- and again, I keep
12 coming back, Professor Freeman. We heard a lot
13 about large banks, corporate fiduciaries, business
14 standards. Let me ask you this question: Related
15 party transactions, would you acknowledge with me
16 just for a moment that the facts at issue in this
17 case, that being the life-altering disability of a
18 child, is an intensely personal matter?
19 A. Yeah. I mean, I've seen -- I've seen
20 her video deposition, and I don't think if you're
21 a parent, and I've got two daughters, that you can
22 look at that deposition and not understand that
23 this is intensely -- an intensely personal matter.
24 Q. Would you acknowledge with me -- do
25 you understand that there might be things that the

1 trustee would reasonably need to have done --
2 first of all, would you understand that these
3 intensely personal issues are taxing upon the
4 family?
5 A. Yes.
6 Q. Would it be your understanding that
7 there might be things that the trustee, in this
8 case being the mother and father of the injured
9 daughter, that there might be things that they
10 might reasonably want and need to have done that
11 they wouldn't want to call Bank of America for,
12 that they wouldn't want to call Webster Rogers
13 for?
14 A. You're going to have to be more
15 specific. I don't want to guess at what the
16 import of your question is. Could you restate it?
17 Q. Does the nature of the trust involved,
18 the nature of the injury and the nature of the
19 purpose of the trust, does that in any way, in
20 your mind, affect the reasonableness of utilizing
21 family members to assist with the obligations of
22 the trust?
23 A. It depends on what the assistance is.
24 Q. If it's something that Mrs. Cohen
25 testified, that she needed, for instance, to call

1 somebody at 3:00 in the morning, is that something
2 that would influence your opinion?
3 A. If she needs to call somebody at --
4 for what purpose at 3:00 in the morning, to have a
5 shoulder to cry on?
6 Q. Well, can we agree that Webster Rogers
7 is not available at 3:00 in the morning?
8 A. We can agree on that.
9 Q. Can we agree that Webster Rogers is
10 not available 24 hours a day, 7 days a week?
11 A. I'd be willing to agree on that.
12 Q. And if it was elicited in testimony in
13 this case that Jeffrey Cohen resigned his job to
14 assist his parents, the co-trustees, would that
15 influence --
16 MR. DAN SLOTCHIVER: Objection, Your
17 Honor. He's asking hypotheticals which are not in
18 evidence, to my knowledge.
19 MR. BOYD: Your Honor, she
20 testified -- Mrs. Cohen testified under direct
21 examination that that, in fact, occurred, and I'm
22 simply asking him to factor -- if it has an
23 impact, to factor the impact of that --
24 MR. DAN SLOTCHIVER: Factor the fact
25 that he was unemployed at the time that she --

1 okay.
2 MR. BOYD: Objection, Your Honor.
3 That's not the testimony.
4 THE COURT: Overruled. I'll allow it.
5 MR. BOYD: Thank you, Your Honor.
6 BY MR. BOYD:
7 Q. Professor, if there was testimony in
8 fact that Jeffrey Cohen resigned a position, a
9 paid position, to assist his patients, the
10 co-trustees, with the myriad tasks dumped upon
11 them, would that influence your opinion in any
12 way?
13 A. It would be an additional fact that I
14 would want to take into account. I can't say
15 whether it would influence my opinion for this
16 reason.
17 At her deposition, Susan Cohen made it
18 clear that Jeffrey was the bookkeeper. That's
19 what he did. And to the extent that he was
20 available as a family member, just as we all have
21 family members in times of crisis that we may call
22 on, cry on their shoulder, complain about, rant
23 and rave, whatever, to me, that doesn't justify
24 $39,000 a year. That's called being a son.
25 And so, I mean, to some extent, I'm

1 mystified about Jeffrey and what he did for this
2 money, because he could not have been doing it --
3 could not have been as a bookkeeper. Had to be
4 for something else.
5 And we already have staff there with
6 Abbie, and the fact that he comes in -- just as I
7 may come in and do something for my sister or my
8 nephew or whatever, I don't get paid $39,000 a
9 year. I don't think very many people get paid
10 $39,000 a year for being there for family, so it's
11 a fact, but it doesn't impress me.
12 Q. But you did say that that would be
13 something that you would want to take into
14 account?
15 A. Yes, and I mentioned -- you know, that
16 came up at my deposition, and it came up, I think,
17 in my direct here. To the extent that he's a good
18 family member, I salute him. And this thing is
19 tragic for multiple families, not just the Cohens,
20 but I still think there's waste as to the
21 spending.
22 Q. Were your original opinions in the
23 case -- and by original opinions, Professor
24 Freeman, I mean those opinions that you expressed
25 at your deposition in the matter on February 18th

1 of this year. Were your opinions in this case
2 based on your belief that Mrs. Cohen was
3 compensating Jeffrey at a rate of $95 an hour or
4 better?
5 A. No. I was mystified what she was
6 doing, because on one hand she says that she had
7 to get rid of Webster Rogers because they're
8 charging $95 an hour. Then she says he wanted to
9 do it for free. I wanted him to take at least $95
10 an hour, at least that, is what she says. And I
11 can give you a page, if you want it, from her
12 deposition.
13 And then -- so then I was interested
14 when I saw her testimony here in court. She said
15 everything's $25 an hour. Okay. All I do then is
16 the math. That's 1,560 hours a year for a
17 thousand checks. That doesn't compute. Entry of
18 a check into a journal and ledger for one check
19 shouldn't take more than ten seconds.
20 Q. Excuse me, Professor. That's really
21 not my question. My question to you was: Were
22 your original opinions in this case premised on
23 your belief that the Cohens were paying their son
24 $95 an hour?
25 A. You know, I wasn't sure what she was

1 paying. She said on one hand she wanted him to
2 take at least that, then she says $95 an hour, and
3 then I see all these numbers that came out exactly
4 to the penny the same. Excuse me. Let me finish.
5 Q. Yes. Go ahead.
6 A. From 6/19/2009 to 6/3/2011, which is
7 the better part of two years, everything comes out
8 exactly to the penny $1,500 every two weeks, so
9 that doesn't look hourly in any fashion to me,
10 whether it's $95 an hour or $25 an hour. If it's
11 $95 an hour, it's grossly overpaid, but if it's
12 $25 an hour for what he did, it's grossly
13 overpaid.
14 Q. Let me ask you a hypothetical,
15 Professor Freeman. If I was alleged to be
16 speeding, I was pulled over, and the officer
17 said -- I'm driving down I-95. The officer says
18 I'm going 200 miles an hour, writes me a ticket,
19 comes back to me later and says: Oh, there was a
20 mistake, you were actually going 50 miles an hour,
21 would that impact the validity of the charges
22 leveled against me?
23 MR. DAN SLOTCHIVER: Objection, Your
24 Honor. I don't know how that relates to this case
25 at hand. He can ask about his opinions. This is

1 a hypothetical about speeding tickets.
2 THE COURT: Mr. Boyd?
3 MR. BOYD: Your Honor, I'm asking
4 about if, in fact, the witness had based his
5 initial assumptions in the case by overstating the
6 hourly rate paid to Jeffrey Cohen by a factor of
7 approximately four, if that would impact his
8 opinions in any way.
9 MR. DAN SLOTCHIVER: Your Honor, this
10 has been asked and answered. Professor Freeman
11 has answered it.
12 MR. BOYD: Well, I'm about to ask him
13 a little bit more about this, Your Honor, because
14 I think he's testified inconsistently with what he
15 said at deposition.
16 THE WITNESS: Let me agree with you.
17 I didn't have her testimony in her deposition or
18 available to me when I testified that it's a flat
19 $25 an hour. That came in for the first time in
20 this courtroom, okay. That helps me in my
21 analysis, okay. I was dealing with the facts that
22 I had, and she said on Page 50 of her deposition:
23 I was paying my firm here $95 an hour, so
24 initially, he didn't want to take any money. I
25 wanted him to take at least that an hour.

1 So, I mean, if you're reading this and
2 trying to understand it, you would think that he's
3 getting somewhere around $95, or something like
4 that, and it's grossly overpaid.
5 BY MR. BOYD:
6 Q. Let me ask you about that, Professor
7 Freeman, because here on Page 52 -- and I'm just
8 going to ask you to follow along with me, if you
9 would, beginning at Line 8 in Mrs. Cohen's
10 deposition.
11 A. I got it. She says: I can't pay $95
12 an hour.
13 Q. Exactly.
14 A. So if she can't pay $95 an hour, then
15 why is she saying: I wanted him to take at least
16 that an hour. It doesn't make any sense, sir. It
17 sounds like somebody who is inventing their own
18 reality and their own set of facts.
19 Q. Is it possible that you misunderstood
20 and misinterpreted her deposition testimony, and
21 you based your opinions on faulty assumptions?
22 MR. DAN SLOTCHIVER: Your Honor, the
23 deposition speaks for itself. It's already been
24 admitted into evidence. She's testified about the
25 deposition. This is the exact language. How can

1 he misunderstand?
2 MR. BOYD: Your Honor, I'm trying to
3 get to the assumptions that the expert based his
4 opinions on.
5 THE COURT: I'm going to allow it.
6 MR. BOYD: Could the court reporter
7 read the question, please?
8 (The Court Reporter read the question
9 commencing on Page 1522, Line 19.)
10 THE WITNESS: No. The assumptions
11 that I based my opinion on were assumptions taken
12 from the lips of Susan Cohen, first of all. Those
13 were her statements. Secondly, the numbers -- the
14 numbers don't change. The numbers that I had
15 available are $88,917.41.
16 Q. But would not --
17 A. May I please -- without being
18 interrupted. Whether it's $95 an hour or $25 an
19 hour, the issue is are these charges reasonable.
20 Frankly, to some extent, it was more helpful to me
21 when I saw her -- like a bird lighting on a
22 branch, and it's $25 an hour, because that pins it
23 down, and that enables me to figure out how
24 many -- exactly how many hours we're talking about
25 to earn this money, and it turns out that that's

1,560 a year. That's fine. For a thousand checks to enter a thousand checks on the books, that's crazy.

Q. Understood, understood, Professor Freeman, but I have a very hard time understanding how you could have misunderstood the hourly rate of compensation, approximately overestimating it by a factor of four, and then say: That did not influence my opinion.

A. No. My opinion is waste. My opinion is whether you're paying him $95 an hour, which, frankly, for a bookkeeper who is just starting out, is not a CPA, $95 an hour is basically ridiculous, based on my investigation, but $25 an hour is more in the ballpark, but there's not -- there's not enough work there to soak up the hours that you would have to put in to earn $39,000 a year at $25 an hour. Either way, Susan looks bad.

And the fact of the matter is that when you're an expert, all you can do is base your opinion on the facts that are there. She didn't say $25 an hour. She didn't say anything an hour, other than that she wanted him to take at least $95 an hour, which struck me as kind of strange if you're a fiduciary and your objective is to

conserve money for the trust and to be reasonable.

So I don't back off anything that I've said. I have different information now. It's not my fault. It came in through her mouth at trial last week. I've taken that into account, and I've testified, I believe, accurately.

Q. So you have different information available to you now?

A. I have refined information as to the hourly rate that he was paid.

Q. It came into trial last week?

A. It came into the record for the first time, as far as I'm aware, last week. If you can show me anywhere that says $25 an hour previously, I would stand corrected. I don't think it's there.

Q. Let's focus on the information you did have available to you. I'm going to shortchange you, Professor Freeman. This is what has previously been marked -- I'm just going to use the first portion. This is what you provided at your deposition.

MR. BOYD: May I approach, Your Honor? I'm sorry.

THE COURT: Yes, sir.

BY MR. BOYD:

Q. And the first three pages, as you will recognize the exhibit.

A. I've got it right here.

Q. The first three pages of the exhibit are what's already been marked in this matter, and I'm going to turn to Page 4 of the exhibit. I'm just going to review this with you.

Do you see on the left-hand column where the hourly employees are identified by name?

A. Yeah.

Q. And the second individual identified is who?

A. Jeffrey Cohen.

Q. And this number where it says rate, what is the number?

A. $25.

Q. That's interesting. Let's turn to Page 5.

MR. DAN SLOTCHIVER: Your Honor, I would only object insomuch as Professor Freeman testified that his opinion doesn't matter if it's $25 or $95. His opinion is that it's waste, and that it was done, and it was a breach of trust, and it was self-dealing, regardless of the number,

because of the amount. So if we're going to continue to ask him questions about the amount, I don't know why it matters, and I would object to it as being irrelevant at this point.

MR. BOYD: He just testified, Your Honor, that he had no information concerning the hourly rate paid to Jeffrey Cohen being $25 hourly until Susan Cohen testified as such last week in this courtroom. I'm reviewing with him documentation that he provided at his deposition that demonstrates repeatedly the hourly rate paid to Jeffrey Cohen being $25 an hour, not $95 an hour. It goes directly to the credibility of this witness and the care he exercised in formulating his opinions.

THE COURT: I will allow it. Overruled.

BY MR. BOYD:

Q. Professor Freeman, let's look at Page 5 of this exhibit. Let's go to Jeffrey Cohen. I don't see a rate on this page, but it says 42.7. Why don't you just take the amount paid. Could you give that to me, please?

A. $1,068.75.

Q. Amount paid. And have you got an

1 hours worked?
2 A. Hours worked, allegedly, 42.75.
3 Q. Allegedly. Does it say 42.75, or does
4 it say something else?
5 A. Says 42.75.
6 Q. Let's hit the magic button, and what
7 does the --
8 A. $25 an hour.
9 Q. Thank you. Let's turn to the next
10 page. Next page, Professor, what do you see
11 beside Jeffrey Cohen where it says rate?
12 A. 25.000.
13 Q. Let's turn to the next page if we can.
14 The next page is a flat rate, Professor, as is the
15 next page.
16 Let's turn to the following page. Can
17 you identify the amount for me there, please?
18 A. $1,531.25.
19 Q. And we're going to divide that by how
20 many hours, Professor?
21 A. According to this, 61.25. There you
22 go.
23 Q. 25?
24 A. Yeah.
25 Q. 25, fair enough.

1 Let's turn to the next page of your
2 exhibit, Professor Freeman. Next page, does it
3 reflect a rate beside Jeffrey Cohen?
4 A. $25.
5 Q. Let's go to the next page, Professor.
6 Jeffrey Cohen, we have to do a little simple math
7 again on this one. What is the amount?
8 Professor, I believe on this page we've got to do
9 just a little bit more simple arithmetic. What is
10 the amount, if you would, please?
11 A. $1,527.50.
12 Q. Divided by how many hours?
13 A. 61.25.
14 Q. A little less, actually, this time,
15 $24.93. Would you agree?
16 A. That's what your machine shows.
17 Q. I can certify this is an app I
18 purchased online. I'm assuming it's not throwing
19 out false numbers.
20 Let's turn to the next page, Professor
21 Freeman. If you would, Professor Freeman, please
22 give me the amount.
23 A. $1,527.15 divided by 61.25.
24 Q. And the amount, please?
25 A. 24.938, so forth.

1 Q. Again, would you give me the amount
2 paid on the next page.
3 A. $1,368.75, and divided into that,
4 54.75.
5 Q. 25?
6 A. That's what it works out to.
7 Q. Profession Freeman, in the interest of
8 time, I'm not going to go through the rest of
9 these pages, because there's quite a few, but let
10 me ask you this: Did you see -- and I'll let you
11 look at the exhibit. Can you find any evidence in
12 the pages we have not examined that would support
13 your assumption that Jeffrey Cohen was being paid
14 $95 an hour?
15 MR. DAN SLOTCHIVER: Object to the use
16 of the word assumption, Your Honor. I believe he
17 testified the basis of why he was using that
18 number.
19 THE COURT: Sustained.
20 MR. BOYD: Thank you, Your Honor.
21 BY MR. BOYD:
22 Q. Do you find anything in the remaining
23 pages, Professor Freeman, that supports a pay rate
24 in the amount of $95 per hour?
25 A. Well, here's the problem. You go a

1 few pages in there, and you see things, salary.
2 About half of these, they just put $1,500 down,
3 with no explanation of anything. So here's what I
4 don't see. I don't see any contract. I don't see
5 Jeffrey's work product.
6 Q. That's not my question, Professor
7 Freeman.
8 MR. DAN SLOTCHIVER: He can finish
9 answering, Your Honor.
10 MR. BOYD: Your Honor, he's not
11 answering my question.
12 THE COURT: Mr. Boyd can ask him
13 questions.
14 BY MR. BOYD:
15 Q. My concern, Professor Freeman, is you
16 testified that there was no indication that
17 Jeffrey Cohen was paid $25 an hour, when, in fact,
18 we've identified dozens of records in your
19 documents that you brought to your deposition that
20 establish exactly that.
21 A. There are documents that are showing a
22 $25 pay rate, which was the pay rate that I
23 assumed in my testimony here today.
24 Q. But you did not assume that pay rate
25 in your testimony at your deposition in February.

1 A. That's right. I didn't have Susan
2 Cohen's testimony at $25 an hour.
3 Q. But you had dozens of pay records that
4 established the pay rate, Professor.
5 MR. DAN SLOTCHIVER: Your Honor, now
6 we're arguing with the witness --
7 MR. BOYD: No, I'm not arguing, Your
8 Honor.
9 MR. DAN SLOTCHIVER: -- about whether
10 he's allowed to rely on the sworn testimony of
11 Susan Cohen or whether he should rely on
12 documentation which she testified she never looked
13 at to begin with, and I believe we've gone well
14 beyond the scope.
15 MR. BOYD: We're not going beyond the
16 scope at all, Your Honor. I'm trying to figure
17 out if --
18 BY MR. BOYD:
19 Q. I'm concerned, quite frankly,
20 Professor Freeman that you used the same degree of
21 care in formulating your other opinions that you
22 obviously exercised in formulating this opinion.
23 MR. DAN SLOTCHIVER: Objection, Your
24 Honor. He is now attempting to harass this
25 witness, who I do not think can be harassed, but

1 it's an inappropriate statement.
2 THE COURT: I'm going to allow him to
3 explore this testimony a little bit in
4 cross-examining the expert witness.
5 BY MR. BOYD:
6 Q. We have established -- Professor
7 Freeman, just tell me if I've misstated anything.
8 We have established that you've testified here
9 today that the first evidence you had that Jeffrey
10 was paid $25 an hour was the testimony of Susan
11 Cohen delivered in this courtroom last week.
12 Would you agree with that statement?
13 A. That was the first time that I focused
14 on the $25 an hour, and I will agree with you that
15 there are some mentions in some line items in some
16 documents that Jeffrey Cohen was paid $25 an hour
17 in the documents I have, true.
18 Q. So, in fact, in forming your opinions
19 in this case as you delivered them at deposition,
20 if you overestimated the pay rate by a factor of
21 approximately four, would that influence -- would
22 that have any bearing or impact on your thoughts
23 about Jeffrey Cohen?
24 A. No. My views, frankly, are stronger
25 when I see a lower pay rate, which would

1 necessitate more hours which could not have been
2 spent. I testified at the deposition that there
3 wasn't enough work for him to do to justify all of
4 that pay, if you assume fewer hours and a higher
5 pay rate. If you assume more hours and a lower
6 pay rate, the same holding applies. There just
7 isn't that much work for an accountant to do 1,560
8 hours a year for $39,000 to enter 100 checks -- or
9 a thousand checks. It doesn't work.
10 Q. It sounds to me, Professor Freeman,
11 like you're putting the trustees in a no-win
12 situation. They pay them low, it doesn't matter.
13 They pay them high, it doesn't matter.
14 A. Well, here's the thing: I didn't see
15 any way that Jeffrey -- whether it's $95 an hour
16 or $25 an hour, I didn't see any way that Jeffrey
17 Cohen earned that money with his accounting work.
18 Q. If the trustee paid Jeffrey $3,000 an
19 hour for one hour of work, would that make you
20 feel more comfortable with the work?
21 A. It would make me feel less comfortable
22 with the trustees because that would be clear-cut
23 waste.
24 Q. But going cheaper doesn't make it
25 better?

1 A. Going cheaper means that he had to put
2 in a lot more time, and when he had to put in a
3 lot more time when already -- assuming $95 an
4 hour, assume $100 a hour --
5 Q. Let's assume what was actually paid,
6 Professor Cohen.
7 A. Freeman.
8 Q. I'm sorry. I didn't mean to say that.
9 Let's assume what was actually paid, Professor
10 Cohen, let's work from $25 --
11 MR. DAN SLOTCHIVER: I would object,
12 Your Honor. He can assume $25 an hour, but there
13 is different testimony about the amount that was
14 paid.
15 THE COURT: Thank you, sir. I'll
16 allow him to continue.
17 BY MR. BOYD:
18 Q. Do I need to repeat the question?
19 A. Would you please? I mean, it sounded
20 like half a question.
21 Q. Well, you were about to make an
22 assumption, and I was going to say let's assume
23 what was actually paid, as has been established,
24 which is $25 hour.
25 A. Okay.

1 Q. Did you have a thought that you wanted
2 to finish?
3 A. No. It's waste because you pin it
4 down to $25 an hour. Even though he was being
5 paid for much of this time straight salary, no
6 hourly pay at all, straight salary, $1,500 every
7 two months -- every two weeks, rather. Fine. If
8 it's $39,000 a year, and it's $25 an hour, all you
9 have to do is figure out how many hours that is.
10 That's 1,560 hours. Fine. You've got that number
11 now.
12 How many checks did we have to enter
13 on the books? Roughly a thousand. So that is
14 roughly an hour-and-a-half to enter one-half of a
15 journal entry because you got to -- it's credit to
16 cash. It's a debit to something. So debit
17 prescriptions, $17.20. That's one entry. You do
18 that for a thousand times or say 1,200 during the
19 year, it doesn't take 1,560 hours. It can't. It
20 takes 20 hours, maybe, to do all that work. So
21 what is the rest of this money being paid for?
22 That's my problem, and that's why I call it waste.
23 Q. Let me ask you this question,
24 Professor -- I'm just going to call you professor.
25 Let me ask you this question, Professor: If the

1 testimony of the Cohens elicited at this trial
2 established, to the satisfaction of this court,
3 the myriad tasks that Jeffrey undertakes for them
4 on a daily basis, which would fill up these hours
5 that you're so concerned about, would that be a
6 mitigating circumstance as to reasonableness?
7 A. The court is certainly entitled to
8 take into account whatever the court wants. This
9 is a case in equity, we've got a highly competent
10 judge here, and I'm not going to second guess.
11 I will say this: My problem, first
12 and foremost, with the Jeffrey Cohen aspect of the
13 case is this is a son. This is a related party.
14 This is clearly not arm's length transaction.
15 This is where if you're a fiduciary, you dot your
16 I's and cross your T's, and you make a record to
17 establish the reasonableness of your behavior.
18 And you don't have facts moving in. You don't
19 have shadowy facts. It's up front. There's a
20 contract. There's clear-cut performance under the
21 contract. It's an arm's length contract on
22 pricing, and everything's fine. We don't have
23 that here. It's not my fault.
24 What we do have are sketchy facts that
25 show to me that there was a lot of money paid to

1 somebody who had a job description of being a
2 bookkeeper for things that couldn't have been
3 bookkeeping and could have been done by other help
4 or -- and paid to a guy who wanted -- didn't want
5 money for doing it, according to Susan's
6 testimony.
7 Q. And I think we've addressed that. I
8 think we've addressed that.
9 A. So all in all, I call it waste, and I
10 don't back off that.
11 Q. Fair enough, Professor. I'm going to
12 move along. I think we've dealt with that issue
13 sufficiently.
14 Professor Freeman, I'm going to show
15 you what has previously been marked in this case
16 as Exhibit No. 1, and are you familiar with that
17 document?
18 A. Yes, sir.
19 Q. Is that what you recognize to be the
20 Abbie Dorn Special Needs Trust?
21 A. I believe so.
22 MS. MOORE: Reese, I apologize. What
23 number is that exhibit?
24 MR. BOYD: Lee, that is Exhibit No. 1,
25 I believe.

1 BY MR. BOYD:
2 Q. I believe you just testified,
3 Professor, on your direct examination by
4 Mr. Slotchiver that you felt prior court approval
5 was needed for the expenditure of the legal fees
6 that are at issue in this case. Is that a fair
7 statement?
8 A. Yes.
9 Q. Let me ask you to take a look -- I
10 believe you referenced in your testimony
11 Paragraph 10 and 12. If you would refer to those,
12 please, and let me ask you this: Do you find
13 those paragraphs to be in any way ambiguous?
14 A. No.
15 Q. Is it clear to you that those
16 paragraphs require prior court approval before a
17 lawyer gets paid, or are those paragraphs subject
18 to potentially multiple readings?
19 A. I believe prior approval is required.
20 I focus on the words: Shall be subject to prior
21 approval, and that's how I read it.
22 MR. BOYD: Your Honor, I would like to
23 open Mr. Freeman's deposition, because I would
24 like to ask him about something that he did
25 testify to at his deposition, if I may, without

1 objection.
2 MR. DAN SLOTCHIVER: No objection.
3 THE COURT: Thank you.
4 BY MR. BOYD:
5 Q. Professor Freeman, I'm going to hand
6 you a copy of your deposition, and if you'd give
7 me just one second, I will ask you where I would
8 like you to turn for me. If you'd turn to
9 Page 34. Excuse me. I'm sorry. Turn to Page 39,
10 if you would, please.
11 MR. DAN SLOTCHIVER: Did you say
12 Page 34?
13 MR. BOYD: 39, excuse me.
14 THE WITNESS: Yes, sir.
15 BY MR. BOYD:
16 Q. I asked you a question about this,
17 Professor Freeman, about what was identified at
18 your deposition as your Opinion No. 3, which was
19 the reasonableness of lawyers getting paid without
20 court approval while the issue was undecided, and
21 I asked you to state in your own mind what that
22 opinion meant, and then I said -- you clarified it
23 for me. Then I said on Line 20: Okay. And would
24 you read your response beginning at Line 21,
25 please?

1 MR. DAN SLOTCHIVER: Your Honor, I'm
2 not sure this is consistent with what he was
3 asking him. Are we asking him now about the
4 reasonableness of attorneys being paid?
5 MR. BOYD: Your Honor, I think if the
6 court will allow him to read, it'll be
7 self-evident what I'm asking him about.
8 THE COURT: All right. Thank you.
9 BY MR. BOYD:
10 Q. Would you read your answer, please,
11 Professor?
12 A. Frankly, I'm not convinced that this
13 court approval prior to payment deal first
14 requirement, assume one exists. On its face in
15 the trust document, if you look at Paragraph 10
16 and Paragraph 12, there's some indication it could
17 be read that way. Maybe you disagree.
18 Q. Excuse me. You're going a little bit
19 fast, Professor. I'm not following you. On its
20 face in the trust document, if you look at
21 Paragraph 10 and Paragraph 12, there's some
22 indication it could read that way. And then
23 continuing on Page 40: Maybe you disagree.
24 Is that a fair statement?
25 A. Then you went on to say: When you say

1 them, assuming both could be read that way, what
2 are you referring to? To require prior court
3 approval before a lawyer gets a check from the
4 trust.
5 Q. That was your answer?
6 A. That's right.
7 Q. And then I said: Okay, and then
8 beginning in Line 15, what did you answer?
9 A. Given that there is doubt over the
10 issue as reflected by the letter to the court
11 September 23, 2010, given that there is doubt as
12 reflected by the lawsuit that was brought on
13 behalf of the trustees seeking to address the
14 issue, given that it is not unknown for a court to
15 sign off on legal fees before they're paid,
16 happens all the time in bankruptcy. For example,
17 you have a class-action settlement --
18 Q. Let me --
19 A. You asked me to read it. I want to
20 finish my answer.
21 THE COURT: Let him finish it.
22 THE WITNESS: -- the court approves
23 the fees before there is ever a check cut. To me,
24 I was surprised to see money up front being paid
25 to lawyers by the Cohens without a court approval.

1 BY MR. BOYD:
2 Q. Fair enough. Was this a bankruptcy
3 action? Is this a bankruptcy action, Professor?
4 A. It's not a bankruptcy action.
5 Q. And would you agree with me that you
6 acknowledged in your answer at the deposition that
7 these provisions could be read multiple ways?
8 A. Yeah, and here's my reason for doing
9 that. I say you've got lawyers on both sides -- I
10 mentioned this more than once at my deposition --
11 fighting over this language. To me, the language
12 is clear, but there's a fight going on. Your
13 Honor has to make a decision as to how that battle
14 should be reviewed.
15 I heard when I was at the deposition a
16 view from one counsel that perhaps 12 means that
17 Abbie's lawyer may have to get prior approval, but
18 the Cohens aren't covered by that. That's how --
19 I never imagined that that was a way of reading
20 it, but that's how it's read.
21 I don't dispute that there's a fight
22 over this language. I was asked what my view is
23 of this language. My view is in line with
24 Mr. Slotchiver's. I think when you say shall have
25 prior approval, it means shall have prior

1 approval. That's it.
2 Q. But you did acknowledge that the
3 provisions are subject to multiple readings?
4 MR. DAN SLOTCHIVER: I believe that's
5 been asked and answered, Your Honor.
6 THE WITNESS: Only in the context of
7 having a battle royale over the propriety of doing
8 this without prior court approval.
9 BY MR. BOYD:
10 Q. Fair enough. I don't disagree,
11 Professor. I'm just curious because you just
12 testified in your direct examination that the
13 provisions were unambiguous.
14 A. They're unambiguous to me. I have a
15 feeling Ms. Hedgepath may have a different view,
16 and Mr. Wingate seems to have a different view
17 too.
18 Q. I tend to generally -- I don't have a
19 copy of Black's Law Dictionary with me, Professor,
20 but I tend to assume unambiguous means unambiguous
21 to all, but fair enough.
22 A. Not when there's $900,000 at stake.
23 Q. Let me ask you this question,
24 Professor: In your opinion with respect to the
25 California proceeding, was it reasonable for the

1 trustee to pursue and pay for the severance of the
2 marital relationship?
3 A. Yeah. I believe I testified at my
4 deposition as to the divorce, I don't consider
5 that to be improper to pay for the divorce, the
6 pure divorce.
7 Q. Was it arguably reasonable for the
8 trustee to defend the child support claim brought
9 by Dan Dorn in the California proceeding?
10 A. Same testimony I gave at my
11 deposition. I don't fault the trustee -- if
12 Mr. Dorn attacks over that, I don't fault the
13 trustee for hiring a lawyer and defending that.
14 Q. Very good. Professor Freeman, I'm
15 going to hand you what was marked at your
16 deposition as Exhibit 16. Does that look to be an
17 accurate --
18 A. Yes.
19 Q. Does that look to be an accurate copy
20 of -- or an accurate representation of the summary
21 opinion document you provided at your deposition?
22 A. Yes.
23 MR. BOYD: Your Honor, I assume
24 there's no objection, but without objection, I'd
25 like to offer that into evidence as I guess it's

1 R-16.
2 THE COURT: Did we admit his
3 deposition and mark it as an exhibit?
4 MR. BOYD: Oh, I'm sorry, Your Honor,
5 we did not, so I guess we're at R-17.
6 THE COURT: His deposition without
7 objection?
8 MR. DAN SLOTCHIVER: No objection from
9 us, Your Honor.
10 THE COURT: No. 17.
11 MR. BOYD: Thank you, Your Honor.
12 THE COURT: And then this summary
13 opinion, Respondent's --
14 MR. BOYD: 17.
15 THE COURT: No. 18?
16 MR. BOYD: Excuse me, 18.
17 THE REPORTER: 16 and 17.
18 THE COURT: I'm sorry. The deposition
19 was what number?
20 THE REPORTER: 16.
21 THE COURT: Deposition 16, summary
22 opinion 17, without objection.
23 (RES. EXH. 16, Deposition of John
24 Freeman, was marked for identification and
25 admitted into evidence.)

1 (RES. EXH. 17, Summary Opinion of John
2 Freeman, was marked for identification and
3 admitted into evidence.)
4 BY MR. BOYD:
5 Q. Professor, I believe you testified at
6 your deposition on February 18 that the amount of
7 improper billings --
8 MR. DAN SLOTCHIVER: Your Honor, he's
9 not reading from the testimony.
10 MR. BOYD: Your Honor, I'm reading my
11 notes that I prepared in advance of this
12 examination. I'll be happy to share them with the
13 court if the court would like to read them.
14 THE COURT: No, sir. You may proceed.
15 BY MR. BOYD:
16 Q. Professor, I believe you testified in
17 your deposition that the amount of improper
18 billings that you deemed the trust to have paid to
19 the Meyer Olson law firm was $600,000. Is that
20 consistent with your recollection?
21 A. It's in that neighborhood.
22 Q. Is that a yes or a no?
23 A. It's a yes that -- I don't recall an
24 exact number. I know that I had Exhibit 1 with
25 me, which lists 668. Some of that money was

1 billed after the Meyer Olson firm. Before the
2 Meyer Olson firm came in, I think 600 is probably
3 a pretty good number, although I think I also
4 mentioned that Mr. Kachmarsky has got some updated
5 numbers, and I think his view is that it's north
6 of that, but 600 is --
7 Q. Well, I'm interested in your opinions
8 today, Professor.
9 A. In my judgment, it's in the realm of
10 600, and I think I said through 12/31/2010, that's
11 what I have.
12 Q. So you're agreeing with me that the
13 number you offered at your deposition was
14 $600,000?
15 A. In that ballpark, yes, sir.
16 MR. DAN SLOTCHIVER: If the record
17 could reflect that's limited to that time period,
18 Your Honor.
19 THE COURT: So noted.
20 THE WITNESS: That's what I said at my
21 deposition.
22 MR. BOYD: Fair enough. Understood.
23 That's fine, Your Honor. I'm fine with that.
24 BY MR. BOYD:
25 Q. Then in your summary opinion document

1 that you provided at your deposition, Professor
2 Freeman, you identified Opinion 4 as -- and I'm
3 going to read from the exhibit -- the
4 reasonableness of expenditures related to the
5 visitation issue of trust funds in excess of
6 $1 million.
7 A. That's what it says.
8 Q. What was the source of that number?
9 A. That was an issue that I was asked to
10 testify on by Mr. Slotchiver, and that's his
11 number.
12 Q. So you just adopted Mr. Slotchiver's
13 number for purpose of your deposition?
14 A. That's not an opinion. That is
15 something I was asking to express an opinion on.
16 If you notice, the opinion that I gave wasn't a
17 million dollar opinion, it was a 600-and-some
18 through 12/31/10.
19 Q. Fair enough. I just wanted to clarify
20 that.
21 I just want to briefly look through
22 this opinion letter with you, Professor Freeman.
23 We've talked about No. 2, Jeffrey Cohen. We've
24 talked about No. 3, the reason for some lawyers
25 getting paid. We've talked about No. 4, the

1 million dollar question.
2 No. 5, as I understood your testimony
3 at deposition -- and just for the record, so the
4 court will know what I'm referring to, your
5 Opinion No. 5 was the reasonableness of using
6 trust funds to prolong litigation and/or defend
7 the trustees in their individual capacities.
8 A. I don't remember being asked about
9 this on my direct here today at all.
10 MR. BOYD: Fair enough. I'll withdraw
11 the question, Your Honor.
12 BY MR. BOYD:
13 Q. Excuse me, Professor, just one second.
14 Professor, would you agree with me
15 that if a ward has a legal right, that it is
16 reasonable for a trustee to seek to realize upon
17 that legal right?
18 A. No.
19 Q. You would not?
20 A. No.
21 Q. Why not?
22 A. Because you didn't button it down, a
23 trustee acting reasonably in the exercise of due
24 care and in good faith. I won't sign off and give
25 a trustee carte blanche to spend a million

1 dollars, for example, to achieve a 25-cent benefit
2 for the ward. Things have to be in proportion,
3 and things have to be sensible.
4 Q. Let's take the extremes off the table.
5 Just in principle, as a fundamental proposition,
6 would you agree with me that if a ward has a legal
7 right, generally speaking, all else being equal,
8 that it's a reasonable thing for a trustee to do
9 to try to enforce that legal right?
10 A. Is that a question?
11 Q. Yes, that's a question.
12 A. To take reasonable steps, operating
13 purely with an eye single, focused purely on the
14 interest of the beneficiary or the ward, and
15 taking reasonable steps, I don't have a problem.
16 I think that's what a fiduciary is obligated to
17 do.
18 Q. Obligated to do, not just the option,
19 but obligated?
20 A. I think the fiduciary is obligated to
21 serve the interest of the ward in a reasonable way
22 without self-dealing, without thought of self, but
23 to accomplish what needs to be accomplished for
24 the benefit of the ward, acting in good faith and
25 with due care.

1 Q. Do you have any evidence, Professor,
2 that the Cohens pursued anything in terms of
3 visitation for Abbie that was unreasonable?
4 A. Yes.
5 Q. Okay.
6 A. Do you want me to explain?
7 Q. Sure.
8 A. I crave reference to the California
9 opinion basically says that Dan contends that
10 Susan is manipulating visitation for her own
11 benefit, and the court credits that Dan -- there
12 seems to be something to that, and then the court
13 goes on and makes findings which are very
14 uncomplimentary towards Susan, in line with --
15 MR. BOYD: Your Honor, the witness is
16 not answering the question.
17 THE WITNESS: I am exactly answering
18 the question.
19 THE COURT: Sounds like to me he's
20 answering.
21 THE WITNESS: I said I crave reference
22 to the opinion, and the opinion is un -- my
23 reading, uncomplimentary to Susan and depicts
24 Susan as self-serving and manipulative and using
25 the supposed visitation right for Abbie for

1 personal purposes, and that, to me -- you asked
2 whether I saw anything in the record that would
3 suggest impropriety, and that stands out like a
4 sore thumb.
5 BY MR. BOYD:
6 Q. Let me ask you this, Professor: Did
7 the court -- and I direct you to Page 8.
8 MR. DAN SLOTCHIVER: What document?
9 MR. BOYD: We're looking at the
10 opinion that the Professor has craved reference
11 to.
12 BY MR. BOYD:
13 Q. Did the court -- Page 8, Section 3B,
14 did the court grant visitation to Abbie?
15 A. I have to get the --
16 Q. I can show you, if I may approach. I
17 would just ask you to read beginning with B, and
18 no need to read the whole paragraph, just through
19 the summary, if you would, Professor.
20 A. It says: Abbie, by and through her
21 conservators, is granted visitation one time each
22 year for a period of five consecutive days
23 commencing in the summer 2011 and continuing each
24 summer thereafter.
25 Q. So, again, I would ask you, Professor,

1 did the court grant visitation to Abbie by this
2 order?
3 A. Yes and no. The order says what it
4 says, but it also says that the primary
5 beneficiary of the visitation will not be Abbie.
6 It will be the children, if anybody.
7 Q. But again, Professor, it's a yes or no
8 question.
9 MR. DAN SLOTCHIVER: It's been asked
10 and answered, Your Honor. He gave a yes and no.
11 BY MR. BOYD:
12 Q. But you don't disagree with the
13 statement that the court granted visitation to
14 Abbie?
15 A. I agree with the fact that there is
16 language in there that talks about Abbie receiving
17 visitation, but there's also language in there
18 that says that the beneficiary of the visitation
19 will not be Abbie. It is perceived by the court,
20 based on the record in California at that time,
21 that the beneficiaries would be the children and
22 not Abbie.
23 Q. You characterized this opinion as
24 painting the trustees as self-serving and
25 manipulative. Is that what I understood you to

1 say?
2 A. Susan.
3 Q. Susan. Did I misunderstand you,
4 Professor?
5 A. No. That was accurate.
6 Q. Let me ask you to read, Professor
7 Cohen -- Professor, let me ask you to read the
8 last sentence on Page 1 of this next-to-last
9 paragraph. Would you just read the last sentence,
10 beginning with: The children's grandparents?
11 A. The children's grandparents, who have
12 been appointed as Abbie's conservators and who
13 have transformed their home into a virtual
14 hospital to accommodate Abbie's special needs.
15 Abbie is unable to function as --
16 Do you want me to keep reading?
17 Q. No.
18 A. Fair enough.
19 Q. I'm going to ask you to read one more
20 provision.
21 MR. DAN SLOTCHIVER: Your Honor, I
22 would object. I don't know why he's being asked
23 just to read the record.
24 MR. BOYD: Your Honor, this witness
25 has characterized this opinion, issued by a court

1 in California, as a smear on my client,
2 characterizing her as manipulative, and I think
3 he's mischaracterized the document, so I'm asking
4 him to comment on other provisions of the opinion.
5 MR. DAN SLOTCHIVER: He's actually not
6 being asked to comment.
7 MR. BOYD: Yes, I am asking him to
8 comment.
9 MR. DAN SLOTCHIVER: Actually, if I
10 may, if I may, he's not being asked to comment.
11 MR. BOYD: You Honor, if I can have a
12 little --
13 MR. DAN SLOTCHIVER: If I could
14 finish, please. He is being asked to read certain
15 sections. That's not commenting.
16 MR. BOYD: I'm going to ask him to
17 comment, Your Honor.
18 THE COURT: If you can go down that
19 road, Mr. Boyd, I'll allow you.
20 MR. BOYD: Thank you.
21 BY MR. BOYD:
22 Q. I've got one more sentence I'd like
23 for you to read, Professor Freeman. Page 4. It's
24 the second full paragraph, the third line, at the
25 end of the line, beginning with: Abbie, and

1 continuing down two more lines.
2 A. Abbie has already outlived the life
3 expectancy given to her by her treating physicians
4 because of Susan's extremely persistent and
5 devoted attention to every detail of Abbie Dorn's
6 life.
7 Q. So is it fair to say that the document
8 in question, the opinion, is not universally
9 derogatory toward Mrs. Cohen?
10 A. No, only in terms of trying to
11 manipulate visitation for personal purposes, which
12 is what I've been talking about, the visitation
13 issue.
14 And I said it at my deposition. I'll
15 say it in this courtroom.
16 Q. There's no question on the floor.
17 A. I want to finish. This thing, there's
18 good on both sides of the aisle here, and I don't
19 deny that there's good to the Cohens and that they
20 have been selfless in wanting to care for their
21 daughter. There have been some problems and
22 friction between the parties that is most
23 lamentable, and hopefully, this proceeding will
24 lead on the path to resolving things, as opposed
25 to exacerbating things.

1 THE COURT: Thank you.
2 BY MR. BOYD:
3 Q. Professor Freeman, I want to ask you a
4 couple of additional questions about the trust.
5 Do you still have that document?
6 A. Somewhere.
7 Q. Do you find any reference in the
8 trust, Professor, that would provide or establish
9 a duty on the part of the trustees to preserve the
10 trust corpus or income for the minor children?
11 A. And the question is whether I find
12 anything in here explicitly stating that the trust
13 is somehow to serve the interests of the children?
14 Q. Yes, sir, that's correct.
15 A. Only inferentially insofar as it
16 states that the trust is for the primary benefit
17 of the plaintiff, Abbie Dorn, and there are others
18 out there, but clearly, this is for her -- to
19 address her, quote, special needs.
20 Q. Anything else?
21 A. That's what I have to say, unless
22 somebody -- unless you want to point me to some
23 other language.
24 Q. Let me ask you to read, Professor,
25 Paragraph 17 at the bottom of Page 11, if you

1 would?
2 A. Do you want me to read it out loud?
3 Q. Yes, sir.
4 A. In the administration of management of
5 the trust, including, without limitation, the
6 investment or reinvestment of the trust estate,
7 the trustees shall consider solely the interest of
8 the beneficiary, Abbie Dorn.
9 Q. Solely?
10 A. That's what it says.
11 Q. Solely the interest of the
12 beneficiary, Abbie Dorn.
13 So let me ask you this question,
14 Professor: If the facts and evidence elicited at
15 this trial were to establish that the Cohens
16 undertook to pursue visitation on Abbie's behalf
17 in California, would that impact your opinions in
18 this case?
19 A. No. It's a given that they purported
20 to pursue visitation on Abbie's behalf. The
21 question is whether they manipulated it, as the
22 California court seemed to find, specifically
23 Susan.
24 Q. It's purported. I'm not asking you
25 what's purported. I'm asking if this court, in

1 its equitable jurisdiction, finds that the Cohens,
2 as trustees, undertook to pursue visitation on
3 Abbie's behalf, would that impact your opinions in
4 this case?
5 A. Only if the court also finds that in
6 pursuing visitation, they did so purely on Abbie's
7 behalf without any thought of self or personal
8 benefit.
9 Q. You're placing a lot of weight on that
10 California order, Professor. Let me ask you this
11 question: The trustees set out on a course of
12 conduct in this case, originally suggested by Dan
13 Dorn, by the way. They set out on a course of
14 conduct in this case, and in that course of
15 conduct, they pursued visitation on behalf of the
16 ward. The order that you rely upon came later,
17 after the fact. Aren't you armchair
18 quarterbacking the decisions of the trustees in
19 this case with the benefit of 20/20 hindsight?
20 A. Absolutely not. I'm looking at the
21 record that's in front of me and the evidence
22 that's in front of me and giving an opinion. Then
23 I'm going to go to my car and go home. That's all
24 I'm doing is giving you an opinion.
25 Q. And I'm wishing you safe travels, sir.

1 A. Thank you.
2 Q. Let me ask you this question -- I have
3 nothing further for this witness, Your Honor.
4 THE COURT: Thank you.
5 MR. BOYD: Thank you, Professor.
6 THE COURT: I suppose Ms. Hedgepath,
7 Ms. Moore, and Mr. Kachmarsky all want to examine
8 the witness. I'm inquiring as to whether we want
9 to break for lunch or keep going.
10 MR. DAN SLOTCHIVER: I'd like to go
11 forward, if we can. I think we're probably almost
12 done.
13 THE COURT: If there's no objection,
14 then I'll keep going.
15 MR. DAN SLOTCHIVER: If Mr. Freeman's
16 okay.
17 THE WITNESS: Fine, go. Let's go.
18 THE COURT: Ms. Hedgepath?
19 CROSS-EXAMINATION
20 BY MS. HEDGEPATH:
21 Q. Of course, I represent Abbie Dorn. We
22 met at your deposition. And I will try to get
23 through this as quickly as I can.
24 The majority of your work as a lawyer
25 or as consulting has been for attorneys, or you

1 have acted for plaintiffs against the wrong-doer,
2 the person who breached the fiduciary duty. Is
3 that correct?
4 A. Typically, yes.
5 Q. Do you or have you ever represented
6 the wrong-doer, the person that's breached the
7 fiduciary duty?
8 A. Well, you know, they, as a rule, don't
9 admit to it, but I have defended cases, sure.
10 Q. For the one that was accused of
11 breaching a fiduciary duty?
12 A. Yeah, sure.
13 Q. But is it fair to say that's a rare
14 occasion?
15 A. As I stated on cross with counsel,
16 most of the time, it's on behalf of plaintiffs,
17 except when I'm -- and that's in civil cases,
18 setting aside where I'm representing a lawyer
19 who's being accused of some wrongdoing by another
20 lawyer or judge or client or something like that.
21 Q. Then your number's going to be in my
22 desk drawer.
23 And we talked briefly about the
24 special needs trust, and you indicated that you
25 had helped to establish a special needs trust

1 because of an award that was received as a result
2 of litigation.
3 Have you ever had to litigate issues
4 concerning a special needs trust?
5 A. No. I haven't been involved in
6 litigation.
7 Q. Have you ever served as a trustee in a
8 special needs trust?
9 A. No.
10 Q. Have you ever or do you serve
11 frequently as a trustee?
12 A. No.
13 Q. Have you ever served as a trustee?
14 A. I am sure at some point or another, I
15 have, but I can't give you a specific.
16 Q. And if you addressed this with
17 Mr. Boyd, I apologize to you, but do you have an
18 opinion as to what, if anything, Jeffrey Cohen
19 should have been paid?
20 A. For 20 hours of work, $25 an hour, a
21 maximum of $500 a year.
22 Q. $500 a year?
23 A. Yeah, maximum.
24 Q. Now, do you have the trust agreement
25 there in front of you? Professor, do you mind if

1 I look over your shoulder? I want to talk about
2 the infamous Paragraphs 10 and 12, okay.
3 A. Sure.
4 Q. Do you agree with me that the
5 beneficiary and the trustee are two separate
6 entities or individuals?
7 A. Yes.
8 Q. And in this particular case, Abbie was
9 a beneficiary, and the Cohens were the trustees?
10 A. I agree.
11 Q. I want you to look with me at
12 Paragraph 10, where it says: The trustee may
13 employ and compensate, so forth and so on,
14 including attorneys -- excuse me, attorneys in
15 fact, attorneys at law, or other assistants and
16 advisers deemed by the trustee needed in the
17 proper administration of the trust estate, okay.
18 A. Yes.
19 Q. Now, that says the trustee may employ
20 and compensate those people that are necessary for
21 the administration of the trust. Is that correct?
22 A. Yes.
23 Q. But it goes on further to say that if
24 an expert or if anyone is hired for the benefit of
25 the trustee, then prior court approval shall be

1 necessary, does it not?
2 A. No. It only refers to attorneys, and
3 so it's more narrow than the previous, which
4 refers to any kind of agent. It says:
5 Compensation shall be subject to prior approval of
6 a court of competent jurisdiction.
7 Q. So do you agree with me if the
8 trustees hired an attorney to represent them,
9 maybe they had done something wrong, then they
10 could not pay themselves from the trust without
11 prior court approval?
12 A. No. I don't -- I read it more
13 broadly, saying that any lawyer hired by the
14 trustee needs -- in order to be paid, needs to get
15 a court order authorizing the payment. That's how
16 I read it.
17 Q. But is that wording specific in
18 Paragraph 10 where it says that the trustee may
19 employ and compensate? It doesn't say that the
20 trustee must get court approval to employ and
21 compensate.
22 A. No, but it qualifies down below that
23 when you're talking about compensation for
24 attorneys, you need prior court approval. That's
25 how I read it.

1 Q. But it refers to compensation for the
2 trustees' attorney.
3 MR. DAN SLOTCHIVER: It's been asked
4 and answered, Your Honor.
5 THE WITNESS: In my view, it requires
6 compensation for whatever attorney the trustee
7 hires.
8 BY MS. HEDGEPATH:
9 Q. Even though it says trustee's
10 attorney, that is your opinion?
11 A. Yes.
12 Q. And I assume your opinion is the same
13 on Paragraph 12?
14 A. It is.
15 Q. Now I want us to go to the litigation
16 in California. Is it your opinion that it was
17 proper for the Cohens to bring the dissolution
18 action on behalf of Abbie?
19 A. Yes.
20 Q. And is it your understanding that Dan
21 asked them to bring that dissolution?
22 A. I read testimony to that effect.
23 Q. And have you seen the petition wherein
24 Susan filed the dissolution action?
25 A. I don't remember seeing that exact

1 document. I've certainly read about it, but I
2 don't remember reviewing that exact document.
3 Q. Well, let me represent some facts to
4 you, and give me your opinion based on my facts,
5 of course.
6 If Susan filed the dissolution action,
7 the petition, filed it with Abbie as the
8 petitioner and Dan Dorn as respondent, in that
9 petition, she sought dissolution, visitation,
10 equitable distribution -- excuse me, she sought
11 dissolution, custody, child support, and
12 visitation, and Dan filed a response seeking the
13 same thing, do you think that was proper on her to
14 do that as trustee?
15 A. I don't think it was improper to do
16 that on its face.
17 Q. Now, I think you have indicated to us
18 that the issue of child support, that you don't
19 think that that's wrong for the trust to pay to
20 defend the issue of child support?
21 A. Not to defend it on the theory that
22 it's hard to criticize -- if you start a fight,
23 it's hard to criticize the other side trying to
24 defend themselves, so that's my view.
25 Q. Now, keep in mind -- let's talk about

1 visitation. Dan, in his response to the petition,
2 also asked for visitation in Abbie, and then there
3 was a big dispute about that visitation: Is it
4 improper for the trust to pay a reasonable
5 amount -- is it proper for a reasonable amount to
6 be paid from the trust to establish visitation in
7 Abbie?
8 A. I think that it is proper to pay a
9 reasonable amount under the circumstances as to
10 the visitation issue. The problem that I have
11 with that is that it seems, based on the record in
12 California, at least the opinion that I read, that
13 the visitation became manipulated into a wedge
14 issue and a personal struggle between Susan and
15 Dan, with an astronomical amount of money being
16 spent to resolve something that is hard for me to
17 imagine couldn't have been settled for a whole lot
18 less a whole lot easier.
19 Q. But you will admit that you don't know
20 all of the fact -- I'm sorry. Bear with me. I
21 hope you can hear me. I'm going to get through
22 this. That we don't know all of the facts and
23 circumstances surrounding that fight for
24 visitation?
25 A. And I'm not claiming to know all the

1 facts and circumstances over the history of the
2 litigation. I am claiming to understand what the
3 judge wrote down in the order.
4 Q. Was it okay for funds to come from the
5 trust to pay for the equitable distribution of the
6 property of the parties?
7 A. I think if you've got a divorce case
8 and that's part of the divorce case, that that
9 limited amount of money, spending that would be
10 proper.
11 Q. And the bifurcation that Mr. Dorn
12 wanted so he could go ahead and get his divorce,
13 prior to the other issues being settled, was it
14 proper for an amount to come from the trust -- a
15 reasonable amount to come from the trust to pay
16 for that?
17 A. For his divorce, the divorce segment,
18 divorce kind of leg of the journey? Is that what
19 you're talking about?
20 Q. Yes, sir.
21 A. Yeah. I think I testified the same
22 way at my deposition, yes.
23 Q. And discovery as well, reasonable
24 discovery?
25 MR. DAN SLOTCHIVER: Objection, Your

1 Honor. I don't know if the discovery's referring
2 to the dissolution of marriage action or the
3 everything action.
4 MS. HEDGEPATH: Everything.
5 MR. DAN SLOTCHIVER: After the
6 dissolution's completed?
7 THE COURT: I'll let her --
8 THE WITNESS: Rephrase your question.
9 BY MS. HEDGEPATH:
10 Q. There was discovery, depositions taken
11 in this action in California, an action that
12 encompassed the dissolution, the custody, the
13 child support, the visitation, the equitable
14 distribution. There was discovery. There were
15 depositions. Was it proper for the cost of that
16 to come from the trust?
17 A. Not insofar as visitation is the
18 issue. And the testimony that I've seen is to the
19 effect that that was the real issue that was being
20 litigated, and the reason I have a problem with
21 spending money on visitation the way it was spent
22 is because of the objectives being served. So I
23 don't agree that you had a bundle, including
24 visitation, and you spent money on the bundle, and
25 that's all reasonable. Now, the big elephant in

1 the room is visitation. Carve that out, and I
2 have much less of a problem with spending money,
3 but it turns out that most of the money was spent
4 on visitation, it appears to be.
5 Q. So everything was okay, except the
6 issue of visitation?
7 A. I think that's where the taint is in
8 the spending.
9 Q. And is your opinion based solely on
10 the wording in that order?
11 A. Well, no. I mean, it's based on the
12 wording in the order, but it's also based on
13 fiduciary duty law, which says that you are to
14 operate with an eye single to the interest of the
15 beneficiary and not for personal gain, and what
16 the judge is saying in that order is essentially
17 that the visitation struggle, which was a mammoth,
18 expensive struggle, was a ruse cooked up to try to
19 get Susan control of the -- as much control as she
20 could get of those kids, which is an improper --
21 to me, improper objective, and that's where the
22 court had a problem. That's where I have a
23 problem.
24 Q. And I, as I said, represent Abbie. I
25 need you to help me understand this. If Susan

1 and/or Paul did not pursue the issue to try to
2 establish as much visitation for Abbie, who would?
3 Who would be fighting for that visitation if it
4 were not her mother and father?
5 A. Well, it would be whoever the trustees
6 were. Frankly, we wouldn't be here if the
7 trustees had been independent and made decisions
8 independently, as opposed to being conflicted,
9 which they were.
10 Q. Can you tell the court, then, how much
11 should have been spent -- how much time overall
12 was spent on the ancillary issues other than the
13 visitation?
14 MR. DAN SLOTCHIVER: Your Honor, I
15 believe he's been asked to opine an opinion on
16 something that he has not been qualified to do,
17 and if she wants to do it, I'd like an
18 opportunity, when it's my turn, to examine him on
19 that issue, because that's not what he's testified
20 to.
21 THE COURT: You can certainly -- if he
22 feels like he can answer it, then I'll allow it.
23 THE WITNESS: I've given that opinion
24 before that it looks to me like around $600,000
25 was spent related to the visitation issue.

1 And I've read the transcript as this
2 thing has been rolling along, and there's been
3 talk about standing. It was all about -- it
4 wasn't about visitation, it was about standing.
5 And I have 341 pages of bills, and they've been
6 OCRed, and so I can word search those bills, and I
7 did, to see how much of this deals with standing,
8 and there were 13 references to standing in those
9 341 pages, and the amount of time spent on
10 standing, if you cost it out, is around 23.8
11 hours. So standing, this big bugaboo issue, turns
12 out to be two eight-hour days, at least according
13 to those bills.
14 MR. BOYD: Your Honor, I'm going to
15 object. The bills that the witness purports to
16 have OCRed were redacted, so I'm not sure there's
17 any foundation for the testimony he's giving.
18 THE WITNESS: That's what I had. But
19 standing wasn't redacted on -- don't tell me
20 standing was redacted, because I saw standing
21 plenty of times.
22 MR. BOYD: It's not clear that --
23 BY MS. HEDGEPATH:
24 Q. Maybe I can wrap this up, Professor
25 Freeman.

1 THE COURT: I'm going to allow this.
2 BY MS. HEDGEPATH:
3 Q. I know we need to move on.
4 If I understand your opinion, it was
5 proper for everything to have been paid from the
6 trust in connection with the California domestic
7 action, except visitation?
8 A. Except for all the struggle and
9 bitterness, acrimony over the visitation issue.
10 Q. But you cannot tell me exactly how
11 many hours were spent on the visitation?
12 A. Only a rough number, and the number
13 that I've given repeatedly is around $600,000.
14 Q. And you base that on your bills that
15 have been redacted?
16 A. Through 12/31/10.
17 Q. The bills that are redacted, am I
18 correct?
19 A. The summary -- including -- yeah, some
20 of them are redacted, but the summary
21 documentation that I referenced in my deposition
22 and having gone through those bills.
23 Q. But Abbie did get visitation, did she
24 not?
25 A. In a sense, yes.

1 Q. Do you have any knowledge of what the
2 average rates are for domestic attorneys in the
3 state of California?
4 A. No. I haven't researched that.
5 Q. So you don't have an opinion on
6 whether or not what this California attorney that
7 represented Abbie, by and through the Cohens, if
8 her rate was reasonable or not?
9 A. Ms. Meyer, you're referring to?
10 Q. Yes, sir.
11 A. I do have an opinion that $700 is a
12 whole lot of money per hour, and it's off the
13 charts here for South Carolina, but for Beverly
14 Hills, I am not expressing an opinion.
15 Q. Thank you, sir.
16 THE COURT: I'm going to take five.
17 Are you going to go next, Ms. Moore?
18 MS. MOORE: Yeah, but I won't take
19 long, Judge.
20 THE COURT: Can I take just five
21 minutes?
22 MS. MOORE: If you must.
23 THE COURT: That's all. It will be
24 limited to five. Thank you.
25 (A recess transpired from 1:47 PM to

1:52 PM.)
THE COURT: We're back on the record now.
Ms. Moore?
CROSS-EXAMINATION
BY MS. MOORE:
Q. Professor Freeman, you worked at Jones Day. Is that correct?
A. I did.
Q. Are you aware of the hourly rates of the partners in that law firm?
A. Today?
Q. Within the last five years. Would it surprise you to find out that their hourly rates are in the range of $625 to $925?
A. It doesn't surprise me. It's one of the ten largest firms in the world, so they have a worldwide practice.
Q. And those rates would be on level with what's being charged by the attorney in California?
A. It would be on the level?
Q. Yes, sir.
A. Yeah. They're on the same astronomical level.

Q. So that's the firm that you previously worked for?
A. That's a firm that I previously worked for.
Q. Would you agree that preparing a case for trial, the parties don't know who may be the ultimate successor?
A. Normally, that's the case.
Q. And no question but that visitation in the California case, no question but that it was contested?
A. It was a contested matter, yes.
Q. Would you agree that there were other medical providers who provided testimony as to Abbie's condition, other than simply Dr. Mamelak?
A. Yes.
Q. Have you spoken or reviewed any reports from other medical providers or caretakers who provided services or medical treatment for Abbie, other than Dr. Mamelak?
A. No.
Q. Would you agree that the parties would not know ahead of time as to the weight the trial judge may give to a particular expert?
A. I think in many cases, that's true,

but in some cases, it wouldn't.
Q. But you wouldn't know one way or the other as far as the experts that were presented as witnesses in the California case?
A. I don't know what -- I wasn't involved in that proceeding, and I don't know the judge, and I don't know how the judge would size them up.
Q. Now,,you indicated that you had reviewed the order as to visitation with the California case, correct?
A. Yes.
Q. And didn't that order, as to visitation, indicate that Dan wanted to have visitation on his own terms, and he requested the authority of the court to order visitation?
A. Let me refresh my recollection. If you have a page, I'm happy to look at it.
I remember the court saying that Dan believed that as the father, he should have a major role in making decisions.
Do you have a page for me?
Q. I apologize, but I don't have a hard copy in front of me. It's Page 7, and it's under a paragraph that starts (2)(c).
A. It says: Dan expresses a desire that

the children wait until age six or seven to visit.
Q. I'm talking about the beginning. Start at the beginning paragraph: During.
A. During the entire process of this hearing, Dan has repeatedly expressed his belief that provided that visitation is done on his terms, the children would benefit from visitation with their mother.
Q. Didn't the court also disagree with Dan that Abbie's disability alone made her an unfit parent; therefore, disqualifying her conservators from seeking visitation on Abbie's behalf?
A. Can you point me to somewhere in the order, please?
THE COURT: I'll speed this along. Page 2, first full paragraph.
THE WITNESS: And your question is what?
BY MS. MOORE:
Q. I'm asking whether or not you were aware of that in formulating your opinion as to the reasonableness of fees. You only pointed out areas of the order that appear to be disparaging to Mrs. Cohen, but there were also portions of the

1 order that included findings where the court
2 likewise did not believe all of what Dan Dorn had
3 to provide.
4 A. Well, what you're referring to is a
5 legal argument.
6 Q. Wasn't that a finding in the case?
7 A. Yeah, but it's also -- but the court
8 prefaces that by saying he doesn't agree with the
9 concept of the children having visitation on his
10 terms, and he's the father. And it goes on to say
11 that his view was that he should control, and not
12 Abbie, because Abbie is totally disabled.
13 Q. But Professor Freeman, doesn't the
14 order specifically state: The court does not
15 agree with Dan that Abbie's profound and permanent
16 disability alone makes Abbie an unfit parent which
17 should disqualify her conservators from seeking
18 visitation?
19 A. And you are where?
20 Q. On Page 2 at --
21 A. I mean, look, the court gave some
22 visitation, and that court order is being, as far
23 as I know, honored.
24 Q. I understand that, but what I'm
25 looking into is the reasonableness of the trustees

1 in pursuing this action for visitation and that it
2 just wasn't a one-sided fight.
3 A. Well, first of all, most fights are
4 two-sided, number one, and secondly, I agree that,
5 as is usually the case, neither party got
6 100 percent of what they wanted. What I do find
7 very obvious, though, about this opinion is that
8 when you started to talk about self-serving
9 motivation and selfishness and kind of weird
10 behavior --
11 MR. BOYD: Objection, Your Honor.
12 THE WITNESS: Let me please finish.
13 MR. BOYD: He's using words that
14 are -- selfishness, weirdness. He's using words
15 that are not in the opinion.
16 THE WITNESS: Well, let me explain.
17 THE COURT: Yes, sir.
18 THE WITNESS: The bottom of three and
19 top of four is where we have the famous Susan's
20 ulterior motive and so forth, and it goes on to
21 talk about what Susan wants, and then on Page 4,
22 it says: Dan is outraged by these unrealistic
23 ideas, and the court is referring to Susan's
24 positions as being unrealistic ideas, which I
25 think they were.

1 So criticize Dan all you want, but
2 he's the dad of these kids, he's got to raise
3 these kids, and he's fighting for the privacy of
4 his opinions in wanting to raise the kids, at
5 least that's how I looked at it, which he
6 absolutely had a right to do.
7 BY MS. MOORE:
8 Q. I understand your position, Professor,
9 but what I'm asking you is to look at areas of the
10 order that address problems that may have been
11 caused by Dan Dorn in the litigation that may have
12 then resulted in the necessary actions of the
13 trustee to pursue the litigation further. For
14 example, didn't the court, in the final order,
15 state that they did not agree with Dan's desire to
16 delay the visitation until the children were ages
17 six or seven?
18 A. It did, sure.
19 Q. Now, Professor Freeman, do you have an
20 opinion as to whether or not the trustees'
21 authority to continue to retain the attorney in
22 California, whether or not that authority
23 terminated upon the issuance of the marital
24 dissolution status only?
25 MR. DAN SLOTCHIVER: I'm sorry. I

1 didn't follow that question. Can you repeat that?
2 BY MS. MOORE:
3 Q. Do you have an opinion as to whether
4 or not the authority of the trustees terminated at
5 the point of the issuance of the decree of marital
6 dissolution, and the order specifically says
7 status only?
8 A. Yeah, I have an opinion.
9 Q. What is your opinion?
10 A. It didn't terminate.
11 Q. So as far as -- strike that.
12 Do you have an opinion as to whether
13 or not there's a distinction between being
14 authorized to hire the attorney versus authorized
15 to compensate the attorney?
16 A. Well, first of all, yeah, there's a
17 bifurcation in the trust agreement which requires
18 prior court approval if you want to compensate.
19 Q. So is it your opinion that in this
20 particular case, the Cohens may have had authority
21 to hire the attorneys in California, but did not
22 have the authority to compensate them without a
23 further court order?
24 A. I believe they needed a court order.
25 I believe that -- look, everybody in the room

1 should know this. I believe that the trust means
2 what it says about prior court approval for fees.
3 I may not like that, but that's what it says.
4 Q. Is it your opinion that the original
5 order, after the conservatorship in California, as
6 well as the order of transfer that was ordered
7 here in Horry County, is it your opinion that
8 those orders do not provide the Cohens with both
9 authority to hire as well as compensate the
10 attorneys in California?
11 A. Yes.
12 Q. Your opinion is that that does not
13 give them the authority?
14 A. Right, that they need -- they need --
15 as bills, as they want to pay or come in for
16 interim pay or come in and petition the court for
17 an advance, ability to pay in advance, that's
18 right.
19 Q. To make sure I'm clear, the orders
20 that exist, the order of transfer as well as the
21 California order of probate orders, that does not
22 give them the authority to pay the attorney in
23 California?
24 A. Yeah, that's my testimony, that the
25 trust means what it says.

1 Q. And is there any distinction between
2 an attorney being hired for the trustee versus an
3 attorney being hired for the ward?
4 A. I don't -- that goes to that
5 Paragraph 12 issue. I don't see any distinction.
6 Regardless of how you want to play it, the same
7 thing. The trustee is going to do the hiring.
8 That person is going to represent the trustee, and
9 I think that you need approval.
10 Q. And the number that you testified to
11 earlier, the 600,000-some-odd number, that is
12 based on simply you OCRing the billing statements
13 that you had and then calculating a figure, the
14 $600,000?
15 A. It's the best that I can do.
16 Q. But is that how it's based?
17 A. You know, it's also based on what I've
18 seen, you know, the testimony that I've seen.
19 Q. But how did you calculate the number?
20 A. We have an exhibit that lists the 660
21 whatever. If you knock around $60,000 off that
22 for the divorce and custody, that gets you to the
23 $600,000 number.
24 Q. So whatever the number is that's
25 reflected on the exhibit attached to your

1 deposition, you took that number and just knocked
2 off $60,000?
3 A. I think it -- yeah. I think that it's
4 in -- it's roughly $60,000 of that number also
5 before Ms. Meyer's firm got involved. That's
6 where I get that number from.
7 Q. And I'm sorry, Professor, are you
8 saying there was $60,000 with an attorney before
9 the Meyer law firm, and that's where you get the
10 $60,000?
11 A. Yeah, I think so.
12 Q. So you don't believe any fees that
13 were generated by the Lisa Meyer firm are
14 reasonable and should be paid by the trustee?
15 A. Well, I heard about the standing
16 issue, but that turns out to be nothing.
17 Q. My question is: You don't believe
18 that there's any fees incurred with Lisa Meyer's
19 firm that should have been paid by the trustee?
20 A. No. My understanding is that
21 virtually -- that what was on the griddle when the
22 Meyer firm was involved was a struggle over
23 visitation. I've told you what I think about
24 visitation.
25 MS. MOORE: That's all the questions I

1 have, Your Honor.
2 THE COURT: Thank you.
3 Mr. Kachmarsky?
4 CROSS-EXAMINATION
5 BY MR. KACHMARSKY:
6 Q. Just one question, Professor.
7 As you're aware, South Carolina law
8 imposes duties of loyalty, impartiality, prudent
9 administration, and prudent investment on
10 trustees. Are you aware of any reason that these
11 duties should not apply to the trustee or
12 co-trustees of a special needs trust?
13 A. No.
14 MR. KACHMARSKY: Thank you.
15 MR. DAN SLOTCHIVER: Very briefly,
16 Your Honor, if I may.
17 THE COURT: Yes, sir.
18 REDIRECT EXAMINATION
19 BY MR. DAN SLOTCHIVER:
20 Q. Professor, does any of the testimony
21 elicited in cross-examination today change your
22 opinions that you've given earlier as to waste,
23 breach of trust, or self-dealing?
24 A. No.
25 Q. Professor, you were asked earlier if

1 you were familiar with any medical testimony other
2 than Dr. Mamelak. You said you haven't read it,
3 but would it be fair to say you have read
4 reference to it in the court's order as it applied
5 to Dr. Hays?
6 A. Yes.
7 Q. Professor, are you aware of any case
8 law in South Carolina or otherwise which weighs
9 fiduciary responsibilities when you're dealing
10 with family members?
11 A. No. They're intensified.
12 Q. You were asked earlier about the
13 amount of money that you considered to be the
14 damages in the case, and you testified that you
15 believe that the fees generated by the Meyer firm
16 were related to the visitation issue, and those
17 weren't appropriate. You also were asked to give
18 a number as to your damages, and you testified, I
19 believe, that the number that you have to date is
20 based on the numbers you were provided at that
21 time.
22 Instead of giving a particular number,
23 would it be fair to say that whatever the number
24 of bills created relevant to the visitation issue
25 would not be appropriate, whether that's $600,000

1 or a million dollars, whatever that amount would
2 be?
3 A. Yes.
4 Q. You were asked by Ms. Hedgepath if the
5 court in South Carolina found that the action in
6 California was done by the trustees solely for
7 Abbie's benefit.
8 A. Could you slow down, please?
9 Q. Yes, sir, I will. I apologize.
10 You were asked by Ms. Hedgepath if the
11 court in South Carolina, Judge Edmonds here, found
12 that the action in California was done by the
13 trustees solely for the benefit of Abbie, what
14 effect would it have. My question to you is:
15 Regardless of if they assert or the court found it
16 was done for Abbie, would it still have to be
17 authorized and/or reasonable?
18 A. Yes.
19 Q. Are you aware that the Cohens in this
20 case actually consented to the language or to the
21 final finding of the court in California?
22 A. Yes. It was discussed in
23 Ms. Meyer's -- when Ms. Meyer was on the stand, I
24 believe.
25 Q. Thank you, sir. Nothing further.

1 THE COURT: Mr. Boyd?
2 MR. BOYD: I don't believe I have
3 anything further for this witness, Your Honor.
4 THE COURT: Thank you.
5 Ms. Hedgepath? Ms. Moore?
6 MS. HEDGEPATH: No.
7 MR. DAN SLOTCHIVER: May he be
8 excused, Your Honor?
9 THE COURT: Any objection to excusing
10 the witness?
11 MR. BOYD: No.
12 THE COURT: Thank you. Appreciate you
13 coming, Professor Freeman.
14 THE WITNESS: Thank you, Your Honor.
15 THE COURT: Do we want to consider
16 breaking for lunch at 2:10?
17 MR. DAN SLOTCHIVER: Your Honor, I
18 would propose that when we come back, I'll call
19 Julian Walker, and if we could, if we can try to
20 work until we finish him.
21 THE COURT: I'm not opposed to that.
22 MR. DAN SLOTCHIVER: Thank you. That
23 way he can drive back. Thank you, Your Honor.
24 MS. HEDGEPATH: Doctor, I hate to hold
25 everybody up, but the doctors that we were

1 anticipating calling, I need to let them know. I
2 know that I think Mr. Slotchiver is going to call
3 another expert and Dan Dorn. Is that correct?
4 MR. DAN SLOTCHIVER: That's correct.
5 THE COURT: You're trying to get some
6 idea of when to call your doctors, your witnesses?
7 MS. HEDGEPATH: I'm trying to get some
8 time frame.
9 MR. DAN SLOTCHIVER: I'm not sure,
10 Your Honor, that we're going to -- and I guess
11 part of the basis -- I guess part of the question
12 is are we on track to finish this tomorrow, and if
13 we're not on track to finish this tomorrow, how
14 much do we want to rush through it.
15 As I understand it, I've got to
16 call -- I'm going to call Mr. Walker, and based on
17 what's occurred just now, my guess is by the time
18 I'm done with Mr. Walker, it will be 6:30.
19 Afterwards, I want to call Dan Dorn, but after I
20 call him, I understand that Cohens' counsel will,
21 at the very least, call Mr. Wingate, then I
22 understand that the guardian ad litem and/or the
23 attorney for Abbie will then call whatever
24 witnesses they have.
25 I'm happy to work as much as you want,

1 but if we're not going to be able to realistically
2 finish it today, then I would ask that after the
3 testimony of Mr. Walker's concluded, depending on
4 how late it goes, that we actually end before 8:00
5 tonight and start in the morning, and I would call
6 Dan Dorn at that point.
7 MR. DAVIS: If we can get Dan Dorn in,
8 we can get Wingate.
9 MR. DAN SLOTCHIVER: I'll do what you
10 want, Your Honor, but it's been 12-hour days, and
11 it's --
12 THE COURT: I know.
13 MR. DAN SLOTCHIVER: I understand the
14 rush -- not the rush, but I understand the
15 court -- and I appreciate the court working with
16 us if we think it's realistic to end it. I don't
17 know how many witnesses they plan to call, but if
18 it's not realistic to end it, then I don't see any
19 reason to beat ourselves up.
20 THE COURT: I understand.
21 MS. HEDGEPATH: We have five.
22 MR. DAN SLOTCHIVER: I don't see, Your
23 Honor, how we would possibly finish this case
24 tomorrow. Assuming that we finish Dan Dorn
25 tonight, we had Wingate tomorrow, who I would

1 assume is going to take close to half a day, at
2 least three hours, and then they have five
3 witnesses, I don't see how it's -- and they have
4 medical witnesses, and we're going to have
5 objections. I don't see how it's conceivable.
6 Maybe we could take that up later on, but --
7 MR. DAVIS: We still have the
8 outstanding --
9 MR. BOYD: There remains the issue,
10 Your Honor, of another witness that we would like
11 to call. I state that merely to say I agree with
12 counsel. I don't think it's realistic that we're
13 going to finish this case this week.
14 MR. DAVIS: And also, the motions that
15 we've made that we're asking to be heard about on
16 conforming the pleadings to -- amending the
17 pleadings to conform to the evidence I think is
18 important as well.
19 MR. DAN SLOTCHIVER: I understood that
20 would be heard later on after this trial is
21 concluded, or after this part of the --
22 THE COURT: I think y'all were going
23 to submit briefs on that.
24 MR. DAN SLOTCHIVER: Yes.
25 THE COURT: What I would like to do is

1 to be able to get as much concluded before we
2 break tomorrow, because the difficulty is if we
3 only have to come back for one day to finish up,
4 that's much easier than two or three or four days,
5 and so whatever we can finish up, I would like to
6 do. I'd like to go 7:00, 8:00 tonight.
7 If we could try to get Mr. Dorn in,
8 then I would at least like to start him. So I
9 think if Reese is going to be calling Mr. Wingate
10 tomorrow, and then we move on to Ms. Hedgepath or
11 Ms. Moore's witnesses, I would think we could get
12 some of them in tomorrow.
13 MR. DAN SLOTCHIVER: I'm only speaking
14 for myself.
15 THE COURT: I know everybody's tired.
16 MR. DAN SLOTCHIVER: Once it starts,
17 I'm actively involved in a case for 12 hours a
18 day, and it's a little taxing, and if we need to
19 do it, that's fine, but honestly, Your Honor, it's
20 a little longer day. Actively involved in
21 litigation in a courtroom, an hour is four hours
22 of being involved in my office.
23 THE COURT: I understand.
24 MR. DAN SLOTCHIVER: And this is the
25 third day. If we're going to go 'til 8:00 tonight

1 again, tomorrow -- I'm worried that it starts to
2 create a little bit of an unfair disadvantage to
3 probably everybody in the courtroom.
4 THE COURT: Well, everybody would have
5 the same disadvantage.
6 MR. DAN SLOTCHIVER: True, but our
7 clients deserve the best advantage they can have.
8 MR. BOYD: And if I can agree with
9 Mr. Slotchiver, Your Honor.
10 THE COURT: Now, this is your fault,
11 Reese.
12 MR. BOYD: I know this is my fault,
13 but I have to say I don't know if I have 8:00 in
14 me tonight, Your Honor. And under our informal
15 understanding concerning witnesses, we were not
16 advised yesterday that Mr. Dorn would be appearing
17 today, and quite frankly, I'm not prepared to
18 question him today.
19 THE COURT: And I thought we might
20 just get through Mr. Slotchiver's questioning of
21 him. Why don't we do this --
22 MR. DAN SLOTCHIVER: Can we see what
23 time it is when we finish with --
24 THE COURT: Let's do that. Let's see
25 what time we finish with the next witness, and if

1 we think we have enough time to at least get the
2 initial direct examination of Dan Dorn in, then
3 we'll try to do that. I understand if you weren't
4 prepared today, Mr. Boyd.
5 MR. DAN SLOTCHIVER: And I apologize.
6 I haven't -- I guess I thought I was announcing
7 the experts. I thought I had mentioned Mr. Dorn.
8 If I didn't, I certainly apologize. It wasn't
9 intentional.
10 THE COURT: I think you may have
11 mentioned that late yesterday evening.
12 So Ms. Hedgepath, I'm not sure what to
13 tell you. You know, we might be in a position to
14 get to a couple of them. I mean, I was still
15 hoping to push this, but I don't want to push
16 people too hard.
17 MR. DAN SLOTCHIVER: Back at 3:30,
18 Your Honor.
19 THE COURT: 3:30, please.
20 MR. DAVIS: What about the order?
21 You've got five total witnesses? And then we
22 got -- do you want to try to do Wingate before
23 they do any of their witnesses?
24 THE COURT: Yes, sir.
25 MS. HEDGEPATH: What if we do --

1 MR. DAN SLOTCHIVER: Your Honor, I
2 can't hear.
3 THE COURT: I can't either.
4 MR. DAN SLOTCHIVER: We're not
5 conversing about which doctors we're going to call
6 between counsel. They're not supposed to have any
7 conversations at all about the doctors.
8 MS. HEDGEPATH: No. We're just
9 talking about order. Is that okay?
10 THE COURT: Yes, ma'am. I think we
11 had talked about Mr. Slotchiver finishing his
12 witnesses, maybe getting to at least the cross for
13 Dan Dorn, see what time that is. I understand
14 that Mr. Boyd and Mr. Davis would then call
15 Mr. Wingate after we finish with Dan Dorn, and
16 then whatever witnesses Ms. Hedgepath, you and
17 Ms. Moore, would call would be next.
18 MR. DAVIS: How late are we going to
19 go tomorrow?
20 MS. MOORE: I don't mean to be
21 hesitant, but --
22 MR. DAN SLOTCHIVER: Could we discuss
23 this later on and take a little break, Your Honor?
24 Would that be okay?
25 MR. DAVIS: I'd like to call Ken and

1 let him know that you're probably going to get him
2 in tomorrow afternoon.
3 MR. BOYD: I think that's a safe
4 assumption, Your Honor. We should be able to do
5 that.
6 MR. DAN SLOTCHIVER: Either way,
7 absolutely.
8 THE COURT: Yes. I think you can call
9 Ken.
10 MS. MOORE: So maybe we could have one
11 or two on stand-by instead of everyone.
12 THE COURT: I think so. I mean, I was
13 hopeful things were going better, that maybe we
14 would finish up tomorrow, but from what I'm
15 hearing from counsel, it's probably not going to
16 happen. I still would like to get in as much as
17 possible, because if we come back, I'd rather not
18 come back for three days. It's just going to be
19 very hard for everybody.
20 MR. DAN SLOTCHIVER: I agree. Thank
21 you, Your Honor.
22 THE COURT: And my calendar to get in
23 more than a day.
24 MR. DAN SLOTCHIVER: Are we excused,
25 Your Honor?

1 THE COURT: Yes, we are. We're off
2 the record. We're excused until 3:30, and we'll
3 start back promptly.
4 (A luncheon recess transpired from
5 2:18 PM to 3:33 PM.)
6 THE COURT: We're back on the record
7 in the Abbie Dorn matter.
8 Mr. Slotchiver?
9 MR. DAN SLOTCHIVER: Ready to call my
10 next witness, if I may.
11 THE COURT: Yes, sir.
12 MR. DAN SLOTCHIVER: Julian Walker.
13 Mr. Walker, if you'll please come up
14 to the box.
15 JULIAN W. WALKER, JR.
16 being first duly sworn, testified as follows:
17 THE COURT: Good to have you, sir.
18 DIRECT EXAMINATION
19 BY MR. DAN SLOTCHIVER:
20 Q. Mr. Walker, would you please state
21 your full name and address for the court?
22 A. Julian W. Walker Jr., 211 South Edisto
23 Avenue, Columbia, South Carolina, 29205.
24 Q. And if you would please provide the
25 court with your educational background.

1 A. I attended public schools in
2 Charleston, where I was born and raised. I then
3 went off to college, University of the South,
4 Sewanee, graduated in 1956, and immediately went
5 to Duke University Law School, where I graduated
6 with an LLB degree -- in those days they didn't
7 give JDs -- and that was 1959. I've attended many
8 conferences and seminars over the years, but those
9 are the -- that's the formal education.
10 Q. I was going to ask you, do you have
11 any distinctions as to your educational
12 background?
13 A. I'm sorry. What?
14 Q. Any special distinctions?
15 A. I was fortunate at Sewanee to be
16 chosen or elected to Phi Beta Kappa my senior
17 year, and I graduated what we call there, which
18 would be the equivalent of summa cum laude, I
19 think it was optime merens was the Latin
20 terminology at that time.
21 Q. Tell us a little about your work
22 career, if you would.
23 A. After I got out of law school, I went
24 in the Air Force for a while, a short time, and
25 when I came out of the Air Force, I was hired by a

1 law firm in Norfolk, Virginia, became a member of
2 the Virginia Bar, practiced with that firm from
3 1960/1961 to 1967.
4 I started out thinking I'd be a
5 litigator, but I ended up moving more into the
6 trust and estate field, which I had studied at
7 Duke Law School and had an interest in. Because
8 of that, I ended up doing a lot of work with the
9 trust department of a bank in Norfolk, Southern
10 Bank of Norfolk, which was a member bank of a
11 multibank holding company, First Union Bank
12 Shares. We didn't have state-wide branching in
13 Virginia then.
14 I was there for just less than a year
15 as the head of that small trust department in
16 Norfolk when I was contacted by the First National
17 Bank of South Carolina to come back home to
18 Charleston and take over the management of the
19 Charleston trust department. I did that for
20 basically three years, when I was contacted by the
21 president of First National Bank in Columbia to
22 come to Columbia and head up the statewide trust
23 division of First National Bank.
24 I held that position until South
25 Carolina National Bank bought First National Bank

1 in 1984, and I was one of the fortunate members of
2 First National, the bank being acquired, because I
3 was given the job of managing, the executive trust
4 officer, of the merged South Carolina National
5 trust division.
6 I held that position until Wachovia
7 bought us in 1990/1991. I was the trust executive
8 officer of still South Carolina National. The
9 name hadn't been changed, but we were owned by
10 Wachovia. I held that position until I retired
11 effective March the 1st, 1994.
12 After that, actually, because of
13 Professor Alan Medlin at the law school in
14 Columbia, he suggested that I should make myself
15 available to do just what I'm doing now, expert
16 witness, having spent all those years in the trust
17 business, being a trustee of a bank, but being in
18 charge of the trust operations.
19 And I did that for about six months,
20 and then I was -- I got into law practice with the
21 old firm of Haynsworth, Marion, McKay & Guerard,
22 had an office in Columbia, Charleston, Greenville.
23 I was there for about a year, and then I changed
24 and went up the street, went with a firm Rogers,
25 Townsend & Thomas.

1 And I was there for a few years, and
2 then I decided to get out of that large firm world
3 and basically open up an office at home and hang
4 out a shingle, and so that's what I've been doing
5 ever since, and essentially doing a lot of this
6 type of what I'm doing right now.
7 Q. Thank you, sir. Based on your
8 statement, it's obvious you've testified as an
9 expert before in the field of trust management, I
10 take it, trust administration?
11 A. Yes. I've done this quite often.
12 I've served in the capacity of a consulting
13 expert, which quite often leads to a testifying
14 expert, and I have testified in depositions many
15 times, and fewer times actually in trial, because
16 so many of the cases are settled.
17 Q. Nature of the business, right?
18 A. Law famous compromise.
19 Q. Mr. Walker, you've also testified with
20 reference to fiduciary accounts, as well as trust
21 accounts?
22 A. Generally, most of my work has been as
23 an expert, consulting expert, a testifying expert,
24 has been in the field of trusts, but I have been
25 involved in decedent's estates, guardianships,

1 conservatorships on a few occasions, but mostly
2 trusts.
3 Q. Thank you, sir.
4 MR. DAN SLOTCHIVER: Your Honor, at
5 this time I would submit Julian Walker as an
6 expert in the field of trust administration as it
7 relates to the handling of monies and the
8 decision-makings affecting the Abbie Dorn Special
9 Needs Trust.
10 THE COURT: Mr. Boyd?
11 MR. BOYD: Your Honor, if I may, I
12 believe it'd be proper for us to have an
13 opportunity to question this witness before we
14 designate him as an expert.
15 THE COURT: Yes, sir.
16 VOIR DIRE EXAMINATION
17 BY MR. BOYD:
18 Q. Mr. Walker, good afternoon.
19 A. Good afternoon.
20 Q. I am Reese Boyd. I represent the
21 trustees in this action, Dr. Paul and Susan Cohen.
22 Let me ask you -- I didn't really hear
23 you specify a number of cases. Approximately how
24 many cases would you say you've served as a
25 testifying expert in?

1 A. I don't have the exact number, but I
2 would say probably at least 30.
3 Q. Let me ask you this: Have you ever
4 had your qualifications as an expert denied by a
5 court?
6 A. No.
7 Q. Of those 30 occasions, Mr. Walker,
8 where you have been admitted or deemed to be an
9 expert for purposes of trial, approximately what
10 sort of time frame, over how many years are we
11 talking about?
12 A. Well, as I testified a moment ago, my
13 original work began shortly after I retired from
14 what had become Wachovia. As I recall, I was
15 perhaps involved in a couple of cases then, but
16 when I went into law practice with Haynsworth,
17 Marion, McKay & Guerard, that type of work pretty
18 much ceased with being a -- working with a law
19 firm, and that continued to be the case up until I
20 finished my law practice with Rogers, Townsend &
21 Thomas, and that was probably a hiatus, if you
22 will, for the better part of three years.
23 So after -- that would have been,
24 let's see, '94. Probably in '97, early '98, I
25 began to be contacted again by litigators who had

1 cases involving fiduciary duties and fiduciary --
2 breach of fiduciary duties, and so that's when it
3 started up again, and it's continuing through
4 today.
5 Q. So from '98 to the present year would
6 be, round numbers, approximately 15 years?
7 A. A round number, yeah.
8 Q. Approximately 30 cases over 15 years.
9 Of those 30 cases, Mr. Walker, how
10 many of those cases would have involved special
11 needs trusts?
12 A. I don't recall any of them being
13 specifically special needs trusts. The special
14 needs trust, as I understand it, as I recall,
15 probably came into existence back in the early
16 '90s, perhaps 1993, and so I'm contacted by those
17 who have the problem, and I don't recall any
18 special needs trust problem coming to me.
19 Q. So you've never been an expert in a
20 case where a d4A special needs trust for Medicaid
21 purposes was involved?
22 A. Not technically, that's true, but I
23 will say this: A special needs trust really,
24 basically, is another trust. The duties of the
25 trustees are exactly the same. In fact, one of

1 the very significant things about the special
2 needs trust is a very important provision that is
3 often hard to find in the normal trust that's
4 prepared by estate planning attorneys, and that is
5 the purposes of the trust.
6 I've examined carefully the special
7 needs trust instrument in this case, and the
8 purposes of the trust are very clearly spelled
9 out. No question to what those purposes are.
10 Once you get past that, it's essentially any other
11 thing for trust, in my opinion.
12 Q. In your opinion. Would you agree with
13 me that there are requirements imposed upon that
14 trust that are incorporated by statute?
15 A. There are certainly provisions that
16 come into play that -- because it is a
17 statutorily-created concept that's been used
18 primarily to protect those who are seeking to have
19 their Medicaid benefits protected.
20 MR. DAN SLOTCHIVER: Your Honor, do we
21 need to continue, or are we ready to --
22 THE COURT: No, sir. I think we're
23 trying to focus on the issue of Mr. Walker's
24 qualification as an expert.
25 MR. BOYD: Your Honor, and I thank the

1 court for the opportunity. I would object to the
2 admission of this witness as an expert, Your
3 Honor. I'm not sure that he -- I believe his
4 testimony is going to be duplicative. It sounds
5 like he's being admitted in the same area for
6 which Mr. Freeman testified, so I would say that
7 the testimony is duplicative, and I'm not sure
8 that he has expertise in a specific area related
9 to this trust that's going to add any probative
10 value to his testimony.
11 MR. DAN SLOTCHIVER: Well, Your Honor,
12 I think he will have a lot of testimony with
13 reference to this trust. His testimony will not
14 be duplicative. Mr. Freeman was clearly called
15 based on his experience as a fiduciary and on the
16 management of monies. We delineated those.
17 Mr. Walker is not being called for those purposes.
18 I believe Mr. Freeman was called for
19 the purpose of testifying and was deemed an expert
20 in the field of fiduciary obligations and handling
21 of monies and making business decisions affecting
22 the Abbie Dorn Special Needs Trust. Mr. Walker is
23 being called as an expert in the field of trust
24 management, having had some 30-plus years in the
25 field and having testified in over 30 cases in the

1 field.
2 I assure Your Honor that the questions
3 I plan to go over with him and the issues that I
4 plan to address with him will deal with a
5 completely different look at this matter than what
6 we addressed with Mr. Freeman.
7 THE COURT: Thank you.
8 Ms. Hedgepath, Ms. Moore, anything on
9 this issue?
10 MS. MOORE: No.
11 MS. HEDGEPATH: No.
12 THE COURT: Mr. Kachmarsky?
13 MR. KACHMARSKY: Nothing, Your Honor.
14 THE COURT: Anything else, Mr. Boyd?
15 MR. BOYD: Your Honor, I would restate
16 my objection. I think the probative value of this
17 witness is going to be outweighed by the
18 prejudicial impact of the testimony.
19 THE COURT: Thank you.
20 I'm going to qualify Mr. Walker as an
21 expert in the field of trust management. Thank
22 you.
23 MR. DAN SLOTCHIVER: And
24 administration. It might be a more appropriate
25 word.

1 THE COURT: Trust management, trust
2 administration. Thank you.
3 MR. DAN SLOTCHIVER: I believe that's
4 what he's been qualified as before, so I just
5 wanted to have -- that's okay, Your Honor. Thank
6 you.
7 THE COURT: Trust management and
8 administration.
9 DIRECT EXAMINATION
10 BY MR. DAN SLOTCHIVER:
11 Q. Mr. Walker, one more background
12 question that I wanted to ask you, just for
13 clarity on the record. Do you ever teach? Do you
14 ever teach in the field or give CLEs or give
15 anything like that in the field of trust
16 administration, or have you ever written anything
17 on the field?
18 A. Well, going all the way back to my law
19 practice days in Norfolk, I have taught trust
20 administration courses quite frequently to
21 trust -- bank trust personnel. I had continued to
22 do that when I actually got into trust banking in
23 Norfolk for the short time I was there, maybe
24 almost a year. I've taught these courses in
25 Charleston, and I've taught them in Columbia.

1 Now, these are the courses that are
2 essentially sponsored, if you will, primarily by
3 banks with trust powers in the trust field, and
4 they're designed to bring their trust personnel to
5 better inform them, better educate them.
6 In more recent years, I have actually
7 developed and have conducted a day-long course on
8 administration of discretionary trusts,
9 particularly with an emphasis on the Prudent
10 Investor Act that became law in South Carolina in
11 2001 and certain aspects of the Uniform Principal
12 and Income Act, which became law the same day,
13 July the 18th, 2001. I began that course for
14 attorneys, trust officers. I've had some
15 individual trustees come and attend to be better
16 informed to acquaint themselves, which, of course,
17 is an absolute obligation on a trustee, to
18 acquaint reasonably well himself or herself with
19 the responsibilities and obligations of a trustee,
20 once they have accepted the trusteeship.
21 So I've taught that course a number of
22 times in various locations around the state. I
23 haven't done it in the last year or so because
24 we've run into a bit of a problem trying to -- we,
25 the Bar, of which I'm very active with legislative

1 efforts, a bit of problem with the legislature in
2 getting these most recent changes, which I think
3 are on a pretty good track now. Maybe the
4 judge -- the court knows better than I exactly
5 what track they're on, but once that all comes to
6 rest, I will offer this course again.
7 Q. Thank you, sir. Understanding that
8 you've got experience in the trust administration
9 world and also with reference to banks, I'm going
10 to ask you today -- the bank trust and having run
11 the bank trust, I'm going to ask you, in giving
12 your opinions, to address matters relative to
13 trust administration, as opposed to those areas
14 that only would affect bank trust administration,
15 if you see the distinction, if there is one, and
16 if there's not one, then we can just go globally.
17 A. That's fine. I'm prepared to answer
18 that.
19 Q. Thank you, sir.
20 A. If that's a question now, I'll proceed
21 forward.
22 Q. Well, I'm just going to ask that when
23 I ask you questions such as if I ask you a
24 particular question, that the response be with
25 reference to trust administration, as opposed to

1 limited to bank trust administration. If it
2 doesn't apply to both, you'll let us know.
3 Otherwise, I'm going to assume, if it's fair for
4 you, that it deals with trusts.
5 A. Well, I mean, the basic point is that
6 a trustee is a trustee is a trustee. Now, the
7 acid test, the standard which all trusts are put
8 to, whether it's a bank, a corporate trustee, a
9 stand-alone trust company, or some individual, the
10 standard is stated very clearly in our statutory
11 law now. A trustee shall administer the trust as
12 a prudent person would. And the test is, and what
13 I believe I will be asked to opine upon, is my
14 opinion as to what a prudent trustee would have
15 done in certain circumstances that will come
16 forward as we move into my testimony.
17 Q. Thank you, sir. Mr. Walker, what's
18 the first thing a trustee should do when appointed
19 a trustee?
20 A. Well, I think that any trustee should
21 immediately focus on what have I got? What am I
22 accepting? What am I now called upon to do? What
23 are my obligations? What does it mean to be a
24 trustee? Lawyers use the term acquaint. A
25 trustee must acquaint himself/herself/itself with

1 the obligations, responsibilities, duties, and
2 powers that the trustee has in this particular
3 trust.
4 Now, that means, in my opinion, and,
5 in fact, in my knowledge, that means that the
6 trustee must go to the terms of the trust, must
7 acquaint himself/herself/itself with the terms of
8 the trust, which, of course, you always go first
9 to the document, the governing document, the trust
10 itself, whether it's a testamentary trust set up
11 in a will or a trust agreement in the standard
12 type of estate planning document or whether it's a
13 trust of the type that's set up here under the
14 particular parameters and requirements of the
15 special needs programs that are now a matter of
16 legislation.
17 You should have that trust document.
18 It's almost a road map, because all of the
19 legislation that we have, most of it, practically
20 all of it, that essentially has come to us now in
21 the form of legislation, but which has evolved
22 over hundreds of years of courts, equity courts,
23 chancery courts in old England where this thing
24 all got started, equity courts. In Norfolk,
25 Virginia, we had a court -- specifically an equity

1 court. That's all it did was equity jurisdiction.
2 Some courts sit as law or they sit as equity.
3 It's the courts which, over hundreds of years,
4 have evolved these rules, these duties that the
5 trustee has. Being a trustee is a very serious
6 business.
7 Professor Scott, one of the
8 authorities -- now deceased, but one of the
9 foremost authorities on trust law in the United
10 States, has said that while there are all kinds of
11 fiduciary duties, all kinds of fiduciary
12 relationships, partners to partners, board members
13 of corporation to the shareholders, an agent to
14 the principle, the most intense fiduciary duties
15 are those of a trustee to the beneficiaries of the
16 trust. Now, let me make sure that I repeat that,
17 not some duty to the trustee, it is the trustee
18 who has these fiduciary duties to the
19 beneficiaries, all beneficiaries of the trust.
20 Q. You stated earlier that it's important
21 to find the purpose of the trust, and I believe
22 you stated that it's oftentimes hard to find this,
23 it's rare, but in documents such as this one that
24 we're dealing with today, there is a purpose. Can
25 you tell us what the purpose of the trust is?

1 A. Could I have the trust document to
2 refer to?
3 Q. You certainly may.
4 A. I have looked at it many times, but
5 I'd like to have it, if I may.
6 Q. There you go, sir.
7 MR. DAN SLOTCHIVER: It's Exhibit
8 No. 1, Your Honor. Would you like a copy?
9 THE COURT: I have it.
10 THE WITNESS: Let me elaborate just a
11 moment on that. My point is that -- and it's
12 interesting. It's expressed in a restatement of
13 trust. It's interesting, because I have taken
14 lawyers to task, because I can do that now,
15 because I'm not engaged in estate planning -- I
16 used to do that -- but I take lawyers who are
17 engaged in estate planning to task sometimes
18 because every trust has a purpose, at least one
19 purpose, maybe more, and you will find, if you
20 look at the probate -- if you look at Uniform
21 Trust Code in South Carolina, and you go into the
22 first five or six or seven sections, you'll find
23 purposes of the trust mentioned in that
24 legislation five, six different times.
25 The purposes of the trust are

1 important, but I take these estate planning
2 lawyers to task because my point is they should be
3 determining at the time the document is drafted,
4 at the time that the client is there and
5 everything is being put together, they should take
6 the time to explore carefully what the settlor,
7 the creator of the trust that wants that trust to
8 do, what those purposes are. But unfortunately,
9 and as the restatement says right here in black
10 and white, says it's difficult to find sometimes.
11 You have to cobble together, from reviewing the
12 language, what the purpose is.
13 In this case, in this case, all one
14 has to do is to go to Page 2, under recitals,
15 Section C: The intent and purpose of this trust
16 is to provide a discretionary spendthrift trust to
17 supplement public resources and benefits when such
18 resources and benefits are unavailable or
19 insufficient to provide for the special needs of
20 the beneficiary.
21 Now, that purpose -- our statute says
22 that a trustee must administer the trust in good
23 faith in accordance with the terms and the
24 purposes of the trust, in good faith. There must
25 be a demonstrated, bona fide, concerted effort to

1 administer that trust in accordance with the
2 purpose.
3 I won't go any further on that now,
4 but I think that will come up later.
5 BY MR. DAN SLOTCHIVER:
6 Q. Did you find any overriding directive
7 here?
8 A. I'm sorry. Overriding what?
9 Q. Overriding directive to the trustee.
10 Was there any overriding directive to the trustee
11 based on the language, or is that the language
12 you're talking about that's --
13 A. Well, I think that overriding
14 directive really begins with the purpose. Now,
15 the purpose is found among the terms of the trust.
16 The terms of the trust, in the broader sense, are
17 very important, because as the court well knows,
18 the duties that are now codified in, our case, the
19 South Carolina Trust Code, which became effective
20 in South Carolina January 1, 2006, about six
21 months before this terrible event that injured
22 Abbie Dorn so terribly. The Uniform -- the South
23 Carolina Trust Code became effective January 1,
24 2006.
25 But none of that -- all of that

1 legislation, almost all of it, is what is referred
2 to as default legislation. In most cases, not
3 all, but if the terms of the trust provide
4 differently from the codified law that has been
5 developed by the equity courts down through the
6 ages, if the terms of the trust provide
7 differently, and they don't require something
8 illegal, immoral -- maybe that's not even a
9 proper -- illegal against public policy,
10 et cetera, then the terms of the trust will trump
11 the code, will trump the statute.
12 So I've taken a very strong position
13 over the years with my trust officers and my
14 personnel, make very sure that you understand well
15 what the terms of the trust provide, because you
16 could find that where you think a particular
17 statutory provision governs, the terms of the
18 trust have trumped that provision.
19 Q. Can the terms of the trust override
20 the duty to act and exercise good faith?
21 A. No. One of the -- this mention
22 earlier that I made of the obligation of the
23 trustee to administer the trust in good faith in
24 accordance with the terms and purposes of the
25 trust is one of those fundamental foundational

1 responsibilities/obligations of the trust which
2 even the trust instrument, the terms itself,
3 cannot disavow.
4 Q. Mr. Walker, are you aware who signed
5 the trust document in this case?
6 A. Who signed it?
7 Q. Yes, sir.
8 A. It's here in front of me, but if I
9 remember, it's Dr. and Mrs. Dorn.
10 Q. Have you formed any opinions about the
11 conduct of the trustees with regard to adhering to
12 the purpose of the trust and protecting the trust
13 in this case?
14 A. Yes, I have, as a result of reviewing
15 many of these documents that are all designed a
16 standard part of the record here that's being
17 built in this case, starting with the terms of the
18 trust in this instrument that we're talking about.
19 To come back to the point about the
20 purposes, it's very clear to me, in my opinion,
21 that this purpose is focused on providing the
22 discretionary spendthrift trust the supplemental
23 funds that will be there to benefit, to be
24 available, when the funds are otherwise not
25 available, if and when they are. That's that

1 primary purpose.
2 Q. Did you have an opinion or an
3 understanding as to whether or not the trust, at
4 its creation, set up enough funds so there would
5 be excess, there'd be more than ample amounts?
6 A. Well, as I understand the background
7 of the creation of the trust, and it's all part of
8 the settlement of the malpractice action that was
9 brought as a result of those terrible injuries to
10 Abbie Dorn, the whole process here was designed to
11 come up with an amount of money, including this
12 substantial annuity, that would -- as they could
13 reasonably project, would be -- would not exceed
14 what would be necessary. That's stated in the
15 order of the court, and so that gets back to the
16 purpose of the trust. The trust -- the
17 trustees -- prudent persons serving as trustee
18 would be acutely aware of the need to adhere to
19 this purpose as reasonably as they could.
20 Q. Is the language that you're referring
21 to about not exceeding the amount necessary to
22 meet the special needs of the beneficiary, is that
23 the language at the bottom of Page 1 on the trust?
24 I believe it's the last two lines.
25 A. Let me see. Yeah. This is where it

1 appears. And this is, of course, a recital of the
2 background, including the settlement itself which
3 gives rise to this trust, and it says all of this
4 that's described above, that it will not be met
5 without this trust, and this trust means not only
6 the $31,000, or the 32, whatever it is, coming in
7 every month on the annuity, which, as I understand
8 it, from the way this is written and from other
9 aspects of this case that I've read, the annuity
10 payments monthly flow into the trust. This is
11 what is said, flows into the trust. And so you
12 have the annuity payments coming in monthly, and
13 you have this amount that started out at $910,000
14 or so as the lump sum funding of the trust at the
15 front end, and it's all designed to provide the
16 funds that are reasonably projected at that time
17 that everybody signed off on, and it was a part of
18 the settlement, and it says: Do not exceed the
19 amount that appears reasonably necessary to meet
20 the special needs of the beneficiary. That's both
21 the annuity payments and the $910,000 in the
22 trust, plus whatever earnings could be realized on
23 that $910,000 over the years of management.
24 Q. Mr. Walker, do you agree with -- and I
25 believe the record speaks -- the fact that this

1 trust was signed on November 2nd, 2007? Is that
2 correct?
3 A. I'm sorry. I missed your question.
4 Q. Do you agree with the fact that the
5 trust was, in fact, signed in November of 2007?
6 A. Yes. That was -- yeah, right here.
7 Q. And would you -- based on your review
8 of the records and your understanding of this
9 case, is it your understanding that the monies
10 spent or even the contemplation of monies to be
11 spent in the visitation act could not have been
12 known at this time?
13 A. You mean the amounts that were spent
14 for Abbie's needs?
15 Q. No, the amounts that would be spent in
16 the visitation action. They hadn't started yet,
17 correct?
18 A. No, that's right, absolutely.
19 Q. So based on the language here, do you
20 believe that it was contemplated that money would
21 be set aside here to pay for an action that had
22 not yet even begun?
23 A. No. You know, you've got to
24 recognize, we all have to recognize, I have to
25 recognize, that there are provisions in the trust

1 that give the trustee discretion with regard to
2 certain use of the funds for certain needs that
3 Abbie may have in the life of the trust, and that
4 is --
5 For example, and I think I followed in
6 the record that counsel for the petitioner,
7 Mr. Slotchiver, who is now questioning me, you
8 really have not questioned the amounts that were
9 spent by the trustees to make repairs -- I mean
10 not repairs, but to certain things that needed to
11 be done with the home. I mean, that is regarded
12 as a reasonable expenditure of funds.
13 And so what I'm saying is that there
14 are numerous -- there could be any number of
15 things that could come up that would impact this,
16 but let me make sure that I make this point:
17 Every power -- and it's right in our statute.
18 Every power that a trustee has, every power, is
19 subject to the duties of the trustee to exercise
20 reasonable care, skill, and caution.
21 Q. You used the term earlier prudence.
22 Is that correct?
23 A. Prudence means the exercise of
24 reasonable care, skill, and caution.
25 Q. What does that mean in the real world?

1 What would be the exercise of reasonable care?
2 A. Well, you'd have to -- you'd have to
3 come up with a particular fact circumstance, but
4 let's just pursue your question a little further
5 here the best way I can answer it. Let's go back
6 to these -- let's go back to these -- the
7 remodeling, or whatever it's referred to in the
8 record, that Dr. and Mrs. Cohen undertook.
9 Q. For example, the renovation where they
10 closed in the patio?
11 A. To make their home more appropriately
12 suited and an appropriate facility to treat their
13 daughter, to keep her in the condition she was in
14 so long as she lived. That would have to be -- in
15 order to deal with the reasonable care, skill,
16 caution, prudence, that would involve the trustees
17 acting jointly, which this requires, the trust
18 itself, acting jointly, to consider relevant
19 circumstances, the cost of the renovation, what
20 sort of professional advice they were getting
21 about how this ought to be done and basically put
22 all of that on the table as part of their
23 decision-making. That's an example of reasonable
24 care, skill, and caution.
25 Q. So even if, in their mind, they

1 believe that this would be of a benefit to the
2 ward, they would still have to exercise this
3 prudence?
4 A. They are required to -- let me put it
5 this way: The restatement says it beautifully,
6 and we use the same language, in effect, in two or
7 three places, two anyway, in our South Carolina
8 trust code. In deciding -- let me start over. A
9 trustee, in deciding whether and how to exercise a
10 power, is subject to and must follow, must comply
11 with, the duties -- the fiduciary duties of the
12 trustee.
13 Now, think about that. At the time of
14 the decision-making -- at the time of the
15 decision-making, a trustee, when deciding whether
16 to exercise the power and how to exercise the
17 power, is subject to these duties of exercising
18 reasonable care, skill, and caution. I've often
19 said for many years that if there is to be
20 prudence, it must be in the process. This is the
21 process. This is the process. This is how --
22 If you were asked, after you made a
23 decision to let your teenage child drive an
24 automobile under certain circumstances that was
25 later questioned when she was injured or he was

1 injured, and somebody really wanted to know did
2 you make -- did you act reasonably in letting that
3 child drive that car, the only way that can be
4 answered is to go back to that point in time when
5 you were trying to decide whether to let the child
6 drive the car or not, and how did you make that
7 decision? What circumstances did you consider
8 that led you to make the decision to let the child
9 drive the car?
10 It is then -- and the law says that's
11 when prudence must be exercised, if it is to be
12 exercised at all. It doesn't make any difference
13 what happens three, four, five years down the
14 road. That particular decision, which is the
15 decision in question, has to be dealt with. The
16 ultimate decision says nothing about whether it
17 was reasonable or not. The ultimate distinction
18 is just she was given the keys. She drove it.
19 In this case, the money was spent for
20 the renovation. What does that tell you about
21 whether it's reasonable or not? You've got to go
22 back in, and you've got to find out what went into
23 the decision-making. That's the process.
24 Q. Have you -- in your review of the
25 deposition transcripts and the testimony of this

1 trial, have you had the opportunity to follow
2 occasions wherein the Cohens were asked, both
3 Dr. and Mrs. Cohen, what prudence, what process
4 they had with making decisions as trustees in this
5 case?
6 A. I observed a number of occasions where
7 I could not find any evidence of an exercise by
8 the trustees of reasonable care, skill, and
9 caution. Not as the parents of Abbie. I'm not
10 here to express judgment about their actions,
11 their love, their interest for their child, but
12 I'm here to talk about when they put their trustee
13 hat on.
14 And I'm here to say, in my opinion,
15 that little, if any, evidence is in the record.
16 To the contrary, I find that Dr. Cohen was
17 obviously or has been and still is an extremely
18 busy physician, and I think by much of what he has
19 himself testified to that I have read, he has
20 essentially said that much of what was done in the
21 way of decision-making was essentially, if there
22 was decision-making, if decisions were made, they
23 were made by Mrs. Cohen.
24 Q. Did he have the authority to do that?
25 A. A prudent person acting as a

1 co-trustee must not -- must participate reasonably
2 in the administration of the trust. Any
3 reasonable person serving as a co-trustee would
4 not seek to delegate away any function. Any
5 fiduciary function that was anticipated at the
6 time the trust was put into existence, became
7 active, that each co-trustee would jointly
8 perform. That would not -- a prudent person
9 serving in that capacity would not do that.
10 Q. Based on that standard and based on
11 your review of the testimony and the deposition of
12 Dr. Cohen, do you have an opinion as to whether or
13 not he acted in a prudent manner as trustee?
14 A. Prudence meaning the exercise of
15 reasonable care, skill, and caution, in my
16 reasoned opinion, little -- I could not really
17 find anything that said to me, that showed me,
18 that Dr. Cohen was engaged actively in the
19 exercise of reasonable care, skill, and caution
20 himself as a co-trustee acting jointly with
21 Mrs. Cohen as co-trustee.
22 Q. So your opinion would be no?
23 A. Opinion is no.
24 Q. You did not make a finding that he
25 acted prudently?

1 A. Yeah.
2 Q. How about with regard to Mrs. Cohen?
3 A. Mrs. Cohen, for her part, I found
4 many, many statements about her confusion about
5 the details, not being able to continue to do
6 certain things that involved her role as trustee,
7 not her role as mother of Abbie, although I'm sure
8 that was very trying at times, but I've found in
9 my review, in my opinion, a situation where the
10 co-trustees were not really engaged and aware of
11 their obligations/responsibilities/duties as
12 co-trustees.
13 Q. Is that a finding that, in your
14 opinion, they breached their duty?
15 A. I put it in terms of, again, they have
16 a duty to administer the trust as prudent persons
17 would, and in my opinion, they did not do so.
18 Q. Thank you, sir. Mr. Walker, what is
19 your opinion about the success of the trustees in
20 administering the trust for the benefit of the
21 beneficiaries versus their own interests?
22 A. That's a tough one, because -- and I
23 looked at that quite thoroughly. I don't really
24 know how far I can go to get inside their heads.
25 I do know what the court said in California, and

1 who just happened to be a lawyer. I think that
2 court decision deserves a great deal of respect
3 and acknowledgment. I mean, that's a decision in
4 California. And there are things in that decision
5 that deal with interests that Mrs. Cohen,
6 Dr. Cohen, interests that they had as
7 grandparents, and I don't know that it's my role
8 to get inside their heads, but I will say that a
9 reasonable -- that a prudent person serving in
10 this particular situation as co-trustees, prudent
11 persons serving as co-trustees, would have
12 acquainted themselves with one of the most
13 fundamental duties of a trustee, and that is to
14 never put the interest of anyone else, anyone
15 other than the beneficiaries, ahead of the
16 beneficiaries, most importantly, the interest of
17 the trustees, and a prudent person caught up in
18 this situation I think would have to acknowledge
19 that somewhere mixed up in all of this is not only
20 my interest for Abbie, but my own interest, and
21 maybe I shouldn't be serving as trustee.
22 Q. Mr. Walker, what would a -- let's put
23 yourself a little bit in this position as a
24 trustee. If you were a trustee in this matter,
25 and you were approached by a guardian asking to

1 spend money to litigate the issue of visitation in
2 California, what would you do? What would a
3 prudent person do at that point?
4 MR. DAVIS: Your Honor, I object, Your
5 Honor. And just for the record, we're not aware
6 of what he was going to be testifying about, we
7 did not know he was going to be called 'til
8 recently, so I'll be the one making the questions
9 and making objections.
10 He is opining about trusts. He's made
11 it clear that he does not understand or does not
12 have a lot of experience, rather, with d4A trusts,
13 and he's asked -- Mr. Slotchiver's asked him to
14 put himself in the position of the Cohens when he
15 has not been -- does not have experience to
16 warrant that, so I think that would be prejudicial
17 and not helpful to the court, Your Honor.
18 THE COURT: Mr. Slotchiver?
19 MR. DAN SLOTCHIVER: Your Honor, he
20 has been deemed by the court to be an expert with
21 reference to trust administration. He's talked
22 about his knowledge with reference to trusts in
23 general, including the special needs trust. He's
24 talked about the vast amount of experience not
25 only testifying in court, but also in his role as

1 trustee for many, many years.
2 The question I'm asking -- he's talked
3 now about the issue of prudent persons, what they
4 would do, the process they would go through, and
5 I'm asking him now what the process would be for a
6 prudent person, were they faced with the same
7 situations, instead of being what happened --
8 instead of looking at what's happened, looking at
9 what a prudent person would do with the same set
10 of facts.
11 THE COURT: Overruled. I think it's
12 inappropriate. I think it's something you can
13 cover in your cross, Mr. Davis.
14 MR. DAVIS: Thank you.
15 BY MR. DAN SLOTCHIVER:
16 Q. Once again, Mr. Walker, assuming you
17 were the trustee, but you're a trustee in this
18 particular matter, or placing yourself in that
19 position.
20 A. Yes, sir.
21 Q. What would a prudent person do, the
22 same set of circumstances, and the guardians come
23 to you, and they say: We want to use trust funds,
24 we want you to fund litigation in California
25 relative to visitation?

1 A. Prudent person would go right back to
2 the purpose of the trust. There's a great deal
3 here said about how much concern there has been by
4 the trustees with regard to custody claims,
5 because that might take some money out of the
6 trust. Now, of course, it also, quite properly,
7 might jeopardize the Medicaid, but there was
8 concern that it could diminish the trust because
9 of the -- the child support is what I mean, child
10 support, I'm sorry, child support.
11 But the same concern to adhere to the
12 purpose of the trust, which is to keep that fund
13 as well preserved, and plus earnings, reasonable
14 earnings as possible, same reasoning applies to
15 the visitation expenses. So what a prudent person
16 would do with regard to visitation, having had the
17 opportunity, the crucial time of Dr. -- what is
18 it, Mallinax? I read his deposition, if I've got
19 that pronunciation.
20 BY MR. DAN SLOTCHIVER:
21 Q. Mamelak, yes.
22 A. Mamelak. The crucial time of what
23 he -- of his involvement, as far as I'm concerned,
24 is back in those days not too far removed from the
25 horrible injuries to Abbie --

1 Q. Why don't you tell us --
2 A. -- when he was trying to communicate
3 with not only the petitioner, but Dr. and
4 Mrs. Cohen. And at least in Mrs. Cohen's case,
5 she basically didn't want to hear what he had to
6 say at that time. Now, this was not four years
7 later at the time of the deposition; this was
8 then.
9 And what I'm saying to you is that a
10 prudent person put in the same position would have
11 listened to what that physician said, would have
12 taken that into account, would have considered it,
13 and if there were issues, would have then and
14 there gone forward to get more competent,
15 qualified medical advice, testing, whatever, then
16 and there, to try to deal with the question of is
17 visitation, is it reasonable for that to be
18 something that we are pursuing as trustees,
19 because we've got to satisfy ourselves as prudent
20 persons that this makes sense. If it doesn't,
21 then they have a duty to stop the expense.
22 Q. Does authority -- is that something to
23 be considered, the authority to do something, as a
24 trustee?
25 A. Well, the authority -- the

1 authority -- if you're referring to some of the
2 language in the trust, those are powers.
3 Q. The fact that you have a power, does
4 that --
5 A. Those are powers, okay. You know, a
6 power, which we recognize in the comments in our
7 trust code, a power is not a duty. A power makes
8 it -- it's allowable, it's allowable, but it is
9 not -- it's not a duty. It's not something that
10 the trustee has to do. The power is trumped by
11 the duty of the trustee to exercise reasonable
12 care and skill and caution when deciding whether
13 to exercise the power and, if so, how.
14 Q. I think I've seen it said differently
15 where I've seen reference to the power -- or the
16 authority to do something does not necessarily
17 mean that the exercise of that authority --
18 MR. DAVIS: Your Honor, I object. Is
19 he testifying for the expert, or is the expert
20 testifying?
21 MR. DAN SLOTCHIVER: I'm just asking a
22 question.
23 MR. DAVIS: It sounds like he's giving
24 expert testimony, Your Honor.
25 THE COURT: Thank you. If you could

1 move on, Mr. Slotchiver.
2 MR. DAN SLOTCHIVER: I will, Your
3 Honor.
4 BY MR. DAN SLOTCHIVER:
5 Q. Understanding your testimony a moment
6 ago, that, I understand, dealt with, I take it,
7 the mental ability of the person to enjoy the
8 benefit. Is that correct? Does that apply, in
9 part, to the mental ability of the ward, in this
10 case Abbie, to enjoy the benefit?
11 A. Well, you know, I refer to the
12 language that appeared in the order, or the
13 statement of opinion, I think, from the California
14 court that -- and I would have to get the document
15 to put the exact language on the record here, but
16 there's a statement, a very simple statement, at
17 the bottom of one of the pages that says that
18 visitation -- here's the point: It expresses a
19 strong doubt as to whether visitation by the
20 children with Abbie would really provide any
21 benefit at all to Abbie.
22 Q. How about cost? Is cost ever a
23 consideration? Is that something a trustee should
24 consider?
25 A. Cost?

1 Q. Yes, sir.
2 A. Always. The trustee, a trustee, is
3 only authorized to pay out of the trust, to pay
4 expenses that have been -- that are reasonable.
5 Q. So there might be something --
6 A. And it's reasonable not only in the
7 amount, but it's reasonable in the -- as our
8 statute says, certainly the restatement, in the
9 prospects of success. In other words, it says
10 clearly that -- and I think it's in the comment on
11 our code, that a trustee has to decide and has to
12 go through the process of deciding what is the
13 probability of success here. I can't be -- I
14 can't be just -- a prudent trustee, a prudent
15 person, would say: I can't be spending this money
16 month after month after month on something that
17 objectively, which is the standard, objectively
18 doesn't appear to be very likely to be successful.
19 Q. Mr. Walker, you mentioned month after
20 month after month, and that brings me to the next
21 question. Is the process a one-time deal, if it's
22 a decision, you make the decision once, and you
23 never look back at it?
24 A. I think that a prudent trustee -- and
25 one of the things that I noticed early on in

1 looking at this is -- and it is perhaps something
2 that bothered counsel for the trustees way down
3 the road much later is the -- a prudent person --
4 and I'll get to this point of how I see myself
5 dealing with it, albeit in a corporate trustee
6 environment, but we used to have a committee that
7 met. And we had a long table. And I was the
8 chairman of that committee from March of 1971
9 until February of 1994, and we met at least
10 monthly, and issues -- I can guarantee you that if
11 this case -- if this case were being administered
12 by us, it would have been in front of that
13 committee, okay, and we would have wrestled with a
14 lot of this, because of what we were aware of,
15 what was already coming out. And would we have
16 turned our back on Dr. Mamelak? No. We would
17 have wanted to know what Dr. Mamelak was really
18 trying to say to us, and that would be one of the
19 considerations that we would use in making
20 decisions.
21 Now, with regard to the visitation
22 specifically, it's a question not of what the
23 trustee subjectively believes or hopes for or
24 wants. That's not the test. A trustee shall
25 administer a trust as a prudent person does or

1 would. The standard is the prudent person in the
2 shoes of the trustee. As the comments say, it is
3 equivalent to the reasonable person in tort law,
4 which we're all familiar with if we've ever had an
5 accident out there on the highway. It is an
6 objective standard. It is not what the trustee
7 personally, subjectively wants. That's fine for
8 the parent, but not the trustee.
9 Q. Mr. Walker, there's been some -- I
10 will ask you: Are you familiar with language
11 within the trust document that talks about the
12 word solely?
13 A. Yes.
14 Q. Can you please, from a trustee
15 perspective, tell me your understanding, in your
16 discretion, what the word solely would mean in
17 this particular matter?
18 A. It has to be read in conjunction with
19 the entire document. It must be read in
20 conjunction with the purpose of the trust, which
21 certainly has the state in mind as a potential --
22 if there are any assets there after Abbie dies,
23 whenever Abbie dies, this trust will provide some
24 reimbursement, and ultimately, of course, Abbie's
25 children, and you've got to read it in that

1 context. In fact, you've got to read it in the
2 context that the trust repeatedly says of Abbie,
3 primary beneficiary. It is only when you get to
4 the matter of powers that the solely comes up.
5 Well, there may be one other place that it ties
6 into.
7 But during Abbie's lifetime, Abbie is
8 the primary beneficiary, but during her lifetime
9 in the administration of the trust, she is the --
10 will be the one who would benefit solely during
11 her lifetime, but she is not the sole beneficiary.
12 It's different. In fact, if you look at the
13 prefatory language to the powers, it says to carry
14 out the purposes of the trust, purposes of the
15 trust, and subject to any limitations elsewhere in
16 the instrument, the trustee is vested with the
17 following powers. And I believe it is maybe the
18 last power. In the administration and management
19 of the trust, including, without limitation, so
20 forth, the trustee shall consider solely the
21 interest of the beneficiary.
22 I interpret that -- even with all of
23 these qualifiers about the purposes for the trust
24 and other provisions of the trust and limitations
25 and so forth, what this is really referring to is

1 in the day-to-day administration of the trust
2 while Abbie lives. While Abbie lives.
3 Now, there's another provision in here
4 somewhere, I think -- I'm not sure, I'd have to
5 review it a little more closely, but I think that
6 it does -- and maybe this is where I was thinking
7 about. It does say -- it probably does speak to
8 the question of just exactly how much discretion
9 the trustee can have to pay expenses of others,
10 other than what would really be like the
11 renovation expenses at the Cohens' home for
12 Abbie's care.
13 During her lifetime, she -- I mean,
14 the reimbursement to the state, any leftover at
15 the end of the trail that go to Abbie's children,
16 that's all after her death. Clearly, it's in
17 there. I mean, it speaks for itself. They are
18 beneficiaries of the trust. They're just not
19 beneficiaries during Abbie's lifetime.
20 Q. Thank you, sir. As a trustee, is
21 there any separate prudence that must be made if
22 you're going to hire a family member of the ward?
23 Are you familiar with the issue that's come up in
24 this case?
25 A. A prudent trustee, in my reasoned

1 opinion, would be very mindful of the requirements
2 and obligations of a trustee, the requirements,
3 the duties of loyalty, which means no
4 self-dealing, no conflicts of interest.
5 A careful reading of our statutes
6 here, which involve the duties and powers of
7 trustees, tell us a trustee who has acquainted
8 herself or himself, as they have a duty to do,
9 acquainted himself with that duty, is that when
10 you arrange for a service like this with a child,
11 Jeffrey, you've stepped into a potential
12 self-dealing conflict of interest situation.
13 Now, what a prudent trustee, in my
14 opinion, would do, recognizing that, would
15 approach the court and would seek to get the --
16 either get the court's approval or don't do it.
17 As I understand the statute is if it
18 turns out to be fair and necessary, since it is
19 the child and not the trustee herself/himself,
20 that the taint or the problem could be removed,
21 but I think a prudent trustee, not having an
22 answer to that, would up front avail
23 himself/herself/themselves of the court. That's a
24 pretty serious move on the part of the trustees.
25 Q. Having reviewed the depositions and

1 the testimony at trial, do you have an opinion as
2 to whether or not the trustees violated their
3 responsibilities and engaged in self-dealing with
4 regard to the hiring of Jeffrey Cohen?
5 A. In my opinion, there's no question but
6 that there's a violation, per se, because of the
7 relationship, and so I guess that's the answer to
8 your question.
9 Q. And do you have an opinion as to
10 whether the Cohens breached their duty as trustees
11 by spending a considerable amount of funds -- I
12 know you haven't calculated funds, to my
13 understanding, but by spending a considerable
14 amount of funds in the litigation in California
15 over the issue of visitation?
16 A. Yes, I have developed an opinion on
17 that. I, of course, have already spoken to this
18 subject here today in my testimony earlier. I
19 find no -- I find no record -- no evidence on the
20 record that Dr. and Mrs. Cohen or either of them
21 individually, independently, made timely efforts,
22 reasonable good faith efforts, to explore
23 objectively the question of whether the -- that
24 Abbie could get any benefits from the visitation
25 by the children. The court expressed itself --

1 MR. DAVIS: Your Honor, I object. Is
2 he opining as to whether Abbie gets a benefit from
3 visitation? He's certainly not qualified to do
4 that.
5 MR. DAN SLOTCHIVER: That's not what
6 he opined to, Your Honor.
7 THE COURT: I don't believe he said
8 that.
9 MR. DAVIS: Ask the question again.
10 I'm also wondering if what he's asking is beyond
11 what he's pled in his pleadings, Your Honor.
12 MR. DAN SLOTCHIVER: It is not, Your
13 Honor.
14 THE WITNESS: I can't understand what
15 counsel's saying, so either speak up, please, sir,
16 or repeat it for me.
17 MR. DAN SLOTCHIVER: Well, I'll move
18 on, if I may, Your Honor.
19 THE COURT: Yes, sir.
20 BY MR. DAN SLOTCHIVER:
21 Q. Assuming, hypothetically, that there
22 was some testimony to support some amount of
23 prudence as to some benefit, some benefit that
24 Abbie would receive --
25 A. On the visitation?

1 Q. -- on the visitation, would the costs
2 incurred still be an issue?
3 A. Yes, absolutely.
4 Q. Are there any other opinions that you
5 can offer or you're here to offer today that we
6 have not discussed? I know we've discussed a lot.
7 A. Well, we've been from one to the next.
8 As I say, my -- as I said earlier, my purpose, the
9 reason I was called to testify today, was to
10 express my opinion as an expert, as somebody
11 that's been engaged in this business of being a
12 trustee for such a long time, to basically testify
13 as to what a prudent person serving in these
14 positions, either of these positions, would have
15 done or not done, and I think that I have covered
16 most of what I wanted to say.
17 One thing that I did plan to say, Your
18 Honor, is that I have been asked many times by
19 either co-trustees that we've worked with as the
20 corporate trustee, and we've had many situations
21 where we've had individual co-trustees, and I
22 always told them that they needed to not only try
23 to get an attorney who could at least talk with
24 them about -- help acquaint them with their
25 duties, but they would be well advised to get a

1 copy of the South Carolina statutes at that time
2 on trustees' duties and powers and also get a copy
3 of the volume of the restatement that deals with
4 duties and powers of trustees. In my opinion,
5 these two documents, these two publications, are
6 extremely helpful to have at your fingertips, and
7 if you don't understand what you're reading, then
8 get back to your attorney.
9 My point in all of this is that since
10 January 1st, 2006, we've had the South Carolina
11 trust code, and Section or Part 8 of that code,
12 which I was instrumental in working on when we had
13 our bar committee who dealt with the whole trust
14 code, as Your Honor remembers, I was responsible
15 for the section that dealt with duties and powers
16 of trustees. It's an excellent, excellent road
17 map for any trustee to have to help that trustee
18 discharge that duty of acquainting herself or
19 himself with those duties.
20 Ignorance of these duties is
21 absolutely no defense, clear, and advice of
22 counsel -- I want to make sure that I go on the
23 record as saying I read in the transcript that
24 there were comments about trustee not having made
25 the decisions, all of them, or not having made

1 them alone. Make no mistake about it, unless the
2 trustee has effectively delegated away the duties
3 of trustee, the ultimate decisions are the
4 trustee's, and the advice of counsel merely assist
5 the trustee in coming to whatever decision the
6 trustee decides to come to.
7 That's important to remember, because
8 going out and obtaining advice of counsel really
9 is a prudent thing to do, but what you do with
10 that advice, how -- again, whether you follow it
11 and how you follow it and how much you follow it,
12 that all is subject to reasonable care, skill, and
13 caution as you are deciding, as trustee, what to
14 do with that advice you got.
15 Q. So even if you follow the advice of
16 counsel, you're not necessarily shielded?
17 A. You are not. You are not shielded.
18 Now, you may have a good strong argument against
19 counsel, but that's a whole 'nother ball of wax.
20 Q. Are all of the opinions that you have
21 given today, are they to a reasonable degree of
22 professional certainty?
23 A. Yes, yes.
24 Q. Thank you, sir.
25 A. I would say that -- to just kind of

1 summarize here, I think it's come through, I hope
2 it's come through, that my assessment as an
3 expert, with the experience I've had and so forth,
4 I just see two very busy people, very, very
5 involved in the care of their terribly, terribly
6 injured daughter, having taken on and accepted the
7 trusteeship, and with no -- I mean, there's no
8 malintent or evil or anything. They just -- in my
9 impression, my opinion, they just never got --
10 they never got it. They never realized what they
11 had and what being a trustee was all about.
12 Q. In your experience, I know you've had
13 30-some-odd years, would it be fair to say that
14 you've overseen -- or interacted is perhaps a
15 better word -- with thousands of trusts?
16 A. Over my years of experience, I
17 couldn't tell you how many, but there are
18 thousands of trusts that were administered under
19 my watch, and many of them, when problems were
20 arising or tough decisions had to be made, came to
21 that table that I just told you about that I was
22 sitting at the end of as chairman.
23 Q. In that capacity, in your interaction
24 capacity, whether as an expert or in your trust
25 capacity at the bank, have you seen -- would it be

1 your opinion that the abuses that you've testified
2 to in this case are more than not, in other words,
3 you've seen more here, and are they clearer here?
4 A. Well, I'd like to try to answer that
5 this way, and I don't have to say it in a whole
6 lot of words. I mean, I've already said it.
7 MR. DAVIS: Your Honor, I object.
8 THE WITNESS: Almost every --
9 MR. DAVIS: I object, sir.
10 Is he going to recite what happened in
11 all of his thousands of cases? Are we saying as
12 an expert, he believes they have not acted
13 prudently? I mean, he's asked him a large
14 question. He said: Out of the thousands and
15 thousands of trusts that you've administered or
16 you've seen violations of a duty, how is this? I
17 mean, I'm not exactly sure. That's kind of broad,
18 Your Honor. I'm not sure if that's a fair
19 question or a fair response.
20 THE COURT: I'm going to let him
21 answer it, and you can go over that on your cross,
22 Mr. Davis.
23 MR. DAN SLOTCHIVER: Coming up very
24 shortly.
25 BY MR. DAN SLOTCHIVER:

1 Q. If you can answer the question.
2 A. What was the question?
3 Q. In the thousands of trusts that you've
4 interacted with over your career, either as a
5 trustee or as an expert, would you classify this
6 as more clearly abusive or abused than most or
7 less than most or somewhere in the middle, the
8 actions that you said you were going to answer
9 it --
10 A. The way I started out to try to answer
11 it is that if you look at the duties of a trustee,
12 the responsibilities that I've tried to point out
13 here that, in my opinion, a prudent person, which
14 is the standard, would have done or not done,
15 there are one right after the other where the
16 prudent person would have done differently or
17 would not have done that was done, and so the
18 answer to your question is that there are not
19 many. There can't be many that would be -- would
20 have more shortfalls or more examples of the
21 actual trustees not meeting the standard, or
22 standards.
23 Q. Thank you, Mr. Walker. If you'll
24 answer any questions that other counsel has.
25 A. Be glad to.

1 CROSS-EXAMINATION
2 BY MR. DAVIS:
3 Q. I hazard to say good evening,
4 Mr. Walker.
5 A. Good evening. You folks have been
6 down here a lot of evenings, haven't you?
7 Q. I know. I was going to say good
8 afternoon, but it is after 5:00. Great goodness.
9 First of all, I want to thank you.
10 I'm a trust guy as well, an accounting guy, so I
11 sort of smelled you when you came in, I recognized
12 it, I'm a familiar mindset, so I appreciate your
13 contributions.
14 I think that Mr. Slotchiver said
15 30-something years. It seems like this is like
16 50-something years. It's 54? Did I calculate
17 that right?
18 A. Well, I mean, I guess it depends on
19 when you get started. I know that I have already
20 been noted as one of the Nifty Fifty here in South
21 Carolina and also in Virginia.
22 Q. Well, I do -- I'm not being -- I'm not
23 saying it for any other reason than I mean it, but
24 thank you for your contributions to the trust
25 code. We needed some help here.

1 A. Thank you.
2 Q. I want to go back to -- I've got a
3 number of things, and I also will ask yours and
4 the court's indulgence.
5 MR. DAVIS: As everyone knows, we have
6 not had an opportunity to prepare any questions
7 for him. We did not know if he was coming or
8 haven't had a chance to depose him, so we're going
9 to do our best to piece this together, so I would
10 certainly beg the court's indulgence in that
11 regard.
12 BY MR. DAVIS:
13 Q. Mr. Walker, you really don't work a
14 lot with d4A trusts, right?
15 A. I'm sorry? Can you get that -- I
16 don't what?
17 Q. You really don't work with d4A trusts,
18 do you?
19 A. With special need --
20 Q. With d4A trusts.
21 A. I'm having trouble understanding you.
22 Q. D4A.
23 A. Well, you're asking me the terminology
24 that the special needs trust comes under? Are you
25 trying to trick me?

1 Q. Are you familiar -- I'm trying to --
2 I'm not trying to trick you. I'm trying to expose
3 your lack of experience with regard to special
4 needs trusts and how they're different than the
5 normal trusts that you've worked with for all
6 these 50 years or so.
7 A. I don't see them as very different at
8 all, Counsel. As a matter of fact, I don't see
9 much difference in them whatsoever, except for the
10 fact that the purpose is unusually -- and maybe
11 you could share with me some of your experience
12 with how well you set up the purpose of the trusts
13 that you draft, but they are -- the purpose, or
14 purposes, the intent and the purpose, is something
15 that is very clearly drawn, and I understand why,
16 and I think I've tried to make -- I've tried to
17 speak to why I think that's so important here.
18 But in terms of what the trustees are
19 responsible for and what their duties are, there's
20 nothing new under the sun here. If you want to
21 take me through some litany of what you think are
22 different and let me comment on them, I'd be glad
23 to. What is so different?
24 Q. That was my question to you. I've
25 been doing them since --

1 A. I don't see any difference, other than
2 the fact that these particular trusts have a
3 genesis, have a reason for being, that is unique.
4 Q. And so it is different than a regular
5 trust?
6 A. Well, I mean, in terms of its reason
7 for being, why they come into existence.
8 Q. Have you reviewed the statute
9 regarding special needs trusts and the --
10 A. Yes. I pulled out the federal
11 statute, and I pulled out the California statute,
12 and I pulled out what I could find in South
13 Carolina, and I repeat, there is nothing new under
14 the sun when it comes to the duties of the
15 trustee.
16 Q. What did you review as far as the
17 statutes for d4A trusts?
18 A. I don't remember exactly. I pulled up
19 what I could find that was under the federal law.
20 I pulled up what I could find under California.
21 And I didn't bring them with me, and I don't
22 really know what the sites are.
23 Q. So basically, you're saying a normal
24 trust, say a QTIP trust, is the same thing as a
25 special needs trust? Is that what you're saying?

1 A. Insofar as the duties of the trustee
2 to administer the trust in good faith with regard
3 to or in accordance with the purposes in terms of
4 the trust, no different.
5 Q. No different?
6 A. Loyalty, no difference. Prudence, no
7 difference.
8 Q. Duties and powers, no difference?
9 A. Duties and powers are set out here.
10 There may be a power here or a power there,
11 whatever, but they all take the back seat to the
12 duties of reasonable care, skill, and caution. I
13 don't know what you're getting at, Counselor.
14 I've answered your question. There isn't that
15 much difference.
16 Q. No difference between that and, say, a
17 credit shelter trust that provides part for a
18 spouse during her life, and then when the spouse
19 dies, it goes on to --
20 A. Distributional requirements. I mean,
21 there could be some differences on when the
22 distributions come or how discretion -- on
23 standards for discretion, yeah.
24 Q. Like obligations of a trustee to look
25 after the different beneficiaries.

1 A. Look, let me put it to you this way:
2 I've looked at this, and if I was still at the
3 bank, and I was still sitting at the end of that
4 table, we'd administer that special needs trust,
5 wouldn't be anything to it, just like -- we would
6 just take into account the particular
7 circumstances of that trust, just as we would in
8 the case of a QTIP trust versus a credit shelter
9 trust or some trust that had generation skipping.
10 Q. And treat the beneficiaries just the
11 same?
12 A. I'm sorry. The what beneficiaries?
13 Q. And treat the beneficiaries just the
14 same. Is that what you're saying?
15 A. I don't know what you mean by that.
16 Explain yourself, Counsel.
17 Q. Look after the interests of the
18 beneficiaries just like you would in any trust.
19 A. Well, as they're provided for in the
20 trust, absolutely.
21 Q. And you testified earlier that the
22 beneficiaries here all -- and I think you
23 emphasized the word all -- all the beneficiaries
24 have to be looked after?
25 A. They have to be dealt with fairly in

1 accordance -- you understand the duty of
2 impartiality, Counsel.
3 Q. I certainly do.
4 A. Yeah. And I'm saying that the duty of
5 impartiality applies to this special needs trust
6 in the context of the special needs trust, just as
7 it does in any of these other trusts you're
8 talking about. Now, if you're asking me whether a
9 special needs trust is verbatim a QTIP trust, I'd
10 say no.
11 Q. Tell me about how -- say, for
12 instance, you've got a trust, a credit shelter
13 trust or a QTIP trust, and you had to balance --
14 MR. DAN SLOTCHIVER: Your Honor, I
15 think he --
16 MR. DAVIS: This is very important.
17 MR. DAN SLOTCHIVER: May I object?
18 Your Honor, I think he's covered this territory.
19 He has asked about the differences. The witness
20 has testified repeatedly to the same answer over
21 and over, and he can keep on throwing different
22 examples. I think we're going to keep on getting
23 the same answer. I would ask that we move along.
24 THE COURT: I'm going to give him a
25 little bit of latitude.

1 MR. DAN SLOTCHIVER: Thank you, Judge.
2 BY MR. DAVIS:
3 Q. Can you explain to the court how do
4 you handle the balancing act with a QTIP trust or
5 a credit shelter trust between the primary
6 beneficiaries and the contingent beneficiaries?
7 How would you handle that balancing act?
8 A. Counsel, what does that have to do --
9 respectfully, what does that have to do with what
10 you're trying to learn from me?
11 Q. I'll be happy to --
12 A. Are you questioning my ability?
13 Q. Yes, I am, with regard to d4A trusts,
14 absolutely.
15 A. Then ask me about the QTIP. I mean,
16 ask me about the special needs.
17 Q. Well, sir, that's what I'm attempting
18 to do. I'm attempting to do that.
19 A. Well, I would appreciate it if you
20 would stick to the subject. I mean, what are you
21 going to do, go off -- the next thing you know,
22 you're going to be talking to me about generation
23 skipping.
24 Q. Would you like to?
25 MR. DAVIS: Your Honor, I would ask

1 that you instruct the witness to just answer the
2 questions.
3 THE COURT: Sir, if you could answer
4 counsel's question.
5 MR. DAN SLOTCHIVER: And Your Honor, I
6 would ask that you ask counsel to refrain from
7 being argumentative.
8 MR. DAVIS: I'm certainly not
9 intending to be argumentative, Your Honor.
10 Actually, the witness, I believe, is the one being
11 argumentative.
12 THE COURT: Thank you.
13 BY MR. DAVIS:
14 Q. Please explain -- there's two --
15 there's a different balancing act between primary
16 beneficiary and contingent beneficiary, and this
17 is a critical part of this case, and the balancing
18 act between a primary beneficiary and contingent
19 beneficiaries.
20 Can you explain how, in your corporate
21 setting as a corporate trustee, you handle the
22 balancing act between a primary beneficiary and
23 contingent beneficiaries?
24 A. Generally?
25 Q. You're the expert.

1 MR. DAN SLOTCHIVER: Your Honor, he
2 has not been called as -- he has not been called
3 as an expert to talk about the difference between
4 these two types of trusts. He has been called as
5 an expert to talk about trust administration.
6 THE COURT: Which I think goes
7 directly to this question.
8 THE WITNESS: Ask your question again,
9 please, Counsel.
10 BY MR. DAVIS:
11 Q. Yes, sir. Please describe for the
12 court the mechanics of the balancing act as
13 trustee you go through when you balance the
14 interest of a primary beneficiary versus the
15 interest of a contingent beneficiary.
16 MR. DAN SLOTCHIVER: Your Honor, I do
17 believe he's hitting on the difference between
18 distribution rights and trustee responsibilities.
19 MR. DAVIS: Your Honor, I think you're
20 well aware of what I'm doing. There's a
21 difference in a d4A trust, and he's obviously
22 exhibited that he's not aware of the differences
23 between the balancing act between primary
24 beneficiaries and contingent beneficiaries, and I
25 think that is very critical to his credibility

1 with regard to a d4A special needs trust, based on
2 the language in the trust, and that is what I'm
3 establishing. I believe I've clearly established
4 that, Your Honor.
5 THE COURT: I'll allow it.
6 THE WITNESS: Counsel, I'm going to
7 answer your question this way: I'm going to look
8 to the special needs trust, okay, and I'm going to
9 say to you what I said earlier. During the
10 lifetime of Abbie, there are no benefits that
11 flow, no distributions that are to be made, to the
12 estate or to the children of Abbie.
13 During the administration of the
14 trust, good faith adherence to the purpose of the
15 trust is required of the trustee, and therefore,
16 the trustee must be very mindful of what gets paid
17 out of that trust for anything other than what the
18 trustee, in the exercise of reasonable care,
19 skill, and caution, that is to say, in the
20 decision-making process before the distribution
21 decision is made, the protection of those assets
22 that remain in that spendthrift trust must be
23 protected. The distributions, the discretionary
24 distributions, are subject to the same sort of --
25 the reasonable care, skill, and caution exercise

1 that must be made on any discretionary
2 distributions.
3 Now, the balancing of the interest I
4 would say to you is -- let's move into that a bit.
5 I would have expected to see in this record a
6 definite set of records, a definite portion of the
7 records, that would deal with how the funds were
8 invested and managed. I found none, none that
9 really discharged the duty of the trustee to
10 invest and manage the trust assets as a prudent
11 investor would.
12 So I'm answering your question. We
13 would concern ourselves mightily with how to
14 prudently invest those assets so as to protect not
15 only the interest of the current beneficiary
16 during her lifetime, Abbie, but also to protect
17 those remainder interests, to the extent that they
18 deserve protection, after Abbie's death.
19 BY MR. DAVIS:
20 Q. So there should be a certain level of
21 the deference given to the remainder of
22 beneficiaries. You need to protect -- is what
23 you're saying you need to protect some corpus and
24 trust assets for the remainder beneficiaries?
25 That would be a fair and reasonable --

1 A. Well, the duty of impartiality,
2 Counsel, says you have to be not equal, but fair.
3 Q. Fair to the remainder beneficiaries?
4 A. Yeah, uh-huh.
5 Q. Are you aware that this trust does not
6 operate that way, that this special needs trust
7 was not set up to operate that way? Are you aware
8 of that?
9 A. That's not what I understand from the
10 document.
11 Q. We'll go on to that. Before we do
12 that, I would like to ask you, what all have you
13 reviewed before you came in here today to testify
14 with regard to this case?
15 A. What have I reviewed?
16 Q. What have you reviewed, sir?
17 A. I've reviewed most of the deposition
18 transcripts. I've reviewed the order from the
19 court in California. I reviewed the document --
20 the one-page document that announced or proclaimed
21 the dissolution of the marriage. I have reviewed
22 the petitions that have been filed here in this
23 court. I reviewed the temporary restraining order
24 transcript, the entire transcript. I've reviewed
25 the documents that were sent from this court to

1 Mr. Slotchiver. I've reviewed the -- I have read
2 the streaming of the testimony in the court. I've
3 also read hard copy of that copy since Day 1 of
4 this trial. I have reviewed the South Carolina
5 Trust Code, particularly with regard to the duties
6 and powers of the trustee, and I have reviewed
7 certain sections of a restatement of trust, which
8 I referred to here today.
9 I don't know that I've covered
10 everything, but most everything that I've covered,
11 except the code and the restatement, are all in
12 the record. I've reviewed everything that
13 Mr. Slotchiver has sent me.
14 Q. Have you reviewed Lisa Meyer's
15 affidavit with the attachments that's been
16 admitted in the record here? Do you know who Lisa
17 Meyer is?
18 A. She's the attorney in California.
19 Q. She did a very large declaration -- we
20 filed it with this court -- and it went into great
21 detail about the action in California and the
22 different parts that went on in that action. Have
23 you reviewed that?
24 A. I don't -- I don't recall that, an
25 affidavit.

1 Q. That's called a declaration. I guess
2 it's the same thing. If that declaration pointed
3 out that the costs in California -- well, first of
4 all, that the marital action in California was
5 actually suggested by Dan Dorn, to start with, and
6 that the costs in California were actually driven
7 higher because of Dan Dorn, would that influence
8 your opinion at all?
9 A. Well, I'd want to know why? How?
10 What did she say about why?
11 Q. In great detail, sir, and we've
12 also --
13 A. Well, I haven't read it, so either get
14 it for me and let me read it so I can speak to it
15 or read it to me.
16 Q. That would have some influence on your
17 opinions?
18 A. I don't know until I've read it. How
19 can I answer it until I've read it?
20 Q. That's fair. I agree. I understand.
21 I believe you testified that you've read
22 Paragraph 17 of the --
23 MR. DAVIS: We've got the declaration
24 here. We are all on sort of the fast-track, the
25 Disney fast-track, trying to speed this case

1 along. I understand, Your Honor.
2 THE COURT: I'm happy to take a few
3 minutes.
4 MR. DAVIS: If you would like to read
5 that declaration of Lisa Meyer that we have, we
6 would be more than happy to provide it to you. It
7 is somewhat large.
8 THE COURT: Shall we take ten minutes?
9 THE WITNESS: I can tell you, Counsel,
10 that I have not read this, okay. This is one
11 thing that I did not review. Now, I'm looking at
12 the declaration itself, and I'm looking further.
13 I haven't seen this, so in order to respond at
14 all, I will have to -- I will have to read it.
15 BY MR. DAVIS:
16 Q. We can work off of some assumptions,
17 or you can have an opportunity to review it.
18 Assuming that that provides the information I told
19 you, that Dan Dorn actually suggested that the
20 dissolution action be commenced, and that he
21 actually, through his attorney, did things to
22 drive the cost up and to keep it from being
23 resolved. There's also a claim for child support,
24 as referenced in there, and the various other
25 documents that would have disqualified Abbie from

1 Medicaid benefits.
2 MR. DAN SLOTCHIVER: Your Honor, I
3 would object to the extent that he's representing
4 these facts to the truth of the matter asserted,
5 as opposed to the reality, which was it was an
6 affidavit submitted by the Cohens' attorney.
7 THE COURT: Yes, sir.
8 MR. DAVIS: No problem, Your Honor.
9 I'll be happy to do whatever you instruct me to
10 do. Do you want to give him time? I mean, the
11 information's in the record, on the record.
12 THE COURT: If you're going to
13 question him about it, I would certainly recommend
14 that we give him an opportunity to review it.
15 MR. DAVIS: Yes, Your Honor. He was
16 in -- yes, I'll be happy to. He apparently was
17 indicating to me that he may not want to take the
18 time to read it, but I'll be --
19 THE WITNESS: No, no. I did not say
20 one word, Counsel. I'm ready to stay here all
21 night.
22 BY MR. DAVIS:
23 Q. No problem.
24 A. I haven't been through what you folks
25 have been through. I got four hours sleep last

1 night, but I'm ready to stay as long as you want
2 me to stay. Now, I don't know how to make it any
3 clearer.
4 Q. That's perfectly clear. Our question
5 to you is: Do you want to take some time to
6 review that declaration?
7 A. If you want to ask me any questions
8 about this at all, I must read it.
9 Q. That's fine.
10 THE COURT: We'll take about ten
11 minutes, and if you need more than that, you can
12 let us know. Thank you.
13 (A recess transpired from 5:23 PM to
14 5:46 PM.)
15 THE COURT: We're back on the record.
16 Mr. Davis?
17 MR. DAVIS: May it please the court?
18 THE COURT: Certainly.
19 BY MR. DAVIS:
20 Q. Mr. Walker, have you had the
21 opportunity to review the declaration of Lisa
22 Meyer?
23 A. I have read it.
24 Q. Did you briefly familiarize yourself
25 with the exhibits attached to the declaration?

1 A. Well, let me make sure. I see a
2 declaration, which I've read. Then there's a
3 follow-up detailed declaration. That's what I
4 read.
5 MR. DAVIS: May I approach, Your
6 Honor?
7 THE COURT: Yes, sir.
8 THE WITNESS: Are you talking about
9 anything beyond that?
10 BY MR. DAVIS:
11 Q. That's correct. This is the
12 declaration, and these are the supporting exhibits
13 that go along with it.
14 A. I'm sorry, but I didn't know that all
15 of these were supporting.
16 Q. Well, I don't know that it's necessary
17 to read all of them, though.
18 A. May I ask a question, Counsel, just
19 for clarification?
20 Q. Sure.
21 A. I've read it. I have not been through
22 all these supporting. As I just said, I didn't
23 realize they were all there to be reviewed. I'm
24 afraid we'd be here for a while, which is fine
25 with me, but I certainly haven't been through all

1 of these.
2 But is this a declaration -- just to
3 clarify, is this a declaration that says it's in
4 support of petitioner's ex parte application
5 requesting the relief set forth in Exhibits 4
6 and 9, which I have not looked at -- well, I guess
7 they're up here. I'm trying to get this -- I'm
8 trying to get this in context.
9 Q. I was just advised that it would
10 probably help you to start on Page 4.
11 A. I mean, I've read all of this, okay.
12 Q. So starting on Page 4, that
13 declaration there. This is -- I don't think this
14 is --
15 A. Well, I've read all of this. I've
16 read all of this.
17 Q. That would be enough to answer the
18 questions that I've got, and if we need to refer
19 to those documents --
20 A. Not heavily, but there's a good bit of
21 this, or some of it, anyway, that's been like
22 that, but anyway, you go ahead, and let me just --
23 what I was trying to figure out for myself is
24 whether this is part of a pending proceeding.
25 Q. Yeah. I can explain that.

1 A. Okay.
2 Q. As you know, there was a California
3 marital action that went on for a long time, and
4 it has been completely resolved, and we got a
5 final order of judgment.
6 Have you reviewed the final order of
7 judgment and the statement of case?
8 A. Shaller?
9 Q. From Shaller, Judge Shaller.
10 A. Yeah.
11 Q. What that declaration does is indicate
12 the litigious nature of Dan Dorn through his
13 attorney, Vicki Greene.
14 MR. DAN SLOTCHIVER: Your Honor, I
15 object. He is mischaracterizing a statement. He
16 is putting into it the words he wants. He can ask
17 him to read it so he can ask him what it means to
18 him, he can ask him what it says, but I do not
19 believe he can testify to this.
20 THE COURT: Yes, sir.
21 MR. DAVIS: I wasn't intending to
22 testify. He actually asked me --
23 MR. DAN SLOTCHIVER: Well, your Honor,
24 I believe it's an objectionable misconduct. It's
25 mischaracterizing what the document states.

1 MR. DAVIS: Sure, Your Honor.
2 Whatever you'd like for me to do. Would you like
3 for him to direct the question to the court,
4 instead of direct the question to me?
5 THE COURT: No, sir. He can direct
6 the question to you, but he asked in what context
7 this declaration, I believe, was submitted.
8 MR. DAVIS: In the context of this
9 South Carolina action, to give us information
10 about the California action.
11 THE WITNESS: So this does not -- is
12 not in the action that Judge Shaller --
13 BY MR. DAVIS:
14 Q. Right. That's just our action. That
15 was prepared for this action, to indicate
16 information about the California action.
17 A. Even though the dates precede the
18 dates of Shaller's --
19 Q. Yes.
20 A. Judge Shaller's statement of opinion?
21 Q. Yes, yes, yes. That's a good
22 question, but yes, you're correct.
23 Assuming that the information you
24 reviewed there is correct and is accurate, and
25 assuming, if you can for a moment, that -- well,

1 actually, you don't have to assume.
2 MR. DAVIS: Your Honor, we've had
3 testimony from Dr. Cohen that Dan Dorn
4 contributed, through Vicki Greene, to the
5 escalation of fees. We've got testimony in the
6 record, and I believe those documents support
7 that. To the extent they do, he can rely on
8 those.
9 MR. DAN SLOTCHIVER: Your Honor, I
10 object. The testimony of the Cohens does not mean
11 that it is necessarily the law of the land or that
12 it's credible. He said you can assume, and then
13 he goes no, don't assume. We have testimony. He
14 may have testimony, but it doesn't mean that it is
15 credible testimony or correct testimony or
16 reliable testimony.
17 THE COURT: Sustained.
18 MR. DAVIS: I didn't say -- I said
19 testimony, and we all agree it's testimony, but
20 okay.
21 BY MR. DAVIS:
22 Q. So Mr. Slotchiver, Dan Slotchiver,
23 asked you to come in here and provide your
24 opinion, but did not provide you with that
25 important document. Is that correct?

1 MR. DAN SLOTCHIVER: Your Honor, once
2 again, I object. I didn't provide him with that
3 document. It's Mr. Davis's opinion that it's an
4 important document in this case. There's no legal
5 conclusion that it's an important document in this
6 case.
7 THE COURT: Thank you. So noted.
8 THE WITNESS: I have not read this
9 document before today.
10 BY MR. DAVIS:
11 Q. Don't you think it would be important
12 to read that document and have that information
13 before you actually made a formal opinion?
14 A. As I read it, it is a statement of the
15 attorney for the trustees, for Dr. and Mrs. Cohen.
16 That's what I understand this long thing to be.
17 Q. Is it fair to say, from your review of
18 that, that that gives a depiction of what happened
19 in California and why the costs were as high as
20 they were?
21 A. It says what it says, but I have no
22 way of knowing whether this is the end-all and the
23 be-all. I mean, there's no reply to this.
24 Q. But you mentioned that the payment of
25 fees was not prudent solely because of the amount.

1 Is that what you testified to?
2 A. I said that I could find no evidence
3 of reasonable care, skill, and caution by the
4 trustees in the process of deciding whether to pay
5 a particular fee or not, and if to pay, how much
6 to pay. It is the absence of the prudence which
7 is in the process of making the decision.
8 Q. I recall that. So you're saying there
9 was essentially no due diligence made whatsoever
10 and nothing done on their part before they
11 undertook this action in California. Is that what
12 you're saying?
13 A. I'm saying that if I'm following your
14 question, and I'm trying hard to, bills came in
15 for attorneys' fees, and they were paid, and they
16 were paid, as I understand it from the record, on
17 the position or the assumption or whatever you
18 want to call it by Mrs. Cohen -- by Dr. and
19 Mrs. Cohen -- that this language in the earlier
20 order from this court, that that was for all time,
21 that that was a blanket approval, prior approval,
22 before the bills were ever submitted.
23 Now, I don't -- it's my opinion that a
24 prudent trustee would not have continued to rely
25 upon that bill after bill after bill, that this

1 was a new decision each time the bill came in, and
2 there was absolutely no consideration of due
3 diligence, as you referred to it, or what would be
4 prudent or what was the exercise of care, skill,
5 and caution that was required. It was just
6 simply -- and by Mrs. Cohen's own testimony, she
7 just believed, she accepted, she thought she had
8 that authority, and I'm saying subjectively that's
9 what she did, but she fell to the standard of what
10 a prudent person would have done.
11 Q. And I've been to law school and
12 accounting school and all that kind of stuff, and
13 I understand a prudent --
14 A. It ain't stuff. I mean, it's the law.
15 Q. It's the law, but it's troublesome,
16 it's troublesome, and I want to get your opinion
17 on this. You say the prudent man, the reasonable
18 man?
19 A. Huh-uh. I said --
20 Q. Reasonable person.
21 A. I said prudent person. Our statute
22 says a trustee shall administer the trust as a
23 prudent person would acting as trustee in those
24 circumstances.
25 Q. And can you explain a little further

1 what, exactly, a prudent person is? Who is a
2 prudent person? You said objectivity.
3 A. A prudent person is a person, by the
4 language in the statute and the restatement, who
5 exercises reasonable care, skill, and caution.
6 Reasonable care, skill, and caution. And that's
7 why I'm here, I think. All I can do is express an
8 opinion, and I'm giving you my opinion.
9 Q. And I'm not -- thank you. When you
10 were in your committee, when you were chairing
11 your committee and sitting at the end of that long
12 table, you had to come up with what you believed
13 to be reasonable, correct?
14 A. Many times.
15 Q. But you testified that it was an
16 objective standard and not subjective?
17 A. We applied objective standards, that's
18 right. That's what we had to do.
19 Q. Apparently, you were trustee, and you
20 were determining whether it was reasonable or not?
21 A. Because we took into consideration all
22 relevant circumstances that applied to the
23 situation. That's what a prudent person does.
24 You better believe we were prudent.
25 Q. Aren't you aware we've got testimony

1 that in this case, the Cohens did the same thing?
2 MR. DAN SLOTCHIVER: Objection, Your
3 Honor.
4 THE WITNESS: I didn't find any
5 evidence of that. They didn't sit down and debate
6 it or consider it. Don't you understand from
7 their testimony, they said, Mrs. Cohen: I didn't
8 have to go back and consider it or regard it
9 because I had standing approval, $115,000 bill.
10 BY MR. DAVIS:
11 Q. Let's take a look at the letter of
12 these orders, Mr. Walker.
13 A. I'm sorry. What letter?
14 Q. We've got Plaintiff's 101 and
15 Plaintiff's 87.
16 THE COURT: Can you state for the
17 record what those are, Mr. Davis?
18 MR. DAVIS: Yes, Your Honor.
19 Plaintiff's Exhibit 87 is the order of transfer of
20 jurisdiction, and Plaintiff's 101 is the
21 California letters of conservatorship.
22 THE COURT: Thank you.
23 THE WITNESS: I'm familiar with this.
24 BY MR. DAVIS:
25 Q. Let me point to the section that I'm

1 talking about, and if I get too close, let me
2 know. I'll be happy to step back. I'm not trying
3 to intimidate you, I promise.
4 A. You're not.
5 Q. The conservators are granted the
6 independent power, et cetera, to compromise or
7 settle any dissolution actions.
8 Now, in this case, there's been a lot
9 of discussion about a bifurcation of a marriage
10 and a dissolution, and apparently, Dan Dorn's
11 position, I believe, is that the authority ended
12 when the bifurcation took place and the marriage
13 was dissolved or the marital union was severed,
14 but yet we've got language from California that
15 says: Compromise or settle any dissolution action
16 between Dan Dorn and Abbie Dorn, and it makes it
17 clear any.
18 And then we go to the -- that's from
19 California, excuse me. We go to the South
20 Carolina order of transfer of jurisdiction, and
21 this order actually references that same document
22 there in Paragraph 7 that says -- references --
23 MR. DAN SLOTCHIVER: Your Honor, is he
24 testifying right now or asking a question? I'm
25 not sure.

1 THE COURT: I'm assuming he's going to
2 get to a question very soon.
3 MR. DAVIS: Absolutely. I'm just
4 laying a foundation. I think it's obvious what
5 I'm doing, Your Honor.
6 MR. DAN SLOTCHIVER: I wasn't sure.
7 BY MR. DAVIS:
8 Q. This order of transfer of
9 jurisdiction, in Paragraph 7, references this
10 document here, so it incorporates it. And you,
11 being a lawyer, are well aware, and an expert, are
12 well aware how you incorporate information into an
13 order.
14 MR. DAN SLOTCHIVER: Your Honor, once
15 again, I think he's advising him as to what the
16 documents do, what they say, as opposed to asking
17 a question.
18 MR. DAVIS: He's an expert. He can
19 speak on his own, Your Honor.
20 MR. DAN SLOTCHIVER: But he's saying
21 to him as a given, this is what it does, this is
22 what it says.
23 THE COURT: Mr. Davis, if you could
24 move on, please.
25 MR. DAVIS: And I would ask for a

1 little room, him being sworn as an expert and an
2 attorney. He can disagree with me if he wants to.
3 He's certainly qualified and capable of doing
4 that, much more experience than I've got, so I
5 believe he can take care of himself, Your Honor.
6 THE WITNESS: This is dated --
7 BY MR. DAVIS:
8 Q. This was dated after this, yes. We
9 can look at the dates if you'd like to.
10 A. April the 24th, '08, the actual date
11 it was filed. So all of these are attachments.
12 I'm trying to deal with your question about
13 incorporation. This says compromise and settle
14 any dissolution action. That's, I think, a word
15 of art in California, but in any event, let's see
16 what this says. The dissolution of marriage --
17 Now, where are we? What is it you're
18 asking me about here?
19 Q. I was just saying where it references,
20 it says: Pursuant to the California court order,
21 and the court order that it referenced here is
22 this one here, is all I was saying. And that's
23 not the actual main point I want to get to, but I
24 want to just indicate that to you.
25 A. Why don't you go ahead -- I'm not

1 really quite sure, but why don't you go ahead and
2 get to what you're asking me.
3 Q. Okay. Let's get to the question.
4 A. And I reserve the right to come back
5 and wrestle with that a little bit further if I
6 have to.
7 Q. I understand. Paragraph 9 has been
8 one we've talked about in great detail. It says:
9 The sums and amounts referred to hereinabove
10 previously paid and disbursed, and then there's
11 some prospective language, not stuff -- not
12 language about actions that happened in the past,
13 but it's actually prospective, things that will
14 happen in the future. It says: And those to be
15 paid --
16 MR. DAN SLOTCHIVER: Your Honor, I
17 disagree. Mr. Davis, at this point, is advising
18 him as to what the language means, and I believe
19 the witness can read it and understand it as he
20 understands it.
21 THE COURT: Thank you.
22 Mr. Davis, if you'll maybe point
23 out -- either read it to him or have Mr. --
24 MR. DAVIS: I'll ask him.
25 BY MR. DAVIS:

1 Q. Does that appear to be prospective
2 language? The to be paid, does that appear to be
3 prospective, or does that appear to refer to
4 something that has already happened?
5 A. I read this earlier, and I must say to
6 you that as I read it -- let me read it again
7 here -- the sums and amounts referred to
8 hereinabove and previously paid and disbursed and
9 those to be paid at the conclusion of these
10 matters, I said to myself that really doesn't make
11 it clear whether we're talking about expenses or
12 fees incurred at a point in time, some of which
13 were paid and disbursed, and others to be paid at
14 the conclusion. In other words, sometimes you can
15 have a situation where you pay 50 percent at the
16 front end, and when the matter is concluded, you
17 pay the balance.
18 In other words, it's a perfect example
19 of lack of clarity, which is what our statute says
20 you go to the court to clarify when it's not
21 really clear, and I'm saying that a prudent
22 trustee is looking at this, trying to figure out
23 just what the court has authorized the trustee to
24 do with regard to items that haven't even been --
25 services that haven't even been performed.

1 Q. This part here also, it says: To the
2 conclusion of these matters. What was matters
3 referring to? Is it fair to say that matters was
4 referring to Paragraph 7, which we read earlier?
5 Is it fair to say that matters included
6 Paragraph 7 in the same order?
7 A. Well, let me read seven again. When I
8 read that, I said that's got to have a finite
9 point. There's no way that -- now, you see, it's
10 not so much what the court said that you're now
11 looking at later and trying to decide. You say:
12 Judge, what did you mean? Clarify this for me,
13 because quite frankly, I'm not comfortable paying
14 $115,000 to a law firm, or $80,000, whatever's
15 come in, without having -- particularly since the
16 document says prior approval, so --
17 Q. Would it be prudent for --
18 A. So let me look at seven again. You
19 asked me that question, and I kind of interrupted
20 myself. Is that right here? Is this the one
21 you're talking about?
22 Q. Yes, the one we read earlier.
23 You testified earlier that --
24 MR. DAN SLOTCHIVER: Your Honor, can
25 he finish? He asked him to review the question

1 and then respond. If he can have an opportunity,
2 please.
3 THE COURT: Let him look at that,
4 Mr. Davis.
5 THE WITNESS: I mean, you know, all of
6 this language is dissolution, and while I just
7 said to you it's not all that clear to me one way
8 or the other, but when they talk about
9 dissolution, dissolution, particularly since it's
10 bifurcated in California, it seems to me that the
11 magic language is dissolution, and that's what the
12 context of the court order is. You can't be
13 talking about -- I mean, maybe it is, but if it
14 is, I want the judge to tell me that again.
15 BY MR. DAVIS:
16 Q. Yeah. No problem. I just want to
17 remind you that what we read here said any
18 dissolution action, and that in California, that
19 one of the documents in record has got -- let me
20 see if it's in here. It's got the caption. It's
21 got three ways that something can be captioned.
22 A. Other than a divorce.
23 Q. It's got -- and I'll just read it. I
24 don't want to testify.
25 A. They seem to recognize with some

1 specificity different ways in which marriages can
2 be ended, and this would be -- this is a
3 dissolution, not a divorce in California.
4 Q. They don't have a place for divorce.
5 A. I mean, I think you take that up
6 when -- you get another form or --
7 Q. Look at this. They've got -- see,
8 this was --
9 MR. DAN SLOTCHIVER: Your Honor, I
10 believe this was asked and answered. Mr. Walker
11 has testified as to his knowledge about this.
12 He's talking about the forms and his understanding
13 of them.
14 THE COURT: I'm going to let him go.
15 THE WITNESS: I've read this form very
16 carefully.
17 BY MR. DAVIS:
18 Q. If you look, you'll see there's three
19 boxes here. We've got dissolution of marriage,
20 legal separation, and nullity of marriage, and
21 then this was also assigned a certain case number,
22 right?
23 A. Yeah.
24 Q. Are you aware of the fact that that
25 case number remained the same and the case was

1 ongoing continuously until it was completely
2 concluded with a judgment?
3 A. Well, I mean, I noticed that, but I'm
4 also quite aware of the bifurcation process.
5 Q. Well, if it ended at the bifurcation,
6 why didn't they --
7 MR. DAN SLOTCHIVER: Let him finish in
8 his response, Your Honor. I believe he was still
9 responding when he got cut off.
10 THE COURT: I thought he was finished.
11 MR. DAVIS: I thought he was finished.
12 THE WITNESS: I mean, my point is that
13 this form appears to me -- I mean, I'm not a
14 California lawyer, and I haven't gone out to
15 California and researched this, but it appears to
16 me that this is a form used by the California
17 courts to deal with the marriage as it is coming
18 apart or ending, where the marriage is dissolved
19 or it acknowledges a legal separation or it
20 basically -- when it says nullity of marriage, I
21 tend to think that that's equivalent to an
22 annulment. Now, I mean, that's just the way I
23 read it.
24 Now, if you've got an old-fashioned
25 divorce, it seems to me that form wouldn't even be

1 used. I mean, there's nothing about the fact that
2 that's the only form. That just happens to be the
3 form here because it was a dissolution. And
4 somebody would have to speak to this with more
5 knowledge than I about the California law and
6 procedures, but I do say that with regard to the
7 number, the case number --
8 BY MR. DAVIS:
9 Q. Yeah, but, I mean, that was my --
10 A. I mean, maybe under California law,
11 when you bifurcate, you basically maintain the
12 same case number. I mean, I don't know the answer
13 to that. That's a good question.
14 Q. Well, that was my question. If, when
15 it was bifurcated, that it actually ended the
16 dissolution action, then why didn't they close
17 that and set up a whole new file?
18 A. Well, I'm telling you what -- this is
19 the way -- the only way I know how to answer this.
20 If this all came before me or one of my guys, one
21 of my officers, one of my department heads, one of
22 my region heads, somebody brought that up, put it
23 on the table, and put it in front of us, we'd say:
24 We don't have the whole story. None of us are
25 California lawyers. We got to get more

1 information here. We got to find out why is this
2 thing -- what's happening in this -- why the case
3 number? I mean, in other words, a prudent trustee
4 is charged with the duties to be inquisitive.
5 Q. Maybe like an --
6 MR. DAN SLOTCHIVER: Could he finish,
7 Your Honor?
8 MR. DAVIS: I thought he did.
9 MR. DAN SLOTCHIVER: He clearly
10 didn't finish, Your Honor.
11 THE WITNESS: To be reasonably
12 cautious, to be reasonably careful, to be -- in
13 other words, you can't -- here's the problem
14 trustees have: It's tough being a trustee.
15 BY MR. DAVIS:
16 Q. Amen.
17 A. Tough. And when you come to make a
18 decision as a trustee, you can't make it the way
19 you make it when you let your child drive the car.
20 You are under a duty to stop, be careful, be
21 reasonably careful, cautious, and be that way
22 while you're trying to decide what to do.
23 Q. So you're suggesting that they should
24 have court supervision and come back to court and
25 have some continuing involvement with the court?

1 A. Oh, no, man, no. What I'm looking for
2 is some -- a note to a file.
3 Now, here's what you'll find in a
4 corporate situation. You got a committee. There
5 will be minutes of that meeting. I was
6 hell-on-wheels about documenting, documenting,
7 documenting, because I knew that somewhere down
8 the road, somebody was going to have us in a
9 courtroom, and we were going to have to show the
10 affirmative duty that we had, the affirmative duty
11 to exercise care, skill, and caution in making our
12 decisions, okay, so we would document.
13 But that doesn't mean that only banks
14 document. What you should have is a prudent
15 trustee would make a note to the file, or there
16 might be an email to the file, or in this case,
17 there might be an email to the co-trustee
18 confirming what they just decided, what they just
19 did.
20 Q. Thank you. Do you realize we've got
21 testimony in the record, and you can review it and
22 it'll speak for itself, but I will make the point
23 that Dr. Cohen testified he did consult with
24 Mrs. Cohen, and they did discuss things?
25 MR. DAN SLOTCHIVER: Objection, Your

1 Honor.
2 MR. DAVIS: I'm asking if he is aware.
3 MR. DAN SLOTCHIVER: It is
4 inappropriate, I believe, to make a reference to
5 something that is not substantiated, in an effort
6 to see what the witness says.
7 MR. DAVIS: Your Honor, what I --
8 THE COURT: I believe he -- I'm sorry.
9 You go ahead Mr. Davis.
10 MR. DAVIS: If you were going to rule
11 in my favor, I'll just be quiet.
12 THE COURT: I believe he said that
13 Dr. Cohen testified to this way.
14 MR. DAN SLOTCHIVER: He said: Do you
15 believe that we have documents in the records that
16 the testimony that Dr. Cohen said this, but I
17 don't believe Dr. Cohen did testify. In fact, I
18 don't want to -- I don't believe that's what the
19 testimony shows. There were questions of
20 Dr. Cohen. And maybe the witness knows what the
21 testimony shows, which might be a first question,
22 but other than that, just to ask him, I believe,
23 is inappropriate.
24 MR. DAVIS: Your Honor --
25 THE COURT: I will allow it.

1 BY MR. DAVIS:
2 Q. I believe -- may I ask you, you've
3 been -- you said you've been receiving the
4 transcripts, and I believe you testified that
5 you've been reading the transcripts?
6 A. I have been doing my best to read
7 them, but I must ask -- I must make this
8 observation, that I have not seen, I mean, in
9 terms of looking at what I read, noted any of that
10 sort of thing. If you can point in the --
11 Q. Sure. Assuming that -- well, assuming
12 that Dr. Cohen consults with his wife about trust
13 matters, and assuming that they discuss medical
14 matters, and Mrs. Cohen, assume that she testified
15 she generally defers to Dr. Cohen about medical
16 treatment or matters for the daughter and
17 expenditures for those types of treatments,
18 assuming that they have those communications,
19 wouldn't that be prudent?
20 A. Why would I make that assumption when
21 there's nothing on the record that I found that
22 supported that? I mean, I'm not going to sit here
23 and agree with you on an assumption that I
24 absolutely found no evidence of.
25 Q. Well, I would encourage you to go back

1 and read the transcripts, because it speaks for
2 itself, and I'm making that assumption based on
3 information I received in this courtroom, but you
4 can corroborate that yourself. But
5 hypothetically -- and I believe, of course, it to
6 be true in testimony, but if you can assume with
7 me for a minute that they actually did that, would
8 that show prudence?
9 A. You'd have to give me a great deal
10 more detail on the assumption. I cannot begin to
11 opine on the question as you've asked me. I mean,
12 what am I -- what are the details of what I'm
13 assuming? I mean, what have they talked about? I
14 mean, I know one place in Dr. Cohen's deposition,
15 somebody asked him -- I guess it was
16 Mr. Slotchiver -- something about when he
17 communicated or how and so forth, and Dr. Cohen's
18 answer was: Well, how many times do you speak to
19 your wife a day? Nothing wrong with that, a
20 husband commenting on -- particularly a busy
21 husband and a busy wife commenting on it, but that
22 does not smack of -- it doesn't rise to the level
23 of two trustees sitting down with their --
24 consciously and deliberately with their trustee
25 hats on, saying: Let's review this and consider

1 it, and let's make a decision about this trust
2 matter.
3 Q. Sort of like a corporate trustee with
4 a committee?
5 A. Well, but you're asking me a clever
6 question, Counsel, but it's no different with
7 individual trustees. They wouldn't call it a
8 committee as we do, but believe me, two
9 co-trustees like Dr. Cohen and Mrs. Cohen have the
10 duty to act jointly, and the trust instrument says
11 it.
12 Q. And we can move on. I believe that's
13 been established in testimony.
14 One last paragraph on the order of
15 transfer of jurisdiction regarding the continued
16 supervision by this court. Can you read that and
17 tell me what your understanding of that paragraph
18 is?
19 A. Now, this is the one in Paragraph 15?
20 Q. That's 16, sir.
21 A. 16.
22 Q. This is the South Carolina --
23 A. You asked me to read it. Let me read
24 it. 16. This court's acceptance of jurisdiction
25 of the Abbie Dorn Special Needs Trust shall not