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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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Shealy B. Reibold, Esquire
The South Carolina Department
of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202
Attorney for The South
Carolina Department of
Health and Human Services

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

Daniel B. Dorn, et al,
Plaintiffs
vs.
Paul S. Cohen, et al,
Defendants

2013-CP-26-08139
2014-CP-26-01744
2014-CP-26-01691
2013-CP-26-08152

ORIGINAL

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

H. Eugene Buckner, CVR-M
Family Court Reporter at Large
15th Judicial Circuit
PO Box 1382, Conway, SC 29528-1382

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This is an appeal from the Probate Court filed 12/26/13; and then there's a Motion to Stay Certificate of Service.

Who's representing who?

If y'all will say it for the record for the benefit of the court reporter?

MR. BOYD:

Your Honor, Reese Boyd. I'm here with my partner Bret Davis. We represent the Conservatories and Guardians and the Trustees that they had, Dr. Paul Cohen and his wife, Susan.

THE COURT:

Who is it represents Dorn?

MR. MASSALON:

Good morning, Your Honor.

THE COURT:

Uh-huh.

OFFICIAL COURT RECORD

MR. MASSALON:

I'm John Massalon, and I represent -- uh -- Dan Dorn, along with Daniel Slotchiver, Steve Slotchiver and Andrew McCumber.

THE COURT:

And who else? I'm sorry.

MR. MASSALON:

Okay; and I'm sorry, I represent John Kachmarsky as well.

THE COURT:

Okay.

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So I represent everybody -- uh -- on the Dan Dorn side. And Mr. Kachmarsky is the -- uh -- Guardian Ad Litem and Attorney for the Guardian ad litem. And -- And Your Honor, I --

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I got Steve Sclotshiver. I've got his brother, Daniel, but I don't have --

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Andrew -- spell that

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It's M-c-C-u-m-b-e-r.

OFFICIAL COURT RECORD

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Thank you.

I heard you said it, but I just didn't catch it.

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And just as a procedural point, we've also got the same motions in a related case that's set after lunch.

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And -- uh -- I've got all the case numbers on that as well.

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I am so woefully blind.

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Uh -- It probably should have been the only case scheduled for this morning -- uh -- but it is what it is.

And so, if y'all could just give me a chance to get caught up, y'all can then try this case and I appreciate it.

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And if in fact everything else from 9:30 is resolved, I'll try and circle back and deal with that. But if not, I'm going to have to press forward to --

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It's exactly the same issue, Your Honor.

It's really a Motion to Stay the Appeal on all of these cases; so that's what -- In my view, it's exactly the same argument.

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It -- It is the same argument, Your Honor.

And also, I wanted to point out to The Court that we have Lenette Hedgepath. Ms. Hedgepath represents Abbie Dorn.

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Ms. Hedgepath represents who?

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Ms. Abbie Dorn, Your Honor.

THE COURT:

Okay. Thank you.

MS. MOORE:

Your Honor, my name is Lee Moore. I'm the court appointed guardian ad litem for Abbie Dorn.

OFFICIAL COURT RECORD

THE COURT:

And tell me your name again? I'm sorry?

MS. MOORE:

Lee Moore. It's first initial name "V" -- middle name Lee, L-e-e, last name, Moore.

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You may proceed, Mr. --

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Your -- Your Honor, if I may?

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Yes.

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We were here in front of -- uh -- Judge Hyman --

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Uh-huh.

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-- approximately three weeks ago. And Judge Hyman had taken the Motion for -- uh -- Stay under advisement. And --

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But I believe that the ruling was the Motion to Stay would be continued. Uh -- I don't believe he --

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You're welcome.

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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.

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Okay.

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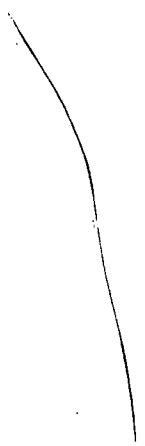

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OFFICIAL COURT RECORD

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THE COURT:

Okay.

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And -- uh -- as a result of that

OFFICIAL COURT RECORD

medical negligence, a lawsuit was filed and about a million dollars was placed into a Special Needs Trust.

Her parents, Mr. and Mrs. Cohen, were named as her Conservators and as the Trustees of the Special Needs Trust.

Uh -- As you heard, Ms. Dorn -- Abbie Dorn -- is a ward of the South Carolina Probate Court.

THE COURT:

Uh-huh.

MR. MASSALON:

She lives here in Horry County with her parents.

THE COURT:

Uh-huh.

MR. MASSALON:

My client, Dan Dorn, is her former husband.

He lives in California.

THE COURT:

Uh-huh.

MR. MASSALON:

And he has custody of -- of the three children.

Uh -- After the Special Needs Trust was established, Mr. and Mrs. Cohen filed a custody

OFFICIAL COURT REPORT

action against Dan Dorn in California.

And we alleged, used substantially all of the money in the Special Needs Trust to sue him for custody on behalf of -- uh -- Abbie Dorn.

That case -- uh -- was resolved by a Consent Order in which it was acknowledged that the visitation wouldn't have any benefit for Abbie Dorn.

And -- uh -- so after that custody case was resolved -- uh -- Mr. Slotshiver filed a lawsuit here in Horry County on Mr. Dorn's behalf against the Cohens, asking for two things:

One, that they be removed as Trustees.

And two, that they be required to pay back the money; not to him; but to the Trust, because they spent on visitation.

THE COURT:

Uh-huh.

MR. MASSALON:

The very next day -- uh -- a lawsuit was filed by the Cohens to reform the trust and allow them to do what they had done spending the money on the lawsuit.

So we have two separate lawsuits -- uh -- that are pending in Probate Court filed a day

OFFICIAL COURT RECORD

apart.

Mrs. Dorn, Abbie Dorn, was a party to the lawsuit that her parents filed.

She was not a party to the lawsuit that Mr. Dorn filed.

That case got tried about two years ago in front of the probate judge at the time in -- in Horry County.

And at the trial of that case, an issue came up about what if anything the attorney and the guardian for Abbie Dorn should be allowed to do in the Dan Dorn case?

And -- uh -- the judge recessed the trial.

Subsequently, she allowed -- uh -- Mrs. Dorn to be named as a party in the Dan Dorn case; file an Answer in that case.

And some testimony of witnesses who weren't previously disclosed was allowed.

We appealed that decision.

And that's the basic appeal that is in front of The Court.

Now -- uh -- after we filed that appeal -- uh -- the attorneys for the Cohens filed a motion to stay the case.

OFFICIAL COURT RECORD

And -- uh -- Judge Edmonds, the Probate Judge, shortly after that, lost her bid for reelection.

And so they then filed a motion -- uh -- to basically mistry the case and asked Judge Edmonds to mistry it since she had had it under advisement for a year and lost her reelection bid; probably wouldn't be able to reconvene the trial.

Uh -- And I'm almost at the end of the story, Judge.

Uh -- The -- uh -- The judge did not hear the motion for a mistrial.

Court Administration has not assigned it to anyone else.

And the motion for a mistrial is still pending.

THE COURT:

Uh-huh.

MR. MASSALON:

Uh -- And so --

THE COURT:

When was it -- When did you all seek Court Administration's assistance?

MR. MASSALON:

Uh -- We did not.

OFFICIAL COPY

And -- And --

MR. BOYD:

Actually, Your Honor -- Yeah, The -- The Court -- The Probate Court actually -- uh -- filed a Request for Recusal with Court Administration, Your Honor.

And I believe I've got the date here that it was --

THE COURT:

Filed a Motion for Recusal?

MR. BOYD:

I -- I think it was in September of 2014 when Judge Edmunds --

THE COURT:

Uh-huh.

MR. MASSALON:

I believe that's correct, Your Honor.

MR. BOYD:

-- asked to be recused and asked for help from The Court Administration.

THE COURT:

After she was not reelected?

MR. BOYD:

After she was not reelected --

THE COURT:

OFFICIAL COURT RECORD

Okay.

MR. BOYD:

-- but before ruling on the motion for a mistrial.

THE COURT:

Okay.

MR. MASSALON:

She did that on September 3rd, 2014.

THE COURT:

And there has been no response yet?

MR. MASSALON:

Actually, Your Honor, The Court Administration -- uh -- did return the case to the Probate Court --

THE COURT:

Uh-huh.

MR. MASSALON:

-- here in Horry County.

THE COURT:

And what's happening?

MR. MASSALON:

Well, now the new judge is on the bench.

THE COURT:

Uh-huh.

OFFICIAL COURT RECORD

MR. MASSALON:

And -- uh -- uh -- on Friday --

THE COURT:

Uh-huh.

MR. MASSALON:

-- uh -- Mr. Boyd let us know that understood that a hearing had been set on the motion to mistry the case.

THE COURT:

Uh-huh.

MR. MASSALON:

And again, I -- I don't have great command of this; I think it was April the 2nd.

MR. BOYD:

That's correct, Your Honor.

MR. MASSALON:

April the 2nd; okay.

And so -- uh -- again, just to recap:

The case was tried in April of 2013.

THE COURT:

Uh-huh.

MR. MASSALON:

It's been under advisement for two years.

After trial, in our case, a party was

OFFICIAL COURT RECORD

added, an Answer was filed, and some witnesses were allowed to testify.

And -- And our position is that:

At least our case has been tried and is pending -- a decision is pending.

THE COURT:

Uh-huh.

MR. MASSALON:

I believe their case -- and obviously they -- uh -- can speak for themselves; but I believe their position is that:

The appeal should be stayed.

And -- uh --

THE COURT:

I guess I'm trying to figure out what are you appealing if there's no final judgment?

MR. MASSALON:

Well what we're appealing, Your Honor, is that:

The judge allowed a new party, and an Answer, and witnesses to be allowed to testify in our case after we rested, meaning the case was over --

THE COURT:

Isn't that interlocutory until you have a final decision?

Official Court Record

MR. MASSALON:

Well -- uh -- that's one of the issues that they've raised on the appeal but we say "no," Your Honor; because under the Appeal Statute, we believe that it invokes the appellate jurisdiction under the substantial right exception that -- the order that -- affecting a substantial right part of --

THE COURT:

I guess I'm trying to figure out how you're prejudiced; because really -- I'm going to cut to the chase on this.

MR. MASSALON:

Uh-huh.

THE COURT:

You're not going to get a mistrial; I doubt it.

Under the Rules of Unavailability, the next Judge this case only --

MR. MASSALON:

And --

THE COURT:

And then they can reopen the record; and all of y'all get to be heard.

So I'm trying to figure out:

How is anybody prejudiced in just

OFFICIAL COURT RECORD

moving this forward, everybody being heard, calling all the witnesses you want to call, getting a final judgment on it; and then moving forward with an Appeal.

MR. BOYD: Mr. Massalon

Well, we don't want a -- a mistrial, Your Honor.

They -- They have moved for a mistrial.

THE COURT:

I understand that. But I said I was cutting to the chase.

MR. BOYD:

And -- And for us --

THE COURT:

Our rules of very clear.

People get elected and don't get reelected.

People die with stuff under advisement.

I mean it happened in the Family Court before. There's a case on point. You just simply -- The next -- Or, even in a Recusal situation, which has happened many, many, times for whatever reason in the midst of case.

And it happens a lot more in nonjury

OFFICIAL COURT RECORD

context and Family Court and otherwise, for whatever reason it comes to The Court's attention that they need to recuse themselves.

They may not realize they knew somebody in case or just a myriad of reasons why judges have to recuse themselves.

That's why you have unavailability rules. And the next person in line takes over, be it The Chief Administrative Judge or the next judge with jurisdiction over the matter.

So I'm trying to figure out why not just -- It seems to me the more practical solution would be for y'all to get the new Probate Judge to take over and just reopen the record. And you need to just have a full hearing on the merits and just be done with it.

MR. MASSALON:

I may let Mr. --

THE COURT:

Uh-huh.

MR. MASSALON:

Since Mr. Slotshiver tried that case, I may let him respond to that; because he knows more about that than I do.

THE COURT:

Was it tried to conclusion?

OFFICIAL RECORD

MR. SLOTSHIVER:

No, your honor, it was not tried to conclusion.

MR. BOYD:

We say yes.

THE COURT:

Well but that is up to the judge that takes over as to whether that was or not.

And it's within their discretion to reopen the record.

MR. BOYD:

And Your Honor, if I may?

We filed -- We filed a motion to conclude --

(Laughter erupts in the courtroom.)

MR. SLOTSHIVER:

But I do want to clarify another point.

MR. MASSALON:

Go ahead

THE COURT:

Yes.

MR. SLOTSHIVER:

What's -- What's complicating me, Your Honor, is:

OFFICIAL COURT RECORD

You've got two cases -- two separate cases --

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

-- that was not consolidated.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

But they were tried together.

THE COURT:

Yes.

MR. SLOTSHIVER:

So, as the case proceeded, the judge -- there were --

THE COURT:

Of course we wouldn't try one without the other; they're dependent on one another.

Really, it should have been done as a Counterclaim probably, but it just wasn't done that way.

MR. SLOTSHIVER:

Well, because -- because they weren't consolidated --

THE COURT:

Uh-huh.

OFFICIAL COURT RECORD

MR. SLOTSHIVER:

-- and they weren't tried together under The Court's ruling --

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

-- what -- what happened is that:

The Court ruled that they were to be -- The Court excluded witnesses.

So we tried our case.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

We put out witnesses up.

We put our experts up.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

We tried the case against the other side --

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

-- as we do in litigation.

We put out witnesses; they put their

OFFICIAL COURT RECORD

witnesses.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

And when that was over, from our position, the case was concluded.

THE COURT:

How was it concluded?

They put up their witnesses as well?

MR. SLOTSHIVER:

They did.

Now what happened, after they put their witnesses up, was we said to the judge:

Judge, we're ready for closing arguments.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

And she said:

What about the guardian ad litem and the attorney --

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

-- for Abbie?

OFFICIAL RECORD

She gets to call witnesses.

And we said:

Judge, Abbie's not a party in our case.

She may be a party in the other case. She is.

But in our case, she's not a party.

We haven't served them with Pleadings. They never responded to Pleadings.

We never served them with Discovery.

They never gave us their witnesses.

So what's happened is:

The judge, at the end of the trial, when it was completely done and all the witnesses had been put up; all the strategies had been utilized, the judge just decided to add new parties to a Cause of Action.

THE COURT:

Why? This action is because of her. She's always mentioned with the parties. We always have to hear from the person who actually is the only person in this who's actually affected because it belongs to her.

So how do you not hear from the guardian?

OFFICIAL COURT RECORD

That probably would have been my question too.

MR. SLOTSHIVER:

Because what we were claiming -- what we had claimed in our -- in our cause of action --

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

-- is that the Trust was wrong to -- wrongfully had money, a million dollars or so spent out of it.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

And what we're asking for is that the Trustees put the money back into the Trust.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

They were never listed as parties.

They never --

THE COURT:

I think she has to be because theoretically the money belongs to her.

So her interest is always going to be

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affected.

And The Court, of all people, needs to hear from the persons whose interests are affected.

MR. SLOTSHIVER:

Well --

THE COURT:

So how do you proceed in litigation and not here from the parties who theoretically are representing the person who this belongs to?

A Trustee doesn't own the Trust.

A Trustee has a special relationship to manage a Trust, but it doesn't belong to them.

MR. SLOTSHIVER:

Your Honor, we cited in our Brief on Page 10, reference to Rule 17 C --

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

-- that provides that persons may sue a Defendant on behalf of an incompetent person -- in general, guardian -- committee -- serves to award a like fiduciary.

The Court may appoint a guardian ad litem for an incompetent person not otherwise represented.

OFFICIAL COURT RECORD

But we -- we proceeded under this -- under this provision.

And in this case, Your Honor, there was never a dispute -- there was never an issue.

She was never said to be party.

THE COURT:

You can go back on, you can always ask the general questions.

It just feels like these questions have not been answered.

You can try a new strategy.

I do it all the time.

People try to -- If they don't answer my questions, I ask them.

And it's my prerogative as a factfinder in a court of equity to hear the entirety of it.

I'm not bound by your strategy.

I'm not bound by who you call.

I'm not bound by who they call.

I can ask questions.

As a matter of fact, I can call my own witnesses if I need to in a court of equity.

So I'm trying to figure out what prejudice you really have suffered.

OFFICIAL COURT RECORD

And again, I'm getting back again to the -- coming full circle with this; which is:

Even if she reopened the record, the question becomes one of prejudice.

And prejudice is when you don't have an opportunity to refute the new stuff that's coming in.

And that's the duty of a court of equity and you can always recess it and come back to it.

You can let people go do Discovery.

You can let them go ask additional questions.

You have the province of luxury.

It's not like it was a jury trial.

MR. SLOTSHIVER:

One of the things here -- and I understand what you're saying, Judge; and I agree you have the right to ask me questions, if you want.

The difference here is that the Cohens -- they are the Conservators; they are the guardians, and they are the Trustees.

They stand in the shoes of Abbie Dorn.

THE COURT:

Yeah, but The Court stopped to appoint a guardian for some reason; because at some point

OFFICIAL COURT RECORD

-- because you've alleged certain inappropriate actions, their interest become adverse to her.

So the theory is, in The Court's mind, that:

I need somebody independent to represent her.

And since you're alleging they stole from her daughter.

MR. SLOTSHIVER:

And actually, I agree with you with reference to the case that the Cohen's filed.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

The Court found it necessary to appoint somebody because they were asking to reform the Trust and to change the Trust.

But in the case that we filed, The Court did not deem it necessary.

In fact, it goes a step further.

The Cohen -- In the Cohen's case, The Court appointed an attorney and a guardian ad litem to represent the minor children.

In the case that we filed, The Court appointed my client to represent the minor children.

OFFICIAL COURT RECORD

So you've got two very different cases.

You have different representatives of the same parties.

You've got different Defendants involved.

I agree with everything you say with reference to the case that the Cohen's filed.

But, as for the case that we filed on behalf of Dan Dorn --

THE COURT:

But you tried them together.

MR. SLOTSHIVER:

She put -- She did try them together; but she would not consolidate them.

She said:

I'll try them together. And there may be a point that --

THE COURT:

From -- From a judicial economy standpoint, that was a smart thing to do.

Why hear it twice.

MR. SLOTSHIVER:

I -- I agree.

THE COURT:

OFFICIAL COURT RECORD

Because it all overlaps.

MR. SLOTSHIVER:

I agree.

And what she said at the beginning of the trial was:

If there becomes a moment they should be separated, we'll separate them, but right now we're going to try it together.

THE COURT:

Uh-huh.

MR. SLOTSHIVER:

We believe, Your Honor, that at the end of the trial -- or to say it differently:

We believe that we did conclude our trial.

There may be another trial and more witnesses to be called and more evidence to put up in reference to --

THE COURT:

I think though, that a procedural posture -- the way it was tried -- they're inseparable at this point.

And in my estimation, it's all interrogatory.

It's all a discretionary call.

OFFICIAL COURT RECORD

You do that all the time.

In a jury trial, if I decide to let somebody reopen their case, you can't go immediately appeal it; because the jury might come back with a -- a verdict that's in your favor.

So it becomes a moot issue.

The only time you get to appeal it is if it comes back adverse to you; and somehow you say:

That decision adversely impacted the jury verdict.

And here, it's no -- the analysis is no different.

MR. BOYD:

And Your Honor, if I may just briefly:

The record was not closed.

The record was open in the trial.

It never closed.

Mr. Slotshiver takes the position that his case has rested.

But the record is open.

There's no -- There's no ambiguity there.

Their own Brief acknowledges in this case -- since there were no closing arguments in either

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case.

It just so happened that the -- that the trial as a matter -- was interrupted -- The Court wasn't able to reschedule; and to all of our surprise -- uh -- Judge Edmonds was not reelected.

And that was --

THE COURT:

The other sticking point is:

What happens once this motion in April, what if she decides -- The Court then decides to mistry it.

MR. BOYD:

Well --

THE COURT:

I think you can appeal that.

MR. BOYD:

That was -- That was the basis, Your Honor, for our motion to stay this proceedings in the interest of judicial economy and in the interest of preservations of the assets of the Trust.

The legal fees that are being occurred, we thought it was appropriate for The Court to stay this appeal until that motion for mistrial is heard, simply because if The Court says she wants to hear all of this in novo, Your Honor, then all this is moot.

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THE COURT:

Did y'all have a court reporter?

MR. BOYD:

There was a court reporter.

THE COURT:

So there's a transcript?

MR. BOYD:

Yes.

MR. MASSALON:

And Your Honor, on the hearing coming up in April, what I would say is:

But there's just no telling what will happen with that.

There's several things that have happened in this case so far that none of us envisioned or could have predicted.

And so, again, our preference would be to get some rulings on these appellate issues.

THE COURT:

I think it's interlocutory.

A judge always has a right to reopen the record.

It's not final.

You don't know what their decision is.

OFFICIAL COURT RECORD

There's no final judgment.

Uh -- Even in a criminal case, you can reopen the record.

And our Courts have said very clearly that it's interlocutory until you get a final decision; because you don't know -- uh -- if reopening the record doesn't affect your client and you get a ruling in your favor, how have you been prejudiced?

MR. MASSALON:

Well -- uh -- Your Honor, on the -- the -- I agree that there's not been a final judgment; but I think the substantial right -- uh -- exception -- uh -- allows some issues to be appealed short of a final judgment.

THE COURT:

I think it's discretionary and I don't think this falls into that exception.

Well, they got a transcript. They were smart enough to get a court reporter to come to Probate Court. Most people aren't.

(Laughter erupts in the courtroom.)

THE COURT:

Well, I always took one to Probate Court with me because I knew that wasn't going to be one; and I wanted to make sure I had a record because strange

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things happens in litigation.

You know lots of things can happen.

People get sick.

They aren't available; have a stroke.

I mean, 'cause crazy stuff happens in litigation. People develop mental illnesses and lots of other things where they can't remember stuff; and it's best to have a record.

And again -- again, maybe I'm looking at this from a too commonsensical standpoint.

Uh -- You all really good resolve your own dilemma by agreeing to -- uh -- have under the unavailability rules, have a Probate Court take over this case -- uh -- have her read your -- read -- read the transcript instead of rehearing all this testimony.

And -- uh -- of course I wouldn't want to tie the hands of the new Probate Judge because I don't know whether they would want to observe these witnesses to judge their credibility.

But I guess there is some thought that a Court -- you can't discern that from a cold record; but having read so many cold records, especially in TPRs, it really isn't that hard to determine credibility.

Because from the questioning, there's

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strategy in Direct; there's strategy in Cross; there's strategy in Redirect.

It really isn't that hard to discern in terms of the record and the testimony from a transcript.

If I were you all, and you can take this for what it's worth -- uh -- I would -- uh -- under the unavailability rules, have the Probate Court take it over; agree to have her review the transcript; go ahead and reopen the record; let them have whoever she suggests that she wanted to hear.

And really, the new Probate Judge may decide that -- There's nothing that precludes you all from asking that that ruling be reconsidered, and say:

Well, we really don't need it.

And then, after reading the transcript, she may decide:

Well, yes, I really do need to hear it.

Uh -- And then, if she does decide to do that, nobody's prejudiced; because you can always call -- The party with the burden of proof is always going to get the last say.

So, if you reopen a record, you always have to give that person the ability to rebut that

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testimony.

You can't reopen a record and then shut it down.

It doesn't -- It doesn't work like that.

Even if you reopen the record in a criminal case, the State still get's last say; because they have the burden of proof.

You reopen it in a civil case, where's there's no counterclaims or otherwise where there's an alternative burden of proof, the Plaintiff's always going to get the last say.

Even in a PCR, if I ask questions, I still give everybody the opportunity to ask more questions.

I also give them the opportunity to call more witnesses if they feel necessary to rebut anything that I've elicited from witnesses.

In a court of equity, The Court sits as the factfinder.

And if they feel there are questions that have not been answered, they have the right to ask questions.

They have the right to get those answers.

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They have the right, even after they've called those witnesses to say:

You know, I called those witnesses, I asked those questions, but I didn't give it no weight in my decision because I determined after I heard it, that it really wasn't -- it was of no importance ultimately in how I resolved the case.

So, there is a lot more to be done in this case.

And I think it serves the parties to have a final resolution with a final order from the Probate Court.

So y'all can take that for what it's worth. And it looks like you already have what appears, at least in this motion to stay, some Briefing Schedule or a scheduling consent order that you all entered on June 23rd of 2014.

Let's see here.

MR. MASSALON:

Yes, Your Honor.

That order was contingent upon the decision of the Dorchester County Probate Court to provide independent appellant counsel for Mr. Kachmarsky, which occurred on October 3rd.

And what we did, Your Honor, we -- uh

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-- so if the motion to stay pending the appeal was approved, we went ahead and filed our substantive brief today on the appeal issues --

THE COURT:

Uh-huh.

MR. MASSALON:

-- just again, it was in the effort to be pragmatic, and --

THE COURT:

Uh-huh.

MR. MASSALON:

-- and to get it going.

THE COURT:

Uh-huh.

MR. MASSALON:

And I don't know what these folks would like to do, if anything, about that; but -- but I -- I think that if you tell us to do --

THE COURT:

I just think that's the smarter, shorter way to handle it and the best way to save money.

Again, it may be way too pragmatic, but I just think when you're in a Court of Equity and you have somebody that has to make the findings of fact, the final order is always best.

OFFICIAL COURT RECORD

Because, right now, you don't know what the final order is.

MR. BOYD:

There is no final order.

THE COURT:

Yeah, I mean, that's what I'm saying: You don't know.

You don't know what the final order reveals on this.

MR. MASSALON:

Well this is, as far as where we stand, I -- I -- I -- I think -- uh -- that if the appeal went -- the motion to stay the appeal is granted or denied, I think that would help us all add some clarity.

And I again, don't want to speak for these folks, but we would like that motion ruled upon to where we would know --

THE COURT:

I don't understand why that would give you any additional clarity?

MR. MASSALON:

Uh -- Well, Your Honor --

THE COURT:

That's not going to have any bearing on what the Probate Court does in April or --

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MR. MASSALON:

It's our position --

MR. BOYD:

Our issue of the motion to stay, Your Honor, was simply an effort to avoid a Briefing, and the -- and the need for court appearances by -- As The Court can see, there's quite a few attorneys; and that's quite a large expense incurred every time we come here, Your Honor.

And so, we were trying to --

THE COURT:

That's why I suggested what I suggested because you all to some extent are the architects of your own dynamics.

MR. MASSALON:

I understand that, Your Honor.

THE COURT:

Uh-huh.

MR. MASSALON:

I do. I understand that.

THE COURT:

And I have to take it under advisement right after the Probate Judge rules on that; and how does that affect you. It doesn't stay her ruling.

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MR. MASSALON:

No.

THE COURT:

You're still going to have to do all that briefing.

MR. MASSALON:

Well, and I actually did have one---

THE COURT:

Of course, I don't know who -- Who got elected as Probate Judge in Dorchester --

MR. BOYD:

The new judge in Horry County is Kathy Ward.

THE COURT:

Kathy Ward.

MR. BOYD:

Yes. Yes, Your Honor.

THE COURT:

Okay.

THE COURT:

Uh -- I'm sorry. I didn't mean to say Dorchester.

MR. BOYD:

Well, it was in Dorchester for a while. But then --

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THE COURT:

Yeah; and then it ended up here?

MR. BOYD:

Yes, Your Honor.

THE COURT:

Okay. I don't know who the Probate Judge there either. Sorry.

MR. BOYD:

That's Judge Blunt.

MR. MASSALON:

Judge Blunt, Your Honor.

THE COURT:

Okay.

MR. MASSALON:

One thought on that.

And the reason I said I might add some clarity is -- uh -- and we'll talk about whether there's some way we can negotiate a resolution as have you suggested.

But if we don't, one issue that may come up when we go back to Probate Court -- and we haven't been there yet -- but she might look at us and say:

Well y'all have got this appeal pending.

OFFICIAL COURT RECORD

Do I have jurisdiction to hear anything while --

THE COURT:

Well, I'm going to deny the appeal.

Oh, and I'm going to say it's interlocutory, if that helps you with clarity.

MR. MASSALON:

I don't think it will help, Your Honor; but it will actually --

THE COURT:

I think it's interlocutory.

I think that you can just -- It's discretionary.

A judge can always reopen a record.

MR. MASSALON:

If that's Your Honor's position --

THE COURT:

Because it may not -- It -- You can't prove any form of prejudice because it's a court of equity. And it's the one time everybody gets to be heard.

MR. MASSALON: Mr. Boyd:

Well, and Your Honor, my -- my motion to stay then, Your Honor, is moot.

So, if that's Your Honor's --

OFFICIAL COURT RECORD

THE COURT:

Does that help?

MR. MASSALON:

Yes, Your Honor.

THE COURT:

And I still think y'all should do what I suggested. Take it for what it's worth.

I don't know what the new probate judge is going to do.

Is the new Probate Judge a lawyer?

MR. MASSALON:

She's not a lawyer, Your Honor.

THE COURT:

And tell me her name again?

MR. MASSALON:

Kathy -- Kathy Ward.

MR. BOYD:

Your Honor, she was Associate Probate Judge in Probate Court for many years.

THE COURT:

Okay. And that's Horry County?

MR. MASSALON:

Yes ma'am.

THE COURT:

Okay.

OFFICIAL COURT RECORD

And did she indicate why your motion for re -- re -- for a mistrial had to wait till April?

Was she just sworn in?

UNKNOWN SPEAKER:

She was sworn in in January; and I think that was a significant backlog because there was a significant transition in court personnel, so the backlog began to accumulate in the fall; and so they were working through that backlog --

THE COURT:

And they only have -- They don't have any Associate Probate Judge up here?

UNKNOWN SPEAKER:

There is probably one Associate Probate Judge, Your Honor.

I believe she -- I heard the Court will add another, but right now, it's the Senior Judge and one Associate.

THE COURT:

And I have no idea what their backlog -- I was just curious if that was why -- to get up to speed to the judge had been sworn in.

But I just wanted clarity on that.

MR. BOYD:

Your Honor, just for The Court's

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information --

THE COURT:

Yes sir.

UNKNOWN SPEAKER:

That was already a lot of things already scheduled on the Court's Docket in Probate Court before Judge Ward took office.

THE COURT:

Uh-huh.

UNKNOWN SPEAKER:

And her Associate Judges that she has with her is also a non-attorney.

THE COURT:

Uh-huh.

UNKNOWN SPEAKER:

Uh -- There were plans for there being an Attorney Associate Judge come onboard.

Uh -- It was my understanding he was supposed to come sometime in February; but I have not heard that he's actually been sworn in yet.

THE COURT:

So they have -- They get appointed through County Counsel?

UNKNOWN SPEAKER:

No. The -- uh -- uh -- Probate

OFFICIAL COURT RECORD

Judge is allowed to -- uh -- appoint her own Associate Judge.

THE COURT:

Okay.

Well, I mean, the funding has to come through from the counsel.

UNKNOWN SPEAKER:

The funding is actually there, but a hold up is a private attorney trying to wind down his practice.

THE COURT:

Okay. I got you.

All right.

If the Motion for Mistrial is denied, you all would just go forward.

If the Motion for Mistrial is granted, then I think that would be immediately appealable.

Because there could be an argument for substantial prejudice in trying to marshal all these witnesses again and have then testify, especially -- and I don't know if they are available or unavailable.

Okay.

Now, you said you had another motion?

MR. MASSALON:

OFFICIAL COURT RECORD

Well, it -- Judge, it's exactly the same issue in the -- I believe I mentioned there were two cases.

THE COURT:

Excuse me.

What's the case number on that other case?

MR. MASSALON:

Uh -- The case number --

THE COURT:

Is it the 1691?

MR. MASSALON:

Give me just a moment, Your Honor.

MR. BOYD:

This one, Your Honor, is 1691 and 1744.

THE COURT:

Say that for me one more time.

MR. BOYD:

This one is 1691 and 1744.

And also --

THE COURT:

Oh, I see. I thought they were duplicates on the docket; but they are actually different cases.

OFFICIAL COURT RECORD

Did they involve all of the same issues?

MR. MASSALON:

For purposes of this, yes, they did.

And it's also 8152 was on the docket for 9:30, Your Honor.

At -- At 1:30, the case number on the docket was 8139.

THE COURT:

All right. Let's see, 8139.

MR. MASSALON:

Yes ma'am.

THE COURT:

33 and 34?

MR. MASSALON:

Yes, that's 33 and 34 on the 1:30 docket, Your Honor.

THE COURT:

Okay.

So they all have the same issues.

And I'm referring to 2014-1691, 2014-1744 and 2013-8139.

MR. MASSALON:

Yes -- Yes, Your Honor for purposes of this hearing.

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THE COURT:

Are they all the same cause -- I'm sorry I can't talk.

Are they all the same causes of action duplicated in each of these files?

MR. MASSALON:

No, Your Honor.

And the underlying cases are not the same, but --

THE COURT:

MR. MASSALON:

But the Notice of Appeal, Motion to Stay the Appeal, issues are all the same.

THE COURT:

What is the nature of the appeal in 1691?

MR. MASSALON:

Uh -- In -- In 1691, Your Honor --

THE COURT:

Uh-huh.

MR. MASSALON:

-- uh -- we had -- uh -- two Orders:

One, an order granting a Motion to Reconsider a Ruling to Exclude Medical Witnesses; and an order granting the Motion to Amend the Pleadings to

OFFICIAL COURT RECORD

Conform to the Evidence.

And -- And so I would say, for appellate issues, broadly they are the same.

Meaning:

It's still the same.

We've tried our case.

We closed.

Afterwards, the judge allowed more witnesses, more pleadings, more parties.

THE COURT:

Okay.

And in 1744, what was the appeal issues?

MR. BOYD:

I don't think I've got the 1744.

MR. MASSALON:

I don't have a 1744.

Oh, yes I do.

That's the same two issues, Judge.

THE COURT:

It's the same; which is the Motion to -- uh -- Reconsider the Inclusion of Medical Witnesses and the Motion to Conform to the Evidence?

MR. MASSALON:

That is correct, Your Honor.

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MR. BOYD:

And just for The Court's record, that Order was entered by the Probate Court, March the 10th of 2014 according to my notes, Judge, excluding medical witnesses --

MR. MASSALON:

I have March 17 and March 20th, Your Honor, for those; but I'm not sure --

THE COURT:

And then the last, which is 2013-8139; what was the nature of that appeal?

MR. MASSALON:

Uh -- Adding the new parties after -- That -- That is actually the --

THE COURT:

Same thing, basically --

MR. MASSALON:

That's the --

THE COURT:

-- as to 8152?

MR. MASSALON:

Correct, Your Honor.

THE COURT:

Okay.

OFFICIAL COURT RECORD

And so, there's a motion for new trial on all of these?

MR. MASSALON:

I don't think there are any motions for a new trial, Your Honor.

I think there's a motion to --

THE COURT:

I'm sorry, mistrial.

MR. MASSALON:

As I said earlier, my Motion for a Mistrial --

THE COURT:

There's a Motion for a Mistrial on all of these cases?

MR. MASSALON:

I believe that's --

THE COURT:

Is there a reason y'all just haven't consolidated them all?

MR. MASSALON:

Your Honor, the -- the -- I believe that Mr. Slotchiver said the judge consolidated -- At the trial, the judge consolidated those for purposes of the -- of the trial proceedings but not for purposes of ruling.

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THE COURT:

Did y'all make a motion to consolidate them?

MR. SLOTCHIVER:

Your Honor, my recollection is that there was a motion in court -- uh -- early in the proceedings -- or it might've been a pretrial motion, Your Honor.

I -- I --

THE COURT:

Who's motion was it?

MR. SLOTCHIVER:

I don't remember the answer to that question, Judge.

I'd have to go research that, Your Honor. I don't have that in front of me.

THE COURT:

I was just curious if you knew?

Have y'all given any thought to consenting to consolidating them?

MR. MASSALON:

Not until this minuet, Your Honor.

THE COURT:

It just seems like it's the same

OFFICIAL COURT RECORD

issue. Why try four different cases?

This is that all about the same?

MR. MASSALON:

It is all arising out of the same --

THE COURT:

Same set of circumstances?

MR. MASSALON:

That's right.

MR. BOYD:

Actually, Your Honor, it's -- I'm sorry.

MR. MASSALON:

Your Honor, are you referring to consolidation of appeals at the Circuit Court level or are you referring to consolidation of the trial --

THE COURT:

Since I've denied the appeal as interlocutory --

MR. MASSALON:

Okay.

THE COURT:

-- so why try four different --

MR. MASSALON:

So it's at the trial court level, Your Honor?

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THE COURT:

So why do I have four different numbers?

MR. MASSALON:

There were two appeals technically filed; two sets of rulings appealed in each trial proceedings, Your Honor; filed as an independent appeal.

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

THE COURT:

Oh, I got you.

MR. MASSALON:

Yeah, we -- We thought about that.

But we were nervous about going over that appeal deadline by the time of the amended notice of appeal.

So we just filed them separately.

And that perhaps that may have been overly cautious. But we --

THE COURT:

Well, what I would suggest you all do -- again, take it for what it's worth -- is to consent to consolidate in both causes of action; and go ahead and have the Probate Judge take over under the unavailability rule; and -- uh -- everybody have their shot at the apple

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and call as many witnesses as you need to and get that final ruling.

So again, that's the order of The Court.

It'll save you a lot of money in the long run.

MR. MASSALON:

Thank you, Your Honor.

WHEREUPON: There being nothing further in this regard, these proceedings were finally concluded at 12:41 PM, February 9th, 2015.

REPORTER'S NOTE:

Due to the inordinate number of attorneys participating in these proceedings and their not habitually identifying themselves as they spoke; and due to this reporter having primary duty in Family Court, and being reluctant to interrupt or improperly disrupt these proceedings, and being unfamiliar with the various attorneys; the reporter can certify the words spoken, but cannot in good faith vouch for the identity of the speakers being completely accurate within this transcript. This reporter is relying on and requesting that the participating parties correct any misidentified portions herein that may be 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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THE COURT: We are here this morning regarding the matter of Abbie Dorn Special Needs Trust, 2008-GC-26-50, and in the matter of Abbie Dorn Conservatorship, 2008-GC-26-25.

Just a couple of preliminary matters that I wanted to start with this morning. We are starting today with what we anticipate will be close to a two-week trial. I just want to recommend that the parties and counsel be mindful of the time we have allotted for the trial, and to the extent that we can conclude this within that allotted time, I think that would be in everybody's best interests, and I will do the same as well.

We're starting today at 9:30. Unfortunately, it's a little bit past that. We've been waiting on Mr. Davis. And the rest of the week we'll begin at 8:30. Next week, on Monday, if necessary, we'll start at 9:30, and then the rest of next week through Thursday at 8:30.

Today I anticipate adjourning at 5:00. I have an appointment outside of my office at 5:30, so I'll need to be finished today no later than 5:00. The rest of the week, we'll go 5:30, 6:00, or even later, if necessary. It just

depends on I think how the witnesses go and how tired everybody gets.

Also, if there are any medical issues or any other concerns that the parties or counsel have about taking periodic breaks, I generally would break at an appropriate time for just a few minutes to allow people to get some water, use the restroom, or whatever, but for a limited, very short break. If we need to take an extended break, 15, 20 minutes or half an hour, you can let me know.

Other than just very short breaks, I would anticipate going all day, breaking for lunch for about an hour and 15 minutes. There are numerous restaurants close by. I think if we can take a limited amount of time for lunch, we can get back on track.

Anything initially from counsel? Those are the only opening remarks I had about how we're going to go forward with this trial. No?

MR. DAN SLOTCHIVER: A few, Judge.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Good morning.

THE COURT: Good morning.

MR. DAN SLOTCHIVER: Just to clarify a

few things, a couple of issues, housekeeping details to take up.

First, as you're aware, Judge, we have a claim that my client has filed. He'll be here shortly.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: And then there's a separate claim that's been merged for trial that was filed by the Cohens, and then there is a counterclaim that was filed by John Kachmarsky in his role as guardian and attorney for the minor children.

My understanding, and I want to get clarity, is that all of these are being tried together at the same time. In other words, we're not going to try one, stop, and then try the second one, and then try the third one, they're all being tried together, so during the examinations and whatever openings or closings, whatever else we do, my understanding is it's all one trial. Is that correct?

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, I have a different impression, and in my earlier discussions with Dan, I thought we had a different

understanding. You've got two matters that are, yes, consolidated, but I don't think -- I don't think, as a matter of practice, Your Honor, that everybody can try their case simultaneously.

I think we've got Mr. Dorn's petition. That was filed first. My thought, my recommendation to the court would be that we try the Dorn petition, Your Honor, and we open with Mr. Dorn's petition, then we'll -- Mr. Dorn will present his witnesses, we will cross, we will present our rebuttal case, Your Honor, and then to the -- because much of the case will be duplicative.

At that point, we will then have an opening, we'll present our petition, and, Your Honor, I would just think the court would be able to incorporate -- will incorporate what testimony the first proceeding generates, to the extent that that testimony needs to be supplemented, but I don't think we can try all of these cases simultaneously. I think that's going to create confusion, and quite frankly, Your Honor, I just think it's going to make it more difficult for us to sort these issues out.

I think the proper approach is to try

the Dorn petition, let Mr. Dorn make his case, we'll rebut, we'll rebut the case, we'll present our petition, and if the testimony is duplicative, Your Honor, we won't necessarily have to bring a witness back for duplicative testimony. I think the court can incorporate that testimony, but I think to have two openings at once and two rebuttals at once is going to be -- is going to be a little bit -- it's just not going to be effective, Your Honor.

THE COURT: Mr. Kachmarsky?

MR. KACHMARSKY: Yeah. My court claim is for breach of fiduciary duty, which is identical to Mr. Slotchiver's claim, so I don't have a dog in the fight with regard to these two, but with respect to my claim, I would like it to be tried at the same time. I mean, I don't see any purpose in having him go forward, having Mr. Boyd then go, and then me come back and basically try the same case again.

MR. DAN SLOTCHIVER: It's no different, Your Honor, than I see in many causes of action. That's what they are. These are multiple causes of action all being heard at the same time.

And the reformation action is really part component of all of this complete case, because part of the argument against the reformation that's been made deals with the issue that they shouldn't be reformed because of factors that are involved. I don't think it's hard to do one opening statement and one closing statement and to hear it all at the same time. Otherwise, we really will have two opening statements and two closing statements. We'll be examining the same witnesses over and over again.

And, as Your Honor is aware, oftentimes or generally, whenever you file a case, one of the things that the court's required to do is to tell you -- and I see this more in federal court, but also in state -- if there's any other actions that need to be joined with this, so they're all heard at the same time.

So I would ask that we not try one case and then adjourn, essentially, and then come back and try another case which deals with the same issues, and in light of the counterclaim that was brought, it really is the same case. There's separate arguments, I understand, that we made in the counterclaim, but it really is the same matter

that's being heard.

THE COURT: Thank you.

Anything from you, Ms. Hedgepath?

MS. HEDGEPATH: No, Your Honor.

THE COURT: Ms. Moore, nothing?

MS. MOORE: No.

THE COURT: Anything else, Mr. Boyd?

MR. BOYD: Your Honor, I think the difficulty we have is I think the cases really are separate. We've consolidated them for purposes of trial, and I think we can streamline the presentation of both cases, but they really are separate matters to be heard independently.

In effect, you've got one petition that Mr. Slotchiver has brought, and the claims there, they're related, but they're not the same, Your Honor. The claims in Mr. Slotchiver's petition are actually fairly limited. The claims in Mr. Slotchiver's petition, he alleges he asked for removal of the trustees, he asked for an accounting, and he alleges certain wrongful acts on the part of the trustees, but he doesn't allege a breach of fiduciary duty.

I think the proper way for the court to address this case is hear the Dorn petition and

allow us to call our witnesses, prepare our -- present our rebuttal to that case, and then if the court decides, for instance, in favor of Mr. Dorn, that's going to have an impact on I think the way the second petition is tried, Your Honor.

THE COURT: Well, you know, the chances of me making a decision at the end of the first case and ruling before you go forward is slim to none. I mean, that's generally not going to happen. So it seems to me that these cases are very intertwined and that it would be more effective for us to try the cases together.

Mr. Boyd, if you see the need at a certain point to re-call a witness after you've had an opportunity to maybe cross-examine that witness, to call them in support, I'll certainly give you an opportunity to do that. I don't want to deny anyone the right to recall a witness when we're concentrating on the second petition, but I do think it would be appropriate to go forward and hear them both together at the same time.

MR. BOYD: Okay.

THE COURT: All right?

MR. BOYD: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: Thank you, Your Honor.

And for the record, I disagree with his assessment of what the case is about, but we'll deal with that throughout the hearing.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: The second matter, Your Honor, that I had written the court about last week is that we received notices of withdrawals from counsel for the conservator guardian and individual and the Cohens in their individual capacity, and essentially --

Well, first, as a formality, my understanding is that the rules require that once you are on the record as an attorney, you cannot just withdraw. You have to file a motion to be relieved as counsel with the court, and the court then has the right to accept it or not accept it, and generally speaking, other counsel would have an opportunity to voice their opinion on this.

And in that regard, Your Honor, we believe, as referenced in the letter, this was -- this came about by a conversation I had where I suggested that during the trial, I don't believe

it would be appropriate for both Reese Boyd and Bret Davis to each have an opportunity to do an opening, do a closing, do an examination, do a cross-examination. They're one counsel. And when you have co-counsel, one person takes a witness or one person takes the motion or one person does the opening. They can switch throughout, but they can't both do it.

As a result of that conversation, there was reference in the letter there may be some issues about this, and therefore, we've tried to clarify it by withdrawing. They've unilaterally withdrawn from their respective roles, so that each one of them serves a separate and distinct role from the other, and we would object for multiple reasons.

First we think about is the Rule. Second, it's nothing short of an extension, an unnecessary extension, and delay in this case. It will require the trial to last considerably longer, because we truly will have two openings, two closings, two examinations, two cross-examinations, which is even more -- it even gets worse and is even more difficult because of the fact that they both represent the same people.

THE COURT: Let me hear from Mr. Boyd real quick again on that.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: And Mr. Davis, if necessary.

MR. BOYD: Your Honor, I would just state in response that throughout this trial, the circumstances in which we were -- which my firm was retained were that Mr. Davis had filed a petition, he asked us to join him on that petition, so from the outset in the trial, we were, in effect, aligned similarly with respect to our clients.

However, throughout these proceedings, from the very first motion that we had, as Your Honor will recall, to the numerous times that we've been before the court since then, Mr. Davis and I have both participated in these proceedings, not consistently or not in every instance, but we both participated. That's been true at deposition, that's been true at several hearings that have been taking place in the matter up until the date, up until the present date, and so to raise this issue now, on the eve of trial, I thought was fundamentally unfair.

Again, our practice in this matter has been established from the outset. Bret and I both participated in argument, and it's not even, Your Honor, that we would necessarily participate in every argument in every instance, but it's just the way that we --

THE COURT: I think, Mr. Boyd --

MR. BOYD: It's the way we've addressed the matter thus far.

THE COURT: I went back and I looked at the pleadings. They were signed by both of you as attorneys for Dr. and Mrs. Cohen in all of their capacities. I think under the Rule -- I think Mr. Slotchiver's right -- one of you can examine the witnesses, cross-examine, you can switch off however you want to, but I don't think it's appropriate at this time to try to separate your representation with respect to Dr. and Mrs. Cohen and their capacities. And I think y'all need to decide, as you go forward, which one of you is going to examine, cross-examine, argue objections.

And certainly, I would give you, as I have with Mr. Slotchiver, an opportunity -- he consults with his co-counsel often to make sure

he's covered everything. I think you and Mr. Davis need to do the same.

MR. BOYD: Thank you, Your Honor.

THE COURT: Thank you. Anything else at this time?

MR. DAN SLOTCHIVER: Yes, Your Honor, a few more little housekeeping details.

THE COURT: Okay.

MR. DAN SLOTCHIVER: And what we tried to do throughout the pretrial issue, as far as discovery and motions, is different than for the trial, obviously. That's why we've given more latitude with both talking at different points.

I'm assuming that during the trial, as Lee Moore is represented by Lynette Hedgepath, likewise, we won't have both of them examining and cross-examining and doing opening statements, but instead, it will actually be Lynette Hedgepath.

MS. HEDGEPATH: Your Honor, I am appointed to represent Abbie Dorn. Lee Moore is a guardian ad litem for Abbie Dorn. I do not represent Lee, but Abbie.

THE COURT: I think that's the case, Mr. Slotchiver.

MR. DAN SLOTCHIVER: Your Honor, the

last thing that I'll bring up is that -- and it may not be an issue that needs to be brought up at this point, but certainly later on, is that there are -- I anticipate making an argument at some point in the future pertaining to documents that we have not yet received until late Friday afternoon that we anticipate objecting to, and I'm just giving the court some advance notice.

A witness who was subpoenaed Friday afternoon who was not listed as a witness in this case, even as of now, has still not been listed as a witness, but certainly was subpoenaed Friday, or we received a copy of the subpoena on Friday, and with reference to those issues and anything else that would come up with new documents we haven't been provided or new witnesses that we haven't been provided in advance, pursuant to the discovery --

As you're aware, Your Honor, we've been up here many times on motions to compel discovery, we certainly have pushed for the discovery responses, and we don't believe they're proper, and we will raise that objection if, in fact, evidence is introduced. I only bring it up now because understanding that there can be

opening statements, I want to restrict any reference to anybody that hasn't been provided to us in a timely manner.

THE COURT: Okay. Thank you.

Okay. Any other preliminary matter before we hear opening statements? Mr. Boyd?

MR. BOYD: Yes, Your Honor. Just briefly, Your Honor, I would say that with respect to another housekeeping matter, if it please the court, we requested, and specifically, I spoke with Dan several times, trying to come up with a trial plan for the presentation of his case, Your Honor. Nothing elaborate, Your Honor, simply a listing of the witnesses, the order in which the parties intend to call them.

As Your Honor knows, the witnesses in this case are spread out, and we're at a disadvantage, Your Honor, in trying to arrange the schedule for our witnesses, knowing when to prepare, how to prepare, how best to prepare for the coming day. I would ask that the court give us some guidance.

I'm even more confused, quite frankly, at this moment, based on the ruling of the court, understanding how we're going to proceed. I'd

appreciate some guidance from Mr. Slotchiver on simply order in which he intends to call the witnesses, Your Honor, the length of time, to the extent that it can be determined, how long we anticipate each witness will take, so that we can come up with some kind of orderly plan for the trial of this case, because just to say, well, the two of you are going to simultaneously try your case, we've got experts, as Your Honor knows, in Columbia. We've got witnesses from California.

We need some guidance from the court, Your Honor, and it's well within the province of the court and your authority to administer the proceedings here, to instruct the parties, to give one another some guidance, so this is just not -- this is not going to be a Wild West free-for-all.

THE COURT: Well, I'm going to have Mr. Slotchiver go first. He filed his petition first. I'm going to have him present his case first. If, in cross-examining any of Mr. Slotchiver's witnesses, you think it's appropriate to question them with respect to your case, Mr. Boyd, then I think you would need to take that opportunity to do so.

I did mention that if you request to

re-call a witness that you've examined or cross-examined, then I'll give you the opportunity to do that. I'll hear from Mr. Slotchiver, if he's got an objection to that.

And then after he presents his case, then you will present your case, to the extent you have not covered your case with the witnesses that Mr. Slotchiver calls, and also call your witnesses in rebuttal to his case.

And then we'll hear from Mr. Kachmarsky with respect to any witnesses he wants to call, and he will likewise cross-examine Mr. Slotchiver's witnesses and your witnesses with respect to your petition and his counterclaim.

If it turns out that all that becomes very confusing, and we are not able to do this in an orderly manner, then I'm happy to hear a motion to bifurcate the matter, and let's concentrate on one petition at a time, but I would like to see us be able to try this case both of these petitions at the same time.

MR. BOYD: And I don't disagree with that, Your Honor.

THE COURT: Ms. Hedgepath?

MS. HEDGEPATH: Your Honor, and

certainly I'm not arguing against -- arguing bifurcation or anything like that, but it would be of help to me if I just had a witness list for Mr. Boyd or witness list for Mr. Slotchiver in the order that they plan to call them. It would help me in planning, rather than planning tonight for someone that may come up next Thursday.

Granted, I know that there have been submission of witnesses, but no witnesses, which I'm aware of, that are actually going to come to trial. So I think it would be time-saving for everybody, including Mr. Slotchiver, if we -- if everybody has a witness list and the order in which they anticipate calling them, realizing that there might need to be deviation from that order, as well as an exhibit list. That way, the parties can get together, they can determine if they all agree on an exhibit coming in or if there might be some objections. That would, I think, save the court's time and all of us some time.

THE COURT: Mr. Slotchiver?

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: Thank you, Ms. Hedgepath.

MR. DAN SLOTCHIVER: To some extent,

Your Honor, there is --

THE COURT: And let me just say this: I don't think those are unreasonable requests, at least to have a list of the order in which you plan to call witnesses, because I don't know how long your case is going to take, but I'm assuming it's going to take a number of days, and for opposing counsel to be in a position to be prepared, when we start a day, knowing who the witnesses might be that day. It would be helpful.

MR. DAN SLOTCHIVER: Your Honor, normally -- and I'll do whatever you ask me to do, but I will suggest to the court that we believe that we have inherent trial strategies that we have the right to work with, and in that regard, there are documents and there are witnesses who they're asking me to disclose to them now on a witness list, and they're now coming to the court asking for that.

Your Honor, there's no discovery that's been sent to us by Lynette Hedgepath or Lee Moore requesting these documents. No discovery was sent to us by Bret Davis requesting these documents. Mr. Boyd sent us discovery requests that are not timely due at this point, and

frankly, I've looked at them, and I've worked some drafts, but I haven't gotten through them, and I think this is an attempt to circumvent that, and in order to ask us to provide documents and information which we were not required to do.

And as you're aware, Your Honor, this case has gone on for two-and-a-half years. As stated before, we've been up here -- we filed three or four motions to compel. We've been up here arguing over discovery. And if you would like me to provide a list of documents, I'm happy to do it. If you want me to provide witness lists, I'm happy to do it.

We've got a little concern with reference to timing with, for example, John Freeman, who's going to testify. He's in Columbia. He's three hours away. And my thought is by the end of today, we would assess how much progress we would make, or we have made, and then we'd talk to you for some guidance on what time we should bring him, and should he be here tomorrow, should he be here tomorrow afternoon.

I don't want to bring him at 4:00 in the afternoon to testify for an hour, for example, to have to have him spend the night to go back the

next day. But certainly, today we think it really depends on how much progress we make as the trial begins.

We have battled almost everything in this case. We can rarely agree to things. And normally, we would be the first ones to say why don't we exchange lists, but my thought is that even if I exchange the list, I'm probably still going to have objection after objection after objection, so why not go through the exhibits, and if there's not an objection, we'll go to the next one. If there is, we'll handle it at that time.

THE COURT: And I'm fine to do that.

MR. DAN SLOTCHIVER: But however Your Honor wants me to handle it. I'm prepared to do whatever you want me to do. You just give me advice.

THE COURT: I'm fine to do that, to hear any objections to the exhibits as they are admitted. I had kind of hoped that maybe there would be a stipulation as to certain exhibits. I thought maybe we talked about at some point a stipulation of some facts. I don't know if that's been done or not. I hope so. But as far as introducing exhibits, providing an exhibit list,

hearing out any objections, I'm happy to let you introduce those as you go forward, and I'll hear the objections then.

Mr. Boyd?

MR. BOYD: Your Honor, I'd have to object to some things that were said. And yes, I have -- we did discuss it in prior proceedings. We did discuss it in a pretrial conference. And Your Honor is well aware we had pretrial teleconference in preparation for these matters, and Mr. Slotchiver, in that teleconference, said that he thought we had been compliant. He thought he had what he needed.

Your Honor, we have produced nearly 5,000 pages of discovery in this matter. We have been -- we have been kept by this matter under the ongoing supervision of the discovery process for the length of time that the matter's been proceeding, which Your Honor knows is now a substantial amount of time. We've produced -- we have been exceptionally cooperative, generally speaking.

We have had disagreements. We certainly have had disagreements. We've had disagreements over the attorney-client privilege.

We've raised issues, and as Your Honor well knows, you've ruled in our favor on many issues, Your Honor.

So yes, we've been before you, but we've been before you when we were asserting claims to protect our clients' interests, and Your Honor has generally ruled in our favor. I don't want to necessarily walk back through a procedural history of how we got here, but the fact is, we produced nearly 5,000 pages of documentation, Your Honor, and this has been extremely burdensome on the trustees. It's been an extremely burdensome case, Your Honor.

And I just got an email Friday from the accountant concerning work on a supplemental accounting, Your Honor. This is an evolving case. And yes, there are documents that have been produced and continue to be produced, and as long as we're under the obligations that we're under, that will continue to happen, Your Honor.

The only thing I would say with respect to the witness list, Your Honor, there is no way that we can adequately prepare and efficiently present -- if we are, in fact, going to have arguments, objections to witnesses, Your

Honor, we should go ahead and address those.

If counsel is not willing to share his witness list, and yet we've disclosed -- we've disclosed our trial subpoenas to the other side, Your Honor. I mean, there's -- in fact, there's -- what's happening is there's unilateral disclosure. So we've disclosed our trial subpoenas as a matter of course. We always do that as a matter of courtesy, Your Honor. And Mr. Dorn's counsel, Dan Slotchiver, did not return -- he's not disclosed to me any indication of exactly when or how he's going to present his case, Your Honor.

I've never been to trial in a matter where the opposing counsel said: I'm not going to say word one about who I'm calling and when I'm calling them, Your Honor. We're just asking for a general order from the court saying this is how the matter will be presented, just like to know from Mr. Slotchiver the order of the witnesses that he's going to call, when he's going to call them, how long he anticipates that will take.

And then, as Your Honor suggested, exactly as I anticipated, we'll present our case-in-chief. I'll explain to Mr. Slotchiver

exactly who I intend to call, exactly how long I anticipate that taking, and we'll exchange those documents.

Your Honor, we can go ahead and set a time where we can go ahead and deal with any objections that there may be, and we can deal with that, Your Honor, but to try to deal with these matters in a sort of as-they-come-up basis I don't think is going to be an effective way to try this case, it's not going to be efficient, and who knows how long we'll be here, Your Honor.

We're not asking for anything other than just, again, a baseline disclosure, here's how I see this day going. I'm going to call -- I'm going to start with Mr. Freeman. I anticipate he'll run into Tuesday. This is how I'm going to run Wednesday, Thursday, et cetera, Your Honor. And I've never participated in a trial at any level where opposing counsel refused to do that, Your Honor.

MR. DAN SLOTCHIVER: Your Honor?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Among the difficulties we've had here, and there are many, last week I received a notice that I was

subpoenaed to be in court, that I was to be in court myself, and that was a mistake, and they withdrew that once we referenced it.

I received documents Friday from Robin Morris, who said before that they had no documents. She's not listed as a witness, but she's been subpoenaed to show up. And then I receive a letter she wrote. She has stated that her file was commingled with Bret Davis's.

I don't understand how all of this can take place. We are prepared to try our case the way that we are set up. We'll do whatever Your Honor requests, but I certainly believe that as far as the pretrial -- but as far as subpoenas go, the only subpoenas I sent out are to the Cohens. Nobody else. There was nothing. It's not a hidden disclosure. There was nothing to disclose. We've done everything, I believe, to the letter of the law, as far as what is required.

If you want us to give the exhibit list, we'll give it. I think we still have issues as far as witnesses go. I don't know how long they're going to take because I don't know how long it's going to take for them to respond. And I say that -- it could be that a witness would

take two or three hours, and it could be they would take two days. I don't know at this point, so it's very hard for me to estimate.

I've got the same concerns that they have with regard to bringing in experts, and how do we notify them. And like I stated before, obviously, we don't plan to get to it today, and I would hope at the end of the day, we can caucus again and determine what we think for tomorrow, how it looks like it's moving, and do we need to bring witnesses.

I would ask the court to give everybody -- not just us, but also the other side -- a little bit of latitude with reference to the fact that we have witnesses from out of town, whether it's their counsel from California, whether it's people from Columbia, wherever it is. Certainly, there's not local people, other than the people that are here in this room or potentially four caregivers who have been listed. That's the only locals that I've been advised of.

So once again, Your Honor, if you wish for me to take a break and to provide documents, I'm happy to do it. I'm prepared to do it. If you wish for us to go ahead forward with the

hearing right now at this point, we're happy to do that at your leisure.

THE COURT: I'm not going to require you to provide a list of exhibits. You can introduce those as we go through the trial, and I'll hear any objections at that time.

With respect to your witnesses, then I think it would be beneficial for everybody for today for you to provide Mr. Boyd and Ms. Hedgepath and Ms. Moore the list of the witnesses that you anticipate maybe calling today. At the end of the day, you can let them know who you anticipate calling tomorrow. We can see how far we've gone, how far we get with this today.

I'm not going to make you itemize all of your witnesses in the order that you're going to call them, but at least give them a heads-up at the end of the day who you anticipate calling the next day. I think they have an opportunity to request this through discovery, and I'm not going to make you go to any lengths other than that.

MR. DAN SLOTCHIVER: Your Honor, today we anticipate calling the Cohens.

THE COURT: Okay. Thank you.

Mr. Boyd?

MR. BOYD: Your Honor, let me just say a word about the subpoena. We did subpoena -- this document that Dan has just presented to the court is a subpoena. It's actually directed to Dan Slotchiver, as Dan and I agreed, but the individual commanded to testify is his client, Dan Dorn. It's not directed to Dan Slotchiver individually, but the subpoena was issued pursuant to a conversation that I had with Mr. Slotchiver indicating that we would both send subpoenas to one another per our respective clients.

MR. DAN SLOTCHIVER: I never got past Page 1. Dear Mr. Slotchiver: Enclosed please find a subpoena for you to testify at trial in relationship to the matter. We look forward to seeing you at the time. Never got past Page 1.

THE COURT: Apparently, that was a typographical error.

MR. BOYD: Typographical error, Your Honor.

THE COURT: Okay. I'm going to give, then, counsel about a five-minute break. I'm going to go get my clock, as I mentioned, so I can keep up with the time, let Mr. Slotchiver speak to his client, if he needs to, and then we'll resume

in about five minutes.
MR. DAN SLOTCHIVER: Thank you, Judge.
MR. BOYD: Thank you, Your Honor.
THE COURT: Thank you.
(A recess transpired from 10:31 AM to 10:39 AM.)
THE COURT: We're back on the record in the Dorn matter.
Mr. Slotchiver, are you ready to proceed?
MR. DAN SLOTCHIVER: I'm sorry, Your Honor?
THE COURT: Are you ready to proceed?
MR. DAN SLOTCHIVER: I am ready to proceed.
THE COURT: Opening statement?
MR. DAN SLOTCHIVER: Very briefly.
THE COURT: Sure.
MR. DAN SLOTCHIVER: I think we've had an opening statement for two-and-a-half years, so it'll be very brief. I'm not going to show you any exhibits. I'm just going to talk briefly and give you kind of an outline of where I think we're going.
THE COURT: Thank you.

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

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

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

an effort to avoid having to come to court and petition for approval.

I believe the evidence will show that the Cohens knew that they had an issue, which lead to an email being sent by their counsel to Your Honor addressing this issue, that they knew they had an issue, which lead to them filing an action for reformation, but they neglected it.

And we believe that we will have testimony that you are -- even were there authority to do it, which we dispute, that having the authority and exercising the authority are two very different things. They're not the same.

We will -- I believe that throughout the course of this hearing, there will be a lot of evidence put in primarily dealing with payments and monies and checks and legal fees and that have occurred without the approval and that weren't reasonable, and that at the end of the case, we contend that the trust has been damaged not only by the outlay of all the monies that have been spent and all the expenses incurred and the expenses -- my client has been damaged by the outlay of expenses he's incurred related to this and will seek reimbursement, but also that in

order to make the trust whole, that we would have to put the money back in and figure out where that money -- what that money would have done had it been properly invested.

We intend to call several witnesses to address this. We'll start with the Cohens. It's going to be a rather lengthy trial. We're doing our best to streamline it. I've got an IT person here with us to help with the court and to put the documents on the screen once they've been into evidence, and we'll move forward as quick as we can. Don't know what the time is going to be, but thank you.

THE COURT: Thank you.

Mr. Boyd or Mr. Davis?

MR. DAVIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. DAVIS: I will say that I arrived a little after 9:40, and I apologize. 9:30, I did have some trouble on 501. That won't happen again. We'll start in the morning at 8:30 promptly.

I appreciate Mr. Slotchiver's comments; however, I very much disagree with them, Your Honor. This is, as he mentioned, a very

tragic case. I mean, we all know the facts, we've been doing this for a couple years now, however, from a legal standpoint, it's a very simple case, Your Honor.

The question we have is was preapproval required of the trustees. We'll have testimony that shows first that there's an opinion that, no, preapproval was not required, because the trust authorized them to do it without prior court approval, and then there's also the argument of whether court approval was necessary, and if the courts finds that it was, then we've got proof that the prior approval was obtained, and we've got a California order and we've got a South Carolina order that we talked about numerous times, and we've got reliance on counsel, Your Honor.

So that either way we take it, it brings us down to the question of was the actions of the trustees reasonable, and that's, I think, what we're going to spend the majority of our time to prove to this court, which we sincerely believe that the actions of the trustees was reasonable.

They're arguing about fees in California. We're generating more fees in South

Carolina arguing about fees in California. There are several points that we'll make to the court and prove to the court through testimony and other evidence.

One thing I'd like to say, Your Honor, the action that was filed by the Cohens here was filed in an effort to preempt or head off any vindictive or aggressive litigation by Mr. Dorn. Unfortunately, that was not successful because they did file an action seeking to do what they're doing now, Your Honor.

But we'll show -- as Mr. Slotchiver mentioned, he said this is a case about grandparent visitation. Well, Your Honor, that's troublesome from a legal standpoint because in California, there's no cause of action for grandparent visitation, so how can it be a case about grandparent visitation when in California, there's not a cause of action for grandparent visitation.

That's troublesome from a legal standpoint. They base their argument on -- or really their whole case on that argument, and we'll, of course, flesh that out for the court during the trial.

We're also going to show that legal fees for both sides were essentially the same. So they're arguing that the legal fees that were paid by the trustees were too high, yet they were paying their attorney the same amount in legal fees, Your Honor.

Also, we're going to show this court that it's going to be -- that it's reasonable for the trustees to seek visitation, that Abbie Dorn does, in fact, appreciate the visitation and acknowledges the presence of her children, and it is reasonable for a mother to have visitation with her children and for the trustees on her behalf to seek that.

I'd also remind the court and opposing counsel that this trust is for the sole benefit of Abbie Dorn, not for the benefit of anybody else, but the sole benefit of Abbie Dorn, and she does benefit and appreciate visitation with her children.

We're also going to show this court that through the pendency of the California matters, Dan Dorn essentially drove the litigation and was unnecessarily aggressive, and his counsels -- or his counsel -- was unnecessarily

aggressive and drove up the fees, Your Honor, and we're going to show that through testimony from counsel from California.

We're also going to show that there are certain things that Mr. Dorn did in California that precluded the Cohens from not defending the actions, that had they had not defended, in particular, the child support claim, that Abbie could have lost Medicaid benefits, and she relies on Medicaid benefits to pay for numerous needs and thousands of dollars each month for benefits.

And we're also going to show, Your Honor, that the Cohens attempted on numerous occasions to resolve this matter, but those were rebuffed and the matter continued on because of actions of Mr. Dorn.

So Your Honor, I would like to, in opening, just say that it would be, I think, helpful to us to realize that the Cohens did have -- if prior approval was necessary, they did, in fact, have it from California and South Carolina, and what they did was absolutely reasonable under the circumstances.

Thank you.

THE COURT: Thank you.

Ms. Hedgepath, anything from you, ma'am?

MS. HEDGEPATH: Just briefly, Your Honor.

The testimony that you'll hear that will go into evidence today will be very conflicting from all different sides, as you can imagine, but I think there's one thing that we will all be able to agree on and what you will see when you've heard all the evidence, that the Cohens have dedicated their life to Abbie Dorn. There's no doubt. I hope there will be no doubt in your mind or anyone else once the -- and the evidence will show that, that her best interest is what they put first.

And they may have made some mistakes in the way they handled the money, out of not knowing about it, but at any rate, I think there's been, in one of the pleadings of Mr. Slotchiver, is to remove them as trustees. There's no one that the evidence will show you that knows more what Abbie needs than the Cohens themselves.

Now, they are asking that part of the relief -- when I say they, Mr. Slotchiver, Dan Dorn -- that some monies be put back into the

trust, the special needs trust. Well, the evidence will show you that that is a catch 22 that we're dealing with. However much is required to be put in, if something happens to Abbie and Abbie goes through a series of stays in the hospital, medical procedures, and she were to then pass away, Medicaid goes after that special needs trust, so all the money that goes back into the trust will have to go to pay Medicaid, and all that we're here today arguing about will be for naught. Dan Dorn's children, Abbie Dorn's children, could end up with nothing.

And furthermore, the monies that will be ordered, if any, to go back into that trust will be taken away, the evidence will show you, from the Cohens' estate that would go to benefit Abbie's children, Dan Dorn's children, and it could all end up in the hands of Medicaid.

MR. DAN SLOTCHIVER: Your Honor, I would object to that. There is no evidence whatsoever and I believe it's improper to argue that money taken from the Cohens to reimburse the trust would come out of the pocket of Dan Dorn's children. That's not what this matter is here about today.

I've given some latitude with reference to the argument that they provided for her well as guardians. This is not a case about their actions as guardians. The matter before the court now is did they act with authority and prudence and reasonableness in what they've done, and I think it's improper to go beyond the facts of anything that this case has ever been about in any of the filings to address this matter with reference to it's going to come out of his pocket or the Medicare issue and would money be depleted from Medicare. That's not what the case is about.

THE COURT: I'll listen to your objections when Ms. Hedgepath presents evidence to the effect. Thank you.

MS. HEDGEPATH: And Your Honor, and with respect to Mr. Slotchiver arguing grandparent visitation, this is just a case of grandparent visitation, Mrs. Cohen's testimony will establish beyond a reasonable doubt in your mind, I believe, and the reasonable doubt is not what we're looking at now, that her daughter -- she is the mouthpiece, she and her husband, for her daughter. Mrs. Cohen, nor Dr. Cohen, can know with absolute certainty, nor do they believe any of the doctors

can know with absolute certainty, what Abbie knows and what Abbie does not know.

And you will hear from Susan Cohen that if there is any possibility that Abbie knows those children, those precious children of hers, are there, then she wanted to fight for every day she could get for those children to be with Abbie.

Now, she had no way of knowing how long or -- how long the visitation period would be or how often, but she had the right to use that money if she believed that that would be in Abbie's best interest and believed that that was reasonable. If she did not know, then would it not be better to err on the side of caution.

And additionally, the evidence will show that Susan Cohen and Dr. Cohen had to pursue the matter in California because Dan Dorn was trying to get child support from the special needs trust, which would cause the trust, as counsel will set forth, I'm sure, to cease or would destroy the purpose of the trust and defeat her having medical benefits.

So though when you hear a million dollars in the California action, yes, ma'am, that is a lot of money, but when you're fighting for

what you think is in the best interest of your child, I believe the evidence will show to you that what Susan Cohen did was reasonable for her and Dr. Cohen.

THE COURT: Thank you.

Ms. Moore, anything?

MS. MOORE: No. I have nothing further to add at this point.

THE COURT: Thank you.

MR. KACHMARSKY: Your Honor?

THE COURT: Yes, sir, Mr. Kachmarsky.

MR. KACHMARSKY: Mr. Slotchiver has already mentioned something which I think is pretty critical here, and it is the difference between Abbie Dorn being disabled. She is disabled, but she's a lot more than disabled. She is in a vegetative state.

And we have a deposition of Dr. Mamelak in California, and he talks in his deposition about what a vegetative state is, and he basically defines it as simply it's a coma, and people transition over some period of time from a coma into a vegetative state, lacking consciousness, as Mr. Slotchiver said, lacking the ability to see, lacking the ability to hear,

lacking the ability to interact with their environment or to even know what environment they're in.

And I think as you go through this case, if you will focus on that very simple fact and ask yourself paying a million dollars for legal fees for visitation for a person who really cannot comprehend or appreciate anything, because she's not brain dead, but the only reflexes she has, according to this deposition, are brainstem reflexes. She blinks, she breathes, but that's basically it.

So when you look at spending a million dollars of legal fees, I mean, it's pretty egregious. And in addition to that, on a monthly basis, we have this annuity, which is like $40,000 a month at the current time. There are procedures that are being performed on her cranial sacral. I don't even know what that is. Wikipedia says that its practice is pseudoscience and quackery. These are the procedures on an ongoing basis that are being given to Abbie. She sees a therapist. She has acupuncture. And again, if you focus on the fact that this is a person who lacks consciousness, I just don't see how any of this

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

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

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

Cohen to the stand.
THE COURT: Mrs. Cohen?
SUSAN COHEN
having first duly affirmed, testified as follows:
THE COURT: Yes, sir?
MR. DAN SLOTCHIVER: Your Honor, if it would please the court, we've got a good amount of exhibits that we want to go ahead and introduce, and my thought would be that I would have the witness -- I would identify them, see if we can introduce them, and with your permission, what I'll do is I'll put the first page on the screen, make it a little bit easier as we go through the process.
THE COURT: I have no objections. I'm happy to hear -- as we go through that process, if there's an objection, then I'll hear it at that time.
MR. DAN SLOTCHIVER: Okay.
DIRECT EXAMINATION
BY MR. DAN SLOTCHIVER:
Q. Good morning.
A. Good morning.
Q. Mrs. Cohen, I want to show you a series of documents and see if you can identify

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Does that appear to be a copy of the bill that you would have received from the Meyer law firm and paid in your capacity as trustee?
A. This one's in order.
Q. I'm sorry?
A. Yes, this one's in order.
Q. And is that a copy of a bill that you would have received and paid as trustee?
A. Well, yes. I'm just not sure -- well, I guess it doesn't matter anymore, right?
Q. I'm just trying to make sure that these are accurate copies of bills that you would have received and paid.
A. Right. I just -- I don't know -- as I said before, I didn't know if you had duplicate charges on one of them, the other one.
Q. This one's cleaner.
A. That one's fine.
Q. No issues with this one?
A. No issues.
Q. You would have received this one and paid the bill on this one?
A. Right.
Q. Thank you.
MR. DAN SLOTCHIVER: If I can

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

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

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

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

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

Q. The next bill I have from the Meyer firm is premarked as Exhibit No. 20, Cohen 3702 through 3711, the billing period of 4/1/11 through what appears to be 4/30/11, and it shows due upon receipt $207,027.18.

Is this a copy of a bill you would have received from the Meyer firm and one to which you would have tendered payment from the trust funds?

A. Oh, these are accumulated balances, though. These are not separate bills. I didn't have enough money. She was allowing me to pay, at this point, half.

Q. So you had run out of funds?

A. I hadn't run out of funds, but I didn't want to spend them all. And you'll notice that she's also -- I think it may have been before. It was actually coming out -- she was charging me half those amounts, gave me a professional courtesy discount. This is -- these were balances.

I believe the last one you gave me was still a balance, because I was only paying at that time -- so they actually -- the fees billed were only $9,060, and I think that's probably true with

some of the others. I didn't catch that before.

MR. BOYD: Your Honor, may I briefly ask a question of the nature?

THE COURT: Sir? Yes, sir. Ask who a question?

MR. BOYD: Well, Your Honor, my understanding is that Mr. Slotchiver is introducing exhibits for the purposes of allowing the witness to authenticate those documents and that we can agree they are the billings that have been provided from the MOLM firm. It wasn't my understanding that he had yet begun to ask her substantive questions about those exhibits, and I feel like they're getting into testimony.

I thought what was happening at this moment was we were just authenticating documents and introducing them into evidence. Not really an objection. I'm just trying to clarify what the witness is doing, Your Honor.

THE COURT: Mr. Slotchiver?

MR. DAN SLOTCHIVER: Yes, Your Honor.

THE COURT: Any response?

MR. DAN SLOTCHIVER: I'm just asking her if these are copies of bills that she's received at this point and if the bills were paid

by the trust. Certainly, we haven't gone into when they were paid or if -- they certainly in their cross-examination will clarify and we will certainly clarify the total amounts of bills that have been paid in total. I'm just confirming these are, in fact, bills that she would have received and bills for which would have been paid from the trust.

THE COURT: Okay. Does that clarify for you, Mr. Boyd?

MR. BOYD: Yes, Your Honor.

THE COURT: Thank you.

THE WITNESS: I'm sorry, Judge. I'm a little confused, though.

THE COURT: Yes, ma'am.

THE WITNESS: When I'm asked and he reads this first number on top to me, will I confirm, well, it's a copy, but the number there of the bill is actually for $9,060.

THE COURT: Yes, ma'am.

THE WITNESS: So what am I supposed to say?

THE COURT: Well, I can't tell you what to say. Counsel has just confirmed that he is just having you to confirm that those are the

billing statements, and then they will get into your specific testimony and clarify the amounts that you actually paid and give the court a total amount paid. I understand that some of those balances may carry over from one bill to the next, and I think that's being clarified.

THE WITNESS: Okay. So all I'm saying is that yes, this is a copy.

THE COURT: Of the bill.

THE WITNESS: Not that this is the amount, as really now, for the past several months, these are balances.

THE COURT: Yes, ma'am.

THE WITNESS: Okay.

THE COURT: I think that has been clarified.

THE WITNESS: Okay. So this is just -- you're asking me -- let me clarify again. You're just asking me if this is a copy.

BY MR. DAN SLOTCHIVER:

Q. Is this a copy of a bill that you received?

A. Not is this amount --

Q. I'm not asking if you paid $207,027 according to on this bill. I'm asking you first

is this a copy of a bill you would have received?
A. Okay.
Q. Is the answer yes to that?
A. The answer is yes to that.
Q. And secondly -- I believe you've confirmed this -- you paid the bills that you had received from the Meyer firm?
A. Yes, I did, but not all at one time. Is that what you're asking me?
Q. Yes.
A. Did I pay it in advance? Not in advance. At that moment?
Q. Well, with all due respect, I want to ask the questions right now.
A. But I don't know what you're asking me. I don't understand it.
Q. All I'm asking you right now, first of all, to confirm this is a copy of a bill that you received?
A. And that's yes.
MR. DAN SLOTCHIVER: That's enough for right there. While we're there, I'm going to deviate for a moment and come back to the documents.
THE COURT: Yes, sir.

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

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

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

MR. DAN SLOTCHIVER: We can mark this as Exhibit 25.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 25 was admitted into evidence.)
(PLF. EXH. 26, 10/31/11 Bill from MOLM, Bates No. 3748 through 3751, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Meyer Olson bill, Your Honor, Exhibit 26, Bates 3748 through 3751, time period of 9/27/11 through 10/31/11. Is this a copy of a bill that you would have received in your capacity as trustee?
A. Pardon? I can pass it to who?
Q. In your capacity as trustee and paid?
A. Yes.
MR. DAN SLOTCHIVER: No. 26, Your Honor.
THE COURT: Any objection to No. 26?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None, Your Honor.

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

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

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

don't know.
THE COURT: Ma'am, I'm sorry. Once he makes an objection or your attorney, then I have to hear the objections, I have to respond, and then we'll let you know when you can begin testifying again or speaking.
THE WITNESS: Okay. Thank you.
MR. DAN SLOTCHIVER: The only question --
MR. BOYD: Your Honor, she is entitled to answer his question. I think that's what she was trying to do was to answer the question that he asked her.
MR. DAN SLOTCHIVER: The only question I asked, is this a copy of a bill she would have received from the Meyer firm, number one, and number two, is it a copy of a bill that she would have paid in her position as trustee. If the answer is: I don't know how I would have paid it, then we can move on to the next question, but I think she's testified that it is a copy of a bill she received.
THE COURT: I believe she did.
THE WITNESS: Yes, I did.
MR. DAN SLOTCHIVER: Okay. Then I

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

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

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

clarified.
THE COURT: Any objection, Mr. Boyd?
MR. BOYD: Your Honor, whether or not the document was paid for by the trust, I think the witness has expressed some question about that. Mr. Slotchiver can establish that on further examination.
MR. DAN SLOTCHIVER: I don't believe there's any question anymore. She just clearly stated that if January was paid by the trust, then December would have been paid by the trust. Her testimony speaks for itself.
THE COURT: Mr. Boyd, I believe it does.
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: And then with reference to Exhibit No. 29, I would move to introduce this into evidence as a copy of a bill that she would have received and was paid for by the trust, based on her testimony.
THE COURT: Any objection to No. 29?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: None.
(PLF. EXH. 29 was admitted into

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

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

2010.
A. And what is the amount?
Q. The amount on December 30th's bill is $7,579.95.
A. All right. So that was already -- that was obviously a second copy of this.
Q. But this is a copy of a bill you would have received?
A. I don't know. You know, I don't know, unless it was -- it was already -- it was either paid then or -- it was paid then or now at this time.
Q. Understanding that, would you agree with me this is a copy of a bill you would have received?
A. I don't even know that. You know, probably, but I obviously only paid it once. I didn't pay it twice.
Q. And I'm not asking about payment of it. I'm just trying to confirm it's a copy of a bill you would have received, because I don't know how else I would have received it through discovery, so I'm asking you if you know if you can identify this as a copy of a bill that you would have received. Looks to me like it's a

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

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

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

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

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

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

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

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

State Bank statement, 641 through 643. It likewise has some notations on it that looks to be more checkmarks and a little bit of handwriting.

Is this a copy of a statement you have seen before, and are the notations, the checks or marks, are you the author of those?

A. I don't know if I'm the author of the checks. I can't tell.

THE COURT: I'm sorry, ma'am. If you could speak --

THE WITNESS: There's no handwriting.

THE COURT: Speak up, please.

THE WITNESS: I'm sorry. I don't have any idea if I made those checks or not.

BY MR. DAN SLOTCHIVER:

Q. Did anybody else handle the management of or the maintenance of the check paperwork, the bank statements, or was it you alone, or was it you and your husband, or someone else?

A. My husband never did. It would have been Yaakov's. It could have been his checks. I don't know. I can't tell.

Q. If we can introduce this as a copy of an accurate bank statement received. That would be fair to say, correct?

A. Yes.

MR. DAN SLOTCHIVER: For that limited purpose, that it does reflect a bank statement, but with no confirmation as to who made the notations.

THE COURT: Any objection?

MR. BOYD: No objection, Your Honor.

MS. HEDGEPATH: None.

THE COURT: Thank you.

(PLF. EXH. 40 was admitted into evidence.)

(PLF. EXH. 41, Horry County State Bank Statement, Bates No. 644 through 650, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. 41 is another bank statement that has handwriting on this one, so it'd be easier for you to identify, and it is Bates 644 through 650.

Is this a copy of a bank statement you would have received relative to the trust, and is the handwriting here your handwriting?

A. Yes.

Q. I'm sorry?

A. Yes.

Q. Yes as to both?

A. Is it a copy of the statement, and it is my handwriting, yes.

MR. DAN SLOTCHIVER: I would move to introduce No. 41, Your Honor.

THE COURT: Any objection?

MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.

(PLF. EXH. 41 was admitted into evidence.)

(PLF. EXH. 42, Horry County State Bank Statement, Bates No. 651 through 653, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. No. 42, same thing with reference to the handwriting and the bank, Bates 651 through 653?

A. My handwriting, and yes.

MR. DAN SLOTCHIVER: If I could introduce No. 42, Your Honor.

THE COURT: Any objection?

MR. DAN SLOTCHIVER: No objection, Your Honor.

THE COURT: Thank you.

(PLF. EXH. 42 was admitted into evidence.)

(PLF. EXH. 43, Horry County State Bank Statement, Bates No. 654 through 657, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. Same thing with No. 43, Bates No. 654 through 657. If you can confirm that is a statement that you would have received, a copy of a statement, and if you can confirm that the handwriting is your handwriting?

A. Yes.

Q. Yes as to both?

A. Yes, it's my handwriting.

MR. DAN SLOTCHIVER: No. 43, Your Honor.

THE COURT: Any objection?

MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.

(PLF. EXH. 43 was admitted into evidence.)

(PLF. EXH. 44, Horry County State Bank Statement, Bates No. 658 through 675, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. Once again on No. 44, same questions.

A. Yes, it's my handwriting.

Q. And this is a copy of a document you would have received from the bank?
A. Yes.
MR. DAN SLOTCHIVER: And this is Bates Nos. 658 through 675. If I could introduce this into evidence, Your Honor.
THE COURT: No. 44?
MR. DAN SLOTCHIVER: Yes.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 44 was admitted into evidence.)
(PLF. EXH. 45, Horry County State Bank Statement, Bates No. 676 through 689, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 45, same questions.
A. My handwriting, and this is a statement.
Q. And this is Bates No. 676 through 689?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce, Your Honor, No. 45.
THE COURT: Any objection?

MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 45 was admitted into evidence.)
(PLF. EXH. 46, Horry County State Bank Statement, Bates No. 690 through 705, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, No. 46, which is Bates numbered 690 through 705, if you would confirm the same things, please?
A. Yes.
Q. Your handwriting, and this is a document you would have seen before?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce No. 46, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 46 was admitted into evidence.)
(PLF. EXH. 47, Horry County State Bank Statement, Bates No. 706 through 721, was marked for identification.)

BY MR. DAN SLOTCHIVER:
Q. Same thing for 47. This is Bates numbered 706 through 721.
A. Yes.
Q. So you would confirm this is, in fact, a statement you would have received and a copy of -- this is your handwriting?
A. Yes.
MR. DAN SLOTCHIVER: If I could mark this as Exhibit No. 47.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 47 was admitted into evidence.)
(PLF. EXH. 48, Horry County State Bank Statement, Bates No. 722 through 735, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 48 appears to be the same thing, different Bates numbers, 722 through 735, from the Horry County State Bank.
A. Yes.
MR. DAN SLOTCHIVER: If I can mark this Exhibit No. 48, Your Honor.

THE COURT: Any objection to 48?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 48 was admitted into evidence.)
(PLF. EXH. 49, Horry County State Bank Statement, Bates No. 736 through 747, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Once again, No. 49, which is 736 through 747 Bates numbered, if you could confirm the same things again for me, please?
A. Yes.
Q. As to both?
A. Yes.
MR. DAN SLOTCHIVER: Your Honor, if I may introduce No. 49.
THE COURT: No objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 49 was admitted into evidence.)
(PLF. EXH. 50, Horry County State Bank Statement, Bates No. 788 through 801, was marked for identification.)

BY MR. DAN SLOTCHIVER:
Q. No. 50, once again, another statement. This is Bates No. 788 through 801, if you could confirm those two items again, that you've both seen this before, and it is your handwriting on the documents?
A. Yes.
MR. DAN SLOTCHIVER: Move to introduce No. 50, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 50 was admitted into evidence.)
(PLF. EXH. 51, Horry County State Bank Statement, Bates No. 802 through 815, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. And with No. 51, Bates numbered 802 to 815, the same questions?
A. Yes.
Q. Yes as to both?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce this, Your Honor, No. 51.

THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 51 was admitted into evidence.)
(PLF. EXH. 52, Horry County State Bank Statement, Bates No. 824 through 832, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 52, Bates 824 through 832, same questions.
A. Yes.
Q. It's your handwriting on this, and you've seen this before?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce No. 52, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 52 was admitted into evidence.)
(PLF. EXH. 53, Horry County State Bank Statement, Bates No. 833 through 848, was marked for identification.)

BY MR. DAN SLOTCHIVER:
Q. No. 53, same questions?
A. Yes.
Q. Yes as to both?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce No. 53, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
MS. HEDGEPATH: What numbers are they?
MR. DAN SLOTCHIVER: And this is Bates numbered 833 through 848. I think I forgot to say that.
THE COURT: Thank you. Without objection.
(PLF. EXH. 53 was admitted into evidence.)
(PLF. EXH. 54, Horry County State Bank Statement, Bates No. 849 through 862, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, the same thing with No. 54.
A. Yes.
Q. Yes as to both?

A. Yes.
Q. I'm sorry to keep asking that. Can I say -- if you say yes, can I assume it's yes as to both?
A. That's correct.
Q. Thank you.
MR. DAN SLOTCHIVER: Your Honor, I move to introduce No. 54.
THE COURT: Any objection?
MR. BOYD: No objection.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: And that was Bates numbered 849 through 862.
(PLF. EXH. 54 was admitted into evidence.)
(PLF. EXH. 55, Horry County State Bank Statement, Bates No. 863 through 880, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 55 is Bates numbered 863 through 880, and the same questions.
A. Yes.
Q. Thank you.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.
MR. DAN SLOTCHIVER: So introduced?
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
(PLF. EXH. 55 was admitted into evidence.)
(PLF. EXH. 56, Horry County State Bank Statement, Bates No. 881 through 896, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 56, also the Horry County State Bank, same questions.
A. Yes.
MR. DAN SLOTCHIVER: And this is Bates numbered 881 through 896.
THE COURT: Any objection to No. 56?
MR. BOYD: No objection, Your Honor.
THE COURT: Without objection.
(PLF. EXH. 56 was admitted into evidence.)
(PLF. EXH. 57, Horry County State Bank Statement, Bates No. 897 through 908, was marked for identification.)
BY MR. DAN SLOTCHIVER:

Q. Same thing with No. 57, if you would please confirm for me.
A. Yes.
MR. DAN SLOTCHIVER: And this is Bates numbered 897 through 908.
THE COURT: Any objection to 57?
MR. BOYD: No objection, Your Honor.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 57 was admitted into evidence.)
(PLF. EXH. 58, Horry County State Bank Statement, Bates No. 909 through 924, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. 58 is, once again, an Horry County State Bank statement. If you could confirm. This, again, is 58. This is Bates No. 909 through 924.
A. Yes.
Q. Thank you.
MR. DAN SLOTCHIVER: If I can introduce No. 58.
THE COURT: Any objection?

MR. BOYD: No objection.
THE COURT: No objection.
(PLF. EXH. 58 was admitted into evidence.)
(PLF. EXH. 59, Horry County State Bank Statement, Bates No. 925 through 940, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Same question on 59, Bates No. 925 through 940.
A. Yes.
Q. Thank you.
MR. DAN SLOTCHIVER: If I could introduce 59, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 59 was admitted into evidence.)
(PLF. EXH. 60, Horry County State Bank Statement, Bates No. 941 through 954, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Same question on No. 60, which is Bates No. 941 through 954.

A. Yes.
MR. DAN SLOTCHIVER: If I can introduce this, Your Honor, No. 60.
THE COURT: Any objection to No. 60?
MR. BOYD: No objection.
THE COURT: Thank you.
(PLF. EXH. 60 was admitted into evidence.)
(PLF. EXH. 61, Horry County State Bank Statement, Bates No. 955 through 970, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 61, same question again, Bates numbered 955 through 970, same questions.
A. Yes.
MR. DAN SLOTCHIVER: If we could introduce this as 61, Your Honor.
THE COURT: Any objection to 61?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 61 was admitted into evidence.)
(PLF. EXH. 62, Horry County State Bank Statement, Bates No. 1675 through 1691, was marked for identification.)

BY MR. DAN SLOTCHIVER:
Q. Plaintiff's Exhibit No. 62, Bates 1675 through 1691, same questions again.
A. Yes.
MR. DAN SLOTCHIVER: If we could introduce No. 62, Your Honor.
THE COURT: Any objection to 62?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 62 was admitted for evidence.)
(PLF. EXH. 63, Horry County State Bank Statement, Bates No. 1698 through 1713, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. I don't believe No. 63 has any handwriting on it, so I'm only going to ask you with reference to the first question: Is this a copy of a statement you would have received? Is this a true and accurate copy of a statement you would have received from the bank, Bates No. 1698 through 1713?
A. Yes.
Q. Thank you.
MR. DAN SLOTCHIVER: Your Honor, I'd

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

THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 64 was admitted into evidence.)
(PLF. EXH. 65, Horry County State Bank Statement, Bates No. 1732 through 1747, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 65 is a copy of -- this is Bates numbered 1732 through 1747. I don't believe there's any handwriting on these. I'll show them to you and ask you the first question: Are these accurate copies of statements you would have received?
A. Yes.
MR. DAN SLOTCHIVER: I move to introduce No. 65, Your Honor.
THE COURT: No. 65, any objection?
MR. BOYD: No objections.
THE COURT: Thank you.
(PLF. EXH. 65 was admitted into evidence.)
(PLF. EXH. 66, Horry County State Bank Statement, Bates No. 1748 through 1763, was marked

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

break and come back, and I can quickly run through it. We're moving at -- it doesn't make a difference, whatever you'd -- I just want a restroom break, if I can.

THE COURT: Sure. We'll take five minutes, very quickly.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Thank you.

I instruct the witness not to speak to your counsel about your testimony, and that's an ongoing instruction.

(A recess transpired from 12:46 PM to 12:52 PM.)

THE COURT: Back on the record in the Dorn matter.

Mr. Slotchiver, I believe the last Exhibit was No. 66.

MR. DAN SLOTCHIVER: Yes, Your Honor.

(PLF. EXH. 67, Horry County State Bank Statement, Bates No. 1764 through 1779, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. No. 67, Mrs. Cohen, under the same questions we were asking before. I don't see anything in handwriting, but I see a copy of a

bank statement. Could you identify this as an accurate copy of a bank statement that you would have received?

A. Yes.

MR. DAN SLOTCHIVER: This is No. 67. If I can introduce it, Your Honor.

THE COURT: Any objection to No. 67?

MR. BOYD: No objections, Your Honor.

THE COURT: Thank you.

(PLF. EXH. 67 was admitted into evidence.)

MS. HEDGEPATH: Do we have some numbers?

THE COURT: I'm sorry, Ms. Hedgepath?

MS. HEDGEPATH: Some numbers to identify it.

THE COURT: Numbers on No. 67? A date, possibly?

MR. DAN SLOTCHIVER: I'm sorry. You're asking me, Your Honor?

THE COURT: Ms. Hedgepath wanted --

MS. HEDGEPATH: A date or a number.

MR. DAN SLOTCHIVER: I apologize. Under Cohen, it was 1764 through 1779 is the Bates number.

MR. KACHMARSKY: What is the date?

MR. DAN SLOTCHIVER: The date on the top of the first page is 6/30/10.

THE COURT: Thank you.

(PLF. EXH. 68, 7/30/10 Horry County State Bank Statement, Bates No. 1780 through 1795, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. No. 68, the date of the first page is 7/30/10, and this is Bates numbered 1780 through 1795. I don't see any handwriting on it, so I'll just ask if you can identify this as a copy of a bank statement you would have received?

A. Yes.

Q. Or that you did receive. Yes?

A. Yes.

MR. DAN SLOTCHIVER: If we can mark this as Exhibit No. 68.

THE COURT: Any objection to 68?

MR. BOYD: None, Your Honor.

THE COURT: Thank you.

(PLF. EXH. 68 was admitted into evidence.)

(PLF. EXH. 69, 8/31/10 Horry County State Bank Statement, Bates No. 1796 through 1813,

was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. No. 69 is marked 8/31/10, and it is Bates numbered 1796 through 1813. If you can identify this. Once again, I don't see any marks on it, but is this a copy of a document that you would have received?

A. Yes.

MR. DAN SLOTCHIVER: If we can introduce this, Your Honor, as No. 69.

THE COURT: Any objections?

MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.

(PLF. EXH. 69 was admitted into evidence.)

(PLF. EXH. 70, 9/30/10 Horry County State Bank Statement, Bates No. 1814 through 1829, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. No. 70 is dated 9/30/10, Bates No. 1814 through 1829. There doesn't appear to be any handwriting on it. Would you confirm that as a document that you received, copy of one that you received?

A. Yes.

MR. DAN SLOTCHIVER: I'd introduce this, Your Honor, as No. 70.
THE COURT: Any objection?
MR. BOYD: None, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 70 was admitted into evidence.)
(PLF. EXH. 71, 10/29/10 Horry County State Bank Statement, Bates No. 1830 through 1849, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 71 is dated 10/29/10, reference 1830 through 1849. Once again, no notations. The only notations I'm not referencing are when we see these arrows, which we've seen periodically. But would you agree with me that is an adequate document?
A. Yes.
MR. DAN SLOTCHIVER: Introduce No. 71, Your Honor.
THE COURT: Any objection to 71?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 71 was admitted into evidence.)

(PLF. EXH. 72, 11/30/10 Horry County State Bank Statement, Bates No. 1850 through 1867, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. 72, date is 11/30/10. Other than a couple of arrows, there's a couple of marks. There's no handwritten language. Those are probably copy marks. This is Bates numbered 1850 through 1867. Does this appear to be an accurate copy?
A. Yes.
THE COURT: I'm sorry?
THE WITNESS: Yes.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: I move to introduce No. 72, Your Honor.
THE COURT: No. 72, any objection?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 72 was admitted into evidence.)
(PLF. EXH. 73, 12/31/10 Horry County State Bank Statement, Bates No. 1868 through 1887, was marked for identification.)
BY MR. DAN SLOTCHIVER:

Q. Date 12/31/10, Cohen 1868 through 1887. No noticeable marks on this one. Does this appear to be an accurate copy?
A. Yes.
Q. Thank you.
MR. DAN SLOTCHIVER: If we can introduce No. 73, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 73 was admitted into evidence.)
(PLF. EXH. 74, 1/31/11 Horry County State Bank Statement, Bates No. 2082 through 2124, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. 74, dated 1/31/11, Bates 2082 through 2124. Doesn't appear to be any markings on it. Is this, in fact, an accurate copy that you would have received?
A. Yes.
MR. DAN SLOTCHIVER: If we can introduce No. 74.
THE COURT: Any objection to 74?
MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.
(PLF. EXH. 74 was admitted into evidence.)
(PLF. EXH. 75, 2/28/11 Horry County State Bank Statement, Bates No. 2139 through 2153, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 75 is dated 2/28/11, Bates 2139 through -53, no discernible markings I see. Is this an accurate copy of a document you received in your capacity?
A. Yes.
MR. DAN SLOTCHIVER: If I can introduce 75, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 75 was admitted into evidence.)
(PLF. EXH. 76, 3/31/11 Horry County State Bank Statement, Bates No. 2731 through 2741, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 76 begins 3/31/11, Bates 2731 through -41. If you can confirm this as a copy of

a document you would have received?
A. Yes.
MR. DAN SLOTCHIVER: Can we introduce this as No. 76, Your Honor?
THE COURT: Any objection?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 76 was admitted into evidence.)
(PLF. EXH. 77, 4/29/11 Horry County State Bank Statement, Bates No. 2742 through 2749, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 77, dated 4/29/11, Cohen 2742 through 2749. I don't see any discernible marks on it. Is this a copy of one that you received also?
A. Yes.
THE COURT: Any objection to No. 77?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 77 was admitted into evidence.)
(PLF. EXH. 78, 5/31/11 Horry County State Bank Statement, Bates No. 2750 through 2759,

was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 78, dated 5/31/11, Bates 2750 through 2759. Same question on this one.
A. Yes.
MR. DAN SLOTCHIVER: If we can introduce?
THE COURT: Any objection to No. 78?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 78 was admitted into evidence.)
(PLF. EXH. 79, 6/30/11 Horry County State Bank Statement, Bates No. 2760 through 2770, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. 79, dated 6/30/11, Cohen 2760 through 2770. Same question on this one.
A. Yes.
THE COURT: Any objection to No. 79?
MR. BOYD: No objections.
THE COURT: Thank you.
(PLF. EXH. 79 was admitted into evidence.)
(PLF. EXH. 80, 7/29/11 Horry County

State Bank Statement, Bates No. 2771 through 2779, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 80, dated 7/29/11, Bates 2771 through 2779. Is this an accurate copy?
A. Yes.
Q. Thank you.
THE COURT: No. 80, any objection?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 80 was admitted into evidence.)
(PLF. EXH. 81, 8/31/11 Horry County State Bank Statement, Bates No. 2780 through 2789, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. 81 is Bates No. 2780 through -89, date is 8/31/11. Is this an accurate copy?
A. Yes.
THE COURT: Any objection to No. --
MR. BOYD: No objections.
THE COURT: Pardon me?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 81 was admitted into

evidence.)
(PLF. EXH. 82, 10/31/11 Horry County State Bank Statement, Bates No. 2800 through 2810, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 82, Bates No. 2800 through 2810, date 10/31/11. Same question.
A. Yes.
THE COURT: Any objection to 82?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 82 was admitted into evidence.)
(PLF. EXH. 83, 9/30/11 Horry County State Bank Statement, Bates No. 2790 through 2799, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 83, dated 9/30/11, Bates 2790 through -99.
A. Yes.
Q. Same question. Same answer?
A. Yes.
Q. This is a copy of one that you've seen before?
A. Yes.

THE COURT: Any objection to 83?
MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 83 was admitted into evidence.)
MR. DAN SLOTCHIVER: And Your Honor, just for clarity, I'm not going to -- unless you want me to state we're going to put it in evidence, I'm assuming that when you say any objections, it's in evidence.
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: Okay. Thank you.
THE COURT: Thank you.
(PLF. EXH. 84, 11/30/11 Horry County State Bank Statement, Bates No. 2811 through 2819, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Next number, Mrs. Cohen, Plaintiff's 84, Cohen 2811 through 2819, and the date on it is 11/30/11. Is that a copy, accurate copy, of a document you received?
A. Yes.
THE COURT: No. 84?
MR. DAN SLOTCHIVER: Yes, Your Honor.
THE COURT: Any objection?

MR. BOYD: No objections, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 84 was admitted into evidence.)
(PLF. EXH. 85, 12/30/11 Horry County State Bank Statement, Bates No. 2820 through 2829, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. 85, dated 12/30/11, 2820 through 2829. Is this an accurate copy of one that you received?
A. Yes.
MR. DAN SLOTCHIVER: Any objections to No. 85?
MR. BOYD: None Your Honor.
THE COURT: Thank you.
(PLF. EXH. 85 was admitted into evidence.)
(PLF. EXH. 86, Judgment by Court in Dissolution of Marriage, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 86 is a copy of a document labeled: Case No. BD478403, Abbie Ilene Dorn versus Daniel Dorn, filing date January 11th, 2008, case type, dissolution of marriage general

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

Exhibit 87, which purports to be the order of transfer of jurisdiction.
Have you seen this document before, and is it an accurate copy of the one that you would have seen before?
A. I don't know. This has more to it than the document I have.
THE COURT: I'm sorry, ma'am?
THE WITNESS: I'm sorry. It's not exactly the same as the document I have. I don't know if I just have a partial document. I don't have -- the one I have, the copy I have, doesn't go through 16.
THE COURT: Is that 16 pages, ma'am?
THE WITNESS: No.
THE COURT: Or paragraph numbers?
THE WITNESS: Paragraph numbers. I only have 'til Paragraph 11.
BY MR. DAN SLOTCHIVER:
Q. Do you have the signature page of the Honorable Dundee Carter?
A. I have -- on this, yes.
Q. Your last page.
A. No, I guess I don't.
Q. Well, I understand it's not the same

as the copy you brought up in front of you, but have you had an opportunity to see a copy of this order? And I'll represent to you, Mrs. Cohen, this is a copy of the order that's been filed with this court back in 2008 and again in 2011.

A. Right.

Q. Do you have any reason to dispute that this is, in fact, an accurate copy of the order?

A. I need to read some of these paragraphs and make sure that it says the same thing.

Q. Take your time.

A. Well, the one that I have matches up until 11.

Q. Other than the ones that match, if you look at Page -- at the last two pages, which is nine and the order page from the judge, have you had an opportunity to review that language before?

A. Oh, yes, yes.

Q. Do you have any reason to dispute the fact that this is, in fact, an accurate copy of the order of transfer of jurisdiction?

A. Okay. This back page was the order of transfer, okay. No, I don't dispute it.

MR. DAN SLOTCHIVER: Then I would move

Plaintiff's 87 into evidence as a copy of the order of transfer of jurisdiction.

THE COURT: Any objection?

MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.

(PLF. EXH. 87 was admitted into evidence.)

(PLF. EXH. 88, Billings of Jeffrey Cohen, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, I'm going to show you a document that I have created and ask you if it appears to accurately reflect the billings of Jeffrey Cohen based on your recollection. I will tell you that -- and we referenced here on the beginning that it says the amounts that Jeffrey Cohen was paid according to discovery documents. Some amounts reflect after-tax amounts and others reflect before-tax amounts.

I'm just asking if these, to the best of your recollection, reflect the payments that he would have been receiving from 2008 through July of 2012, understanding that there may be payments that took place after July that are not included in this list?

THE COURT: Is that No. 88?

MR. DAN SLOTCHIVER: This is No. 88, yes, Your Honor. We have about 15 more.

MR. BOYD: Your Honor, I'm just going to object. I'm not sure how the witness is -- are you asking her to accept this document for its accuracy or accept it as a summary that you've prepared?

MR. DAN SLOTCHIVER: I'm merely asking her if the numbers notated on these documents appear to coincide with the numbers -- with the payments made to Jeffrey Cohen in this matter. Later on, we'll go through and we'll validate the document, but I'm just asking if at this point it appears to be consistent with the numbers that she remembers paying to her son in this case.

THE WITNESS: Well, it's probably accurate, but can I remember? I don't remember.

BY MR. DAN SLOTCHIVER:

Q. And understand that I'm not -- does it appear to be accurate? We'll go through it in a little more detail later on. I'm just asking if it appears to be accurate?

A. Okay. I will say it could be accurate.

MR. DAN SLOTCHIVER: Well, we would introduce it as an exhibit with the limitation that it needs to be verified as far as the accuracy, but it'll help us in moving forward later on with the case if we can introduce it for that purpose, Your Honor.

THE COURT: Any objections based on that limitation, Mr. Boyd?

MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: This is No. 88.

MS. MOORE: Your Honor, that's an exhibit that I don't have a copy of. If he could provide a copy, instead of simply limiting us to what we see on the screen.

MR. DAN SLOTCHIVER: Be happy to do it. Can we provide that to you during the break? I'll get it printed up.

MS. MOORE: That would be fine.

THE COURT: So No. 88 without objection?

MR. BOYD: No objection, Your Honor.

THE COURT: With the limitation so noted.

MR. BOYD: Yes.

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

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

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

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

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

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

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

MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 97 was admitted into evidence.)
(PLF. EXH. 98, 1/1/11 through 12/31/11 Conservatorship Annual Accounting, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 98 is a copy of a document, a conservatorship annual accounting, that appears to be from the date of January 1st, 2011, through the 31st of December 2011, signed by you and your husband Paul.
Is this a copy of a document that you would have signed and had filed with the court?
A. Yes.
MR. DAN SLOTCHIVER: If we can introduce No. 98.
THE COURT: Any objections?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 98 was admitted into evidence.)
MR. DAN SLOTCHIVER: No. 99.
MR. DAVIS: Your Honor, may I say one

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

A. Yes.
MR. DAN SLOTCHIVER: If I can introduce this as No. 99, Your Honor.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 99 was admitted into evidence.)
(PLF. EXH. 100, Amended Petition to Affirm Payment of Fees to a Special Needs Trust and to Reform Terms of the Trust, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, No. 100 is a copy of a document which appears to have been filed in the probate court in March of 2011 which is listed as Amended Petition to Affirm Payment of Fees to a Special Needs Trust and to Reform Terms of the Trust.
Are you familiar with that document? I believe if you look at the last page, it shows a verification signed by you.
A. Yes.
Q. Is this an accurate copy of a document that you and your husband had filed in this court?

A. I assume so.
Q. I'm sorry, but is that a yes? Take your time.
A. Yeah, I believe it's correct.
MR. DAN SLOTCHIVER: I would ask to admit this as No. 100.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 100 was admitted into evidence.)
(PLF. EXH. 101, Paperwork for Creation of Conservatorship, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. No. 101, Mrs. Cohen, purports to be a copy of the paperwork for the creation of the conservatorship. Is this an accurate copy?
A. You're not talking about this anymore?
Q. No, I'm not. This was a document done in California.
MR. BOYD: I'm sorry. Your Honor, I can't hear the witness.
THE WITNESS: I'm sorry. I was just checking to make sure that they weren't similar.

I'm sorry. You just want me to confirm the document is signed by me?
BY MR. DAN SLOTCHIVER:
Q. Well, is this an accurate copy of a document signed by you?
A. No, it wasn't signed by me.
Q. Or filed on your behalf?
A. Yes, filed on our behalf.
Q. And I believe it's verified by Paul Cohen?
A. That's correct.
MR. DAN SLOTCHIVER: If I can introduce this, Your Honor, as Exhibit No. 101.
THE COURT: Any objections?
MR. BOYD: No objection, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 101 was admitted into evidence.)
(PLF. EXH. 102, Court Ruling Ordering Dissolution of Marriage, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, I'm going to show you the next document labeled Plaintiff's Exhibit No. 102, which purports to be a court ruling ordering the

dissolution of marriage effective September 11th, 2008. Have you had an opportunity to see this document before? And if you look under 4-A, it states: Judgment of dissolution is entered.

A. Yes.

MR. DAN SLOTCHIVER: If I can introduce this as Exhibit No. 102.

THE COURT: Any objection to 102?

MR. BOYD: No objection, Your Honor.

(PLF. EXH. 102 was admitted into evidence.)

MR. DAVIS: Your Honor, can we clarify one thing real quick before we move on with this last exhibit?

THE COURT: What is that, sir? Mr. Davis?

MR. DAVIS: Just one minute, if we can. I just want to look at the attachment and see if the attachment for this 102 is the correct attachment.

THE COURT: Give him just --

MR. DAN SLOTCHIVER: I'll be happy, Your Honor, but they can cross-examine her on it. She's identified it, but whatever you want to do with it.

THE COURT: Well, I think they're asking whether there's an attachment to that exhibit.

MR. DAN SLOTCHIVER: Your Honor, we're going to pass on 103.

THE COURT: Pass on 103. Thank you.

MR. DAN SLOTCHIVER: Your Honor, while they're looking.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: I want to advise the court that we have two more exhibits, one of which mistakenly wasn't printed. It's going to take a few minutes to print it. If it would be okay with the court, if we can print that over the lunch break and then come back, just for expediency.

THE COURT: That's fine.

MR. DAN SLOTCHIVER: But other than that, I've only got one other document to introduce.

THE COURT: If you want to go ahead and -- you want to print it, then introduce it after lunch or --

MR. DAN SLOTCHIVER: It might be the best.

MR. AKERMAN: I've got one copy if you want.

MR. DAN SLOTCHIVER: Well, we can show the original, if that'll work out.

THE COURT: I don't mind showing the original, let her acknowledge it if she can, and then you can print it and submit the copy of --

MR. DAN SLOTCHIVER: That would be fine. Thank you.

THE COURT: Mr. Davis, 102?

MR. DAVIS: Yes, Your Honor. And maybe Mr. Slotchiver can help me. On the exhibit, Attachment 3-D, Page 2, my understanding is that that -- and I could be wrong. Let's see if we can clarify it. That attachment belonged to a different document from California that did not belong to that document that was filed. It belonged to one that was actually his Exhibit 101, I believe, is my understanding. I don't think that attachment should be filed with this exhibit, because it doesn't go along with it. It was not -- my understanding, it was not attached to the court's order.

MR. DAN SLOTCHIVER: Your Honor, I have no problem withdrawing the attachment. I'm

not familiar with that, but it's not necessary for what I'm putting forward today.

THE COURT: Okay. So can you confirm with Mr. Davis exactly what your exhibit looks like?

MR. DAN SLOTCHIVER: Well, we're going to redact this, so it's only one page on 102, instead of two pages.

MR. DAVIS: Just take the second page off, okay. Fair enough.

THE COURT: One page for No. 102. Thank you.

Skipping 103.

MR. DAN SLOTCHIVER: We're skipping 103 because we misnumbered. We're going to go to 104.

(PLF. EXH. 104, Emergency Petition, was marked for identification.)

BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, I'm going to show you what has been filed as -- it was a copy of an emergency petition filed which started the South Carolina action, and it's been marked as Exhibit 104. I believe you appeared in court for this.

Have you had an opportunity to review

this before?
A. How can I tell if that was the end of it?
Q. I'm sorry?
A. How do I know if that was the end of it if it doesn't have a signature at the end? Is this it?
Q. The petition has attachments to it. If you look at Page 4, that's the signature. The rest of them are attachments.
A. Page 4? This page?
Q. Page 4, fourth page. Page 4 of the document.
A. That says four.
Q. Of the document.
A. Can you find it? That says four. I don't see a signature there. Oh, there are two Page 4's in this. This is your signature.
Q. Right. There's other documents. Have you had an opportunity to review this document before? Is this, in fact, a truthful and accurate copy of a document you would have had a chance to see --
A. I would have seen it.
Q. -- filed with this court?

A. I'm sorry. I would have seen it, but I didn't sign it. Is that what you're asking me?
Q. No, not if you signed it, just if you had an opportunity to see it.
A. Yes.
Q. And you appeared in court relative to this?
A. Yes.
Q. Thank you.
MR. DAN SLOTCHIVER: I would move to introduce this as Exhibit 104.
THE COURT: Any objection?
MR. BOYD: No objection.
THE COURT: Thank you.
(PLF. EXH. 104 was admitted into evidence.)
MR. DAN SLOTCHIVER: I don't have an extra copy of this, Your Honor, but I'm going to ask Mrs. Cohen about it, and we can make copies afterwards.
THE COURT: To submit it as 105?
MR. DAN SLOTCHIVER: 105, yes, Your Honor.
THE COURT: Thank you.
(PLF. EXH. 105, Deposition of Adam

Mamelak, was marked for identification.)
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, this is a copy of a deposition of Adam Mamelak. You're familiar with Adam Mamelak?
A. Yes, I am.
Q. And have you had an opportunity to review his deposition?
A. No, I did not.
Q. Or his testimony?
A. I chose not to.
Q. Are you familiar with what his testimony --
A. I am familiar.
Q. Any reason to believe that this transcript here that I'm holding in my hand is not a truthful and accurate copy of his transcript?
A. I would have no idea.
Q. If you're familiar with his testimony, would you like to take a few minutes to review it --
A. No.
Q. -- and to see if it's consistent?
A. I didn't read it. I've heard that he, after not -- seeing her only for the three months

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

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

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

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

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

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

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

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

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

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

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

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

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

there, 2.21. There's another statement that breaks down 2.21. It breaks down what those are. That doesn't say they're legal fees or accounting fees or what, so I don't know if it's fair to ask her are these legal fees for the year 2008. She can't -- how could she say that? You need more detail, and the accountings provide more detail.

THE COURT: Do you have -- the attachments to the accounting, were they admitted as part of the exhibits?

MR. DAN SLOTCHIVER: They weren't provided to us for those years, Your Honor.

MR. DAVIS: Your Honor, with all due respect, these are filed in the public record, and I don't know -- and I believe they were provided. It's not -- these are filed in this court.

MR. DAN SLOTCHIVER: Your Honor, back discovery. From 2009 forward, the detailed breakdowns were provided; for 2007 and 2008, they weren't. Just like the Bates-numbered stamps, we're working off of the documents they provided to us. I can't read into things that they don't give us. But in the same way that they referenced the professional fees here, the breakdowns come in the other years, the later years, the 2009, '10,

and '11, but for those two years, they don't.

MR. BOYD: Your Honor, if the court will recall, we had a conference regarding the electronic versions of the accountings being prepared and provided to petitioners. We provided 2008, 2009, 2010, 2011, and the then-available 2012 in an electronic format, so the breakdowns have been made available.

MR. DAN SLOTCHIVER: No. And we can discuss it through the ledgers that they provided through discovery, except for the fact that Mrs. Cohen cannot affirm one way or the other with reference to the ledgers. She says she's never seen them or looked at them.

THE COURT: Mr. Boyd is saying that he provided the attachments to the accounting to you, Mr. Slotchiver, as part of discovery in electronic format.

MS. MOORE: Judge, I have a copy of the actual attachment in the file.

MR. DAN SLOTCHIVER: Your Honor, if we look at the ledger -- if you allow us to look at the ledger, it confirms the numbers over here.

THE COURT: Are these the ledgers that were attached to the accountings?

MR. DAN SLOTCHIVER: Yes.

MS. MOORE: Right. They were attached to the accounting.

THE COURT: So Ms. Moore says they're part of the accounting that was filed with the court. Those are the accountings I guess, Mr. Slotchiver, that you referenced with the witness, who could not identify them.

MR. DAN SLOTCHIVER: Correct, so --

THE COURT: Mr. Boyd, if y'all will stipulate to the ledger sheets that were attached to the accountings that were filed with the court. Your client was unable to identify them, but Ms. Moore is confirming that these are attached to the accounting, the 2008 accounting, that was filed with the court, and I'm assuming that's what Mr. Davis was referring to.

MR. BOYD: And Your Honor, if I may, let me just -- I did want to clarify that on -- because there was an earlier exchange about the electronic version. On January 14 and January 15, subsequent to the court direction and the pretrial teleconference between the parties and the court, we did provide, on the 14th and the 15th of January, electronic versions of all the

accountings, beginning with 2009, continuing 2011, and on the 15th, we provided 2012.

Exhibit 89, Your Honor, which has been admitted --

THE COURT: No, sir, it was not admitted because Mrs. Cohen could not identify it.

MR. DAVIS: What are they referring to, Your Honor, on this general ledger? I'm trying to find the part about the professional fees. Is that a different page? It's on Page 4.

MR. DAN SLOTCHIVER: This is on the ledger. It's showing the professional fees - legal.

MR. DAVIS: Okay. Well, that first page didn't have it. So the next page, four.

MR. DAN SLOTCHIVER: It adds up to the same number, Your Honor, that we submitted that I showed to Mrs. Cohen earlier. We can do this, but --

MR. BOYD: Your Honor, I don't see -- I don't see a breakdown for --

MR. DAVIS: On Page 4. They have Page 1 up.

THE COURT: Is this the amount, $17,097.98, that's on the accounting for

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

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

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

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

MR. DAN SLOTCHIVER: Your Honor, when you look, you'll see there are five years of ledgers that we had attempted to admit earlier, but you should have all of those.

THE COURT: I don't have those because we didn't admit those into evidence.

MR. DAN SLOTCHIVER: I understand.

THE COURT: What is the date, Ms. Moore?

MS. MOORE: February 3rd, 2011.

THE COURT: Let me take just a moment. Let me get those.

(A recess transpired from 3:22 PM to 3:26 PM.)

THE COURT: All right. We're back on the record in the Abbie Dorn matter. I have the accounting file February 3rd, 2011, dated January 1st of '08 through December 31st of '08, and another accounting file the same date for January 1st of '09 through December 31st of '09, with attachments.

If you would like to review that, Mr. Slotchiver. There is a schedule and supporting documents attached.

MR. STEVE SLOTCHIVER: Your Honor,

might I approach to review?

THE COURT: Yes, sir. They are clipped right there.

Ms. Moore, did you have the other accountings for 2010 and 2011 with a date of filing? And I might could find those.

MS. MOORE: They should be right in order, Judge, February 3rd for the 2009. Should have been immediately thereafter.

THE COURT: Yeah, I had the '09.

MS. MOORE: Oh, I'm sorry. Which one were you looking for?

THE COURT: 2010. I'm not sure when that was filed. Let me see. I have some notes.

MS. MOORE: 2010 is March 29th.

THE COURT: Of '11?

MS. MOORE: 2012.

THE COURT: What date?

MS. MOORE: March 29, 2012.

MR. DAN SLOTCHIVER: Have we decided to take judicial notice on this one, Your Honor?

THE COURT: Mr. Boyd, I assume --

MR. BOYD: I think the court can take judicial notice of that document, Your Honor. It's in the file.

MR. DAN SLOTCHIVER: Well, why don't I show the witness.

THE COURT: I have no objection to you -- Mr. Boyd, no objection?

MR. BOYD: No objection, Your Honor.

THE COURT: That is the 2008 accounting that was filed by the court on February 2nd, 2011, for the year 2008?

MS. MOORE: It's February 3rd, Your Honor.

THE COURT: February 3rd.

MR. DAN SLOTCHIVER: May I proceed?

THE COURT: Yes, sir.

BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, I'm going to show you a document that is in the court's file, submitted by your counsel, and it references this is the -- in the accounting that was submitted.

MR. DAN SLOTCHIVER: You said February 3rd, 2008. Is that right?

MS. MOORE: No. February 3rd, 2011, is the date of filing.

BY MR. DAN SLOTCHIVER:

Q. 2011, there is a reference sheet to legal and professional fees under Schedule 2.21,

and it represents bills to Robin Morris, Louis Michelson, clerk, Louis Michelson, Webster Rogers, Robin Morris, Robin Morris, Moore Law Firm, Louis Michelson, Korol, Robin Morris, Korol, Louis Michelson, and Marina Korol.

What is the total amount?

A. The total amount also included Webster Rogers and clerk fees, so should I subtract that?

Q. Well, the clerk fees are three bills for $17 apiece, correct?

A. Webster Rogers is $1,362.37.

Q. So we're about $1,500. That amount would be correct at the bottom?

A. Minus $1,500, so it would be 15 five.

Q. About 15 five, okay.

THE COURT: And I'm sorry. Give me that number, and what was that?

MR. DAN SLOTCHIVER: Why don't we get the exact number, Your Honor. It's $17,097.98, and we're going to subtract from it $17 on three occasions, and we'll subtract from it the Webster Rogers bill, which is $441.90.

THE WITNESS: No. There's another one. There's a second bill for Webster Rogers for $1,300.

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

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

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

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

that we had created the spreadsheet, and now it's not. I wanted to clarify that issue, so there's no dispute.

THE COURT: Is that your understanding, Mr. Davis?

MR. DAVIS: As to what?

THE COURT: They have not created these attachments to the exhibit.

MR. DAVIS: I don't think there's fundamentally a problem. However, he's asking our client to identify things that she's not seen. She saw the final version of the accounting, signed it, filed it.

MR. DAN SLOTCHIVER: Your Honor, I object. He is putting words -- she has testified that this is a copy of the accounting that she had and she filed, and it's in evidence at this point, and now to say that she hadn't seen it would be inappropriate.

MR. DAVIS: That's not what I said. She did see this. This is what's filed.

THE COURT: And that exhibit is what she identified, Mr. Davis, was it not?

MR. DAVIS: It is. It's in a little different format, but it is, basically.

MR. DAN SLOTCHIVER: We haven't changed any format, Your Honor.

THE COURT: Can you present her with the exhibit?

BY MR. DAN SLOTCHIVER:

Q. It should look in the same format as the one that's here, but if you would take a look at this document.

A. This is the one with the stamp, right?

Q. Correct.

A. Was this the one you showed me?

Q. It's the same one that's on the board right now.

A. Where's the stamp?

Q. I'll get the one with the stamp.

A. I just want to know if this is the one you asked me about.

Q. I'm going to show it to you right now. If I can take this one back, and I'll get you 96, and I'll show you the same one that we showed you. This is the one with the stamp.

A. What numbers am I looking at? What am I supposed to look at?

Q. Let me turn to the page, if I may. Under the section listed as Schedule 2.24, would

you agree with me that this is the schedule that references the attorneys fees paid from the trust?

A. I'd have to subtract out all those other numbers.

Q. Well, why don't we put the total number up and subtract the ones -- and let's talk about the ones that you want to subtract out. So the total number on this page shows $60,076.66?

A. Huh? 60,000? 50,000.

Q. Excuse me, $50,000 -- my eyes are tired -- $50,078.68. And from there we can subtract out.

You believe that QuickBooks would not be appropriate, correct?

A. Right.

Q. So we're going to subtract out $10.65, and we'll subtract it out again for the $10.75.

MR. DAN SLOTCHIVER: Can we go ahead and put it on the board, so there's no confusion?

BY MR. DAN SLOTCHIVER:

Q. We're going to show you right on the board so you can see the numbers as they go. We'll subtract out the $10.65, and we'll subtract out the -- let's do one at a time. Let's go to the $10.75 for the QuickBooks. Is that the next

one? You would agree with that?

A. The next QuickBooks? Yeah.

Q. No, the next issue to subtract out.

A. And Webster Rogers.

Q. Webster Rogers would be $1,039.10, the next would be the $20 to the probate court, and then Webster Rogers again. Is that correct?

A. Right, $2,820.21.

Q. I take it we'd subtract out the $200 to Susan Cohen?

A. Yes.

Q. And the $10.75 for QuickBooks. We'll subtract out the $162.50 to the Horry County Probate Court, we'll subtract out the $637.40 to Webster Rogers, and we'll subtract out the $442.48 to Webster Rogers.

A. What about that $1,072.11?

Q. The journal entry?

A. I guess that's what it is, bank statement.

Q. The rest of these expenses would have all been legal fees, so the total we come to is -- then we have to add back in the $32.15 from Webster Rogers, based on the sheet that shows it was a negative, so it goes back in.

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

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

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

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

And clearly, this is an accounting she filed, and if you'll look at the accounting, it shows professional fees - legal. I am assuming that when they provide an accounting that says professional fees - legal, that it's for professional fees that are legal, not medical, and if she disputes that, I'm happy to go through it with her, but I'm just trying to right now confirm what the amounts are.

THE COURT: Mr. Davis?

MR. DAVIS: Yeah. I mean, I appreciate the -- in an effort to get through this thing quickly, but we just went through the schedules on the previous years, and all of a sudden we just hydroplaned right over the schedule for this 2010 when the same issues apply. We need to deduct some of these. I don't think it's fair for her just to kind of hydroplane right past it. We got to go back and look at Schedule 2.21, legal fees. Let's go and look at that number and break them down. Some of these are not legal fees.

THE COURT: Mr. Davis, could you not cross your client on that?

MR. DAVIS: Well, we just -- what he's doing now is inconsistent with what we just did

with the two previous years.

MR. DAN SLOTCHIVER: Your Honor, if we talk about fairness, it's not fair for me to have to look at a document submitted and filed by the Cohens with this court that references these are legal fees and then to hear an argument maybe they're not legal fees, because it gives me further concern -- if we're going to make a filing and make certain statements and certain representations, then I believe we should be bound by those representations, and what I'm hearing now from Mr. Davis is that perhaps the filings we've made have been in error and inaccurate.

MR. DAVIS: No.

MR. DAN SLOTCHIVER: And in that regard, I don't -- there's certain things we've taken as a given, one of which is if you represent this is a legal fee, we're going to assume the filing with the court is accurate and that it's a legal fee. Now what we're hearing is it's not.

I don't believe that he, Mr. Davis, can control how I ask my questions. I think I'm allowed to ask them as I want to. He can ask on cross-examination, but certainly, if he wants to impeach his client based on the documents she

submitted, he's welcome to do it.

MR. DAVIS: Your Honor, I think we've gotten off track. I think Dan and I are saying the same things. I don't know why we deviated from our current track. We were taking the breakdown and going through it, and then all of a sudden we got to 2010, and that changed for some reason, and the question in front of Mrs. Cohen said are these -- and just kind of hydroplaned right over it. Let's just do the same thing we did with 2008 and 2009 with 2.21.

THE COURT: Mr. Davis, I think you can cover that on cross if you would like. This is Mr. Slotchiver's witness, so I'm going to let him proceed as he would like to with questioning Mrs. Cohen, and I'll be happy to allow you to cover that on your cross-examination.

BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, I'm going to show you -- I'm going to ask you about the legal bills paid in 2012 referenced on the accounting that was filed.

THE COURT: I'm not sure that she did 2011.

MR. DAN SLOTCHIVER: Oh, I'm sorry. Thank you, Your Honor.

BY MR. DAN SLOTCHIVER:

Q. On 2011, would you agree with me that the form that you submitted had particular reference to legal fees in 2011 being in the amount of $121,799.76?

A. Well, I'd like you to do that same thing, because someplace I think we put in a fee twice.

Q. Well, Mrs. Cohen, I'm looking at a document that you filed that's been entered into evidence, and unlike the earlier years that talked about professional fees, this one talks about legal fees. Are you suggesting to me that perhaps the document that you filed in 2011, which states legal fees in that amount of 121, was incorrect?

A. I don't understand. I know that when that figure of 963 was come in -- was made --

MR. DAN SLOTCHIVER: I'm going to ask, Your Honor, that she be instructed to answer the question.

THE WITNESS: I don't know the answer.

BY MR. DAN SLOTCHIVER:

Q. Would you have filed paperwork with the court if you believed it to be inaccurate?

A. If I believed it to be inaccurate?

Q. Yes.
A. Well, I know that I don't know very much about how to figure these things out.
Q. But would you have filed paperwork with the court --
A. Well, not deliberately.
Q. -- in your accountings if you believed it to be inaccurate?
A. Not deliberately, but I think something may have been put in twice, but I don't know that it was this year.
Q. When you filed the accountings with the court, would you have filed them if you thought they were wrong or if you had any questions?
A. If I thought -- it wasn't until I went through the numbers later on that it seemed to me that something may have been put in twice, but I don't know very much about what you're talking about.
Q. You understand that as a trustee, you have a fiduciary obligation?
A. That's why I have other people do these.
Q. I'm sorry?

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

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

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

that might be a problem?
A. Right.
MR. DAVIS: Your Honor, may I make one quick point? In the accountings, there are some --
MR. DAN SLOTCHIVER: Your Honor, I would object if he's going to articulate his cross-examination.
THE COURT: Unless you have an objection, Mr. Davis.
MR. DAVIS: Okay. I'll do it on cross.
THE COURT: Thank you.
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, I'd like to chat with you a little bit about your understanding of the representations and opinions of Dr. Mamelak. I believe you testified earlier that you purposely did not read his deposition, but that you were aware of his opinions. Do you still agree with that statement?
A. I was aware of one of his opinions.
Q. Which opinion were you aware of?
A. I was aware of his opinion that he claimed that she was in a vegetative state.

Q. Are you aware -- or do you agree with me that he is a doctor at Cedars-Sinai in California?
A. He is a doctor at Cedars-Sinai, yes.
Q. And that he evaluated your daughter and was involved with her care while -- or before she was transferred to South Carolina?
A. Only for the first three months, when she was critically ill.
Q. And you yourself had the opportunity to chat with him if you wished to?
A. No, I did not. Now? At the time of the deposition? Absolutely not.
Q. At the time that he was the care provider while your daughter was still at Cedars-Sinai.
A. Yes.
Q. Are you aware that in connection with his opinion about her being in a vegetative state, that he opined that she had no awareness of her surroundings and had no ability to hear or see? Are you familiar that that was within the parameters of her being in a vegetative state in his opinion?
A. In his opinion, I didn't read it.

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

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

yourself with all the opinions that were out there by the different experts who have been involved in Abbie's care and have given deposition or opinion testimony?

A. The experts that examined her at the current time I was aware of. Those are all that mattered.

Q. You stated that you did not read the deposition of Dr. Mamelak because you did not want to. Is that correct?

A. Because it -- you told me I can't make an opinion, so are you excusing me from that?

Q. No. I'm trying to understand from you if you considered it important to understand the basis of what opinion Dr. Mamelak would offer, even if you don't agree with it?

A. If a physician or an attorney or anybody else opines on something that they have no business opining on, then I don't need to read their opinion. It's unethical. He violated his Hippocratic oath.

MR. DAN SLOTCHIVER: I'm going to ask, Your Honor, this be stricken from the record again.

THE WITNESS: You asked me. You asked

me.

MR. DAN SLOTCHIVER: Again, he was a treating physician, as testified to by Mrs. Cohen, and he gave an opinion, and her personal opinion that he's unethical is unfounded in this case, it's not supported by documentation, there's no foundation for it, and it's inappropriate, and I would ask that be stricken from the record.

MR. BOYD: Your Honor, I'm going to object. She's probing why she may not have considered the opinion to the degree that perhaps his client wanted to consider it. When she answers the question, he moves to strike. Either she can answer the question or she can't.

MR. DAN SLOTCHIVER: I believe she testified not that she didn't consider it to the degree that my client would. She testified she wouldn't consider it at all. She wouldn't even read his deposition, even though he was a treating physician for some period of time.

MR. BOYD: Your Honor, where is the requirement written that the trustee has to sit around and read every deposition? Who reads every deposition? That's not even relevant.

THE COURT: I think Mr. Slotchiver

asked her as to whether she had a fiduciary duty to read the deposition as the trustee of the trust. I believe she's trying to explain why she did not read the deposition. I'll allow it for that purpose only.

Mr. Slotchiver, if you could move on. She stated why she did not read the deposition.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. Are you familiar with the fact that -- Judge Shaller, I believe is his name. Mrs. Cohen, you're aware of the fact that Judge Frederick Shaller, in rendering his opinion, his final order, called a statement of decision, in the visitation matter in California --

A. It wasn't a final order.

Q. We've already admitted this as Exhibit No. 86. Are you familiar with the fact that he himself relied on the testimony of Dr. Mamelak?

A. Am I familiar with it?

Q. Yes.

A. I am familiar with it.

Q. And you don't dispute the fact that

that was an unappealed order? You agree that it was an unappealed order, correct?

A. I agree because you're suing me for spending the money. It doesn't mean it was correct. It's not correct. It was unethical. It was --

THE COURT: I'm sorry.

THE WITNESS: I'm sorry.

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. Have you had a chance -- and I know you've identified this document, but have you had a chance to read --

A. Yes.

Q. -- the deposition -- or the order of Judge Shaller?

A. Yes.

MR. DAN SLOTCHIVER: Give me one moment, Your Honor, please.

THE COURT: Yes, sir.

BY MR. DAN SLOTCHIVER:

Q. And are you familiar with a Dr. Hays?

A. I certainly am, yes.

Q. And do you dispute the fact that the court, in rendering its decision, said as follows:

In determining Abbie's degree of disability, the court is not permitted to make decisions on the basis of possibilities or a wishful desire to find that Abbie possesses sufficient degree of awareness to be able to see the beautiful children she has created?

A. That's not from Dr. Hays's report.

Q. From the court's order.

A. You asked me about Dr. Hays.

Q. I asked if you're familiar with Dr. Hays.

A. Yes, I am. What does that have to do with that?

Q. I'll come to it in a moment.

A. Okay.

Q. That the videotape deposition of Abbie Dorn and the testimony of Abbie's evaluating neurologist, Dr. Hays, must be viewed under the preponderance of the evidence standard and that given the standard, the court concludes that it is more likely than not that Abbie Dorn does not have any significant cognitive function, that her eye blinking and smiling and movements are involuntary movements described by Dr. Hays as brainstem reflexes.

Do you remember that language?

A. You're quoting out of context, though. That's not what Dr. Hays said. That was what he said, but it's not what she said in her entirety.

Q. Do you not agree with that opinion from Dr. Hays?

A. That's not her full opinion. I don't know what I'm supposed to say, so you tell me. Should I continue or not?

Q. I'll go to the next question.

MR. BOYD: Your Honor, I am just going to state I think the witness should be given some latitude to answer the questions fully and completely.

THE COURT: I think she answered, granted a limited answer. She asked: Should I go on? Mr. Slotchiver didn't seem to want her to. I instructed her no.

THE WITNESS: Excuse me, Judge. Should I ask you?

THE COURT: No, ma'am, not directly. If I need to get involved, I will, ma'am.

THE WITNESS: Okay. Thank you.

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, I want to move along and discuss some activities in your capacity as trustee with you, okay. I'm assuming in that capacity, you've been following -- you followed both the cases in South Carolina and in California very closely?

A. I followed them?

Q. Yes.

A. You mean I was aware of everything. Yes.

Q. Are you familiar with an argument that was made with reference to -- at first in a petition -- you know who John Kachmarsky is in this case?

A. Yes.

Q. Are you familiar with who he is?

A. Yes.

Q. And are you familiar that he submitted a bill for his time, and an argument was made by your counsel that it would be unreasonable or that it would be inappropriate to pay a lawyer for research? Are you familiar with that?

A. Yes.

Q. I believe we have a transcript, if it helps to put up, but you're familiar with that.

And the argument being, I take it, that it's unreasonable to pay research because lawyers, that's their -- they're hired to know the knowledge, correct?

MR. BOYD: Objection, Your Honor.

THE WITNESS: I don't know.

THE COURT: Excuse me.

MR. BOYD: I'm really befuddled by the relevance of any of this.

MR. DAN SLOTCHIVER: I'll show the relevance, Your Honor, if I can have a little bit of latitude.

THE COURT: I'll let him proceed.

BY MR. DAN SLOTCHIVER:

Q. For example, on the board you'll see a copy of the transcript that shows an argument that I take it everything that was done by your counsel was on your behalf, but it says: I have issues with billing clients for research when the research becomes extraordinary. I take it you agree with that position? Your lawyer made the argument on your behalf.

A. Yes, the lawyer made the argument on my behalf, but I don't know what extraordinary means in legal research.

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

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

agree that paying a lawyer for his time is distinguished from paying a lawyer for his research?
A. I have no idea. I don't know. I don't understand.
Q. Well, you're familiar with the fact that your lawyer has made these arguments. Did you disagree with him when you learned that?
A. No. I didn't -- I didn't read them. He just talked to what's-his-name.
MR. BOYD: Your Honor, again, I'm going to --
MR. DAN SLOTCHIVER: She can answer the question.
MR. BOYD: She's answered the question, Your Honor.
THE COURT: I think she's answered. She doesn't understand him.
MR. BOYD: And I'm going to renew my objection. She was not in either room when either statement was made.
THE COURT: Thank you, Mr. Boyd. She's answered she doesn't understand.
BY MR. DAN SLOTCHIVER:
Q. Have you reviewed legal fees submitted

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

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

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

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

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

things that were included that were -- essentially, the majority of the bill for that entry was redacted, and Mr. Slotchiver wants to attribute $442.50 to research and asks the witness if she agrees with it. There's no foundation for that, Your Honor.

MR. DAN SLOTCHIVER: Your Honor --

THE COURT: Mr. Boyd, I'm going to allow him to go forward with this manner of questioning. I can certainly review the exhibits and see what has been redacted, and then I will take into consideration your arguments in determining whether I think those are appropriate or whether there are things left out of it, as you point out.

MR. DAN SLOTCHIVER: And if I may have one more point, Your Honor.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Counsel for the Cohens has subpoenaed and listed as a witness their litigation counsel in California. When their litigation counsel comes to testify, I would assume that would waive any attorney-client privilege. If they intend to provide their litigation counsel to testify and they intend that

the privilege be waived, then they certainly have the opportunity, if they so desired, to unredact all of these documents, but they chose not to do that.

And once again, I'm seeking discovery, and I'm using the information that I've been provided with. I haven't been supplemented new issues or new numbers or anything else since then, so I'm using the best I can with what I've been given in light of the entire situation.

THE COURT: Certainly. I understand. Mr. Kachmarsky?

MR. KACHMARSKY: First, Your Honor, I'd like to object. We had made it clear that it was either going to be Mr. Boyd or Mr. Davis, and not both, and I think we've heard from both of them now multiple times during Mrs Cohen's testimony, so one or the other would be my objection to both of them.

Secondly, with regard to this issue, this is not about my bill, it's only about the issue of the legal research, and it's not appropriate for me to charge for it, but it seems to be appropriate for California counsel to charge for it.

THE COURT: Thank you. I understand that.

Mr. Boyd, if you could clarify which one of you might be raising objections. I would encourage that we only hear from one of you.

MR. BOYD: Your Honor, my understanding of your ruling was that we could both comment.

THE COURT: You're right, you're right, but it's 4:30, and we have barely started, so --

MR. BOYD: I understand that. We'll try to rein that in, Your Honor, within the spirit of your order.

THE COURT: If you could do that, I would appreciate it.

MR. BOYD: Thank you.

THE COURT: Thank you. Mr. Slotchiver?

THE WITNESS: Do you want to ask me the question again?

BY MR. DAN SLOTCHIVER:

Q. If you look at the total of the numbers running on the side, would you agree that they total up to be $501.50?

A. The numbers?

Q. Yes, the numbers.

A. Yes, the numbers add up.

Q. Let's go to the next one. Here's the next entry, which has been submitted, and this is Cohen 3440. Continue legal research on, leaves blank what the on is. That number is $88.50. Would you agree that the total adds up to be $590?

A. Yes.

Q. And we can keep going through these one at a time, if you like, we'll tally as we go, or if counsel will stipulate, we'll be happy to that do that also.

The next reference on February 28th, 2010, review law review articles regarding something for $737.50. Running total, $1,327.50. You'll agree with that?

A. You're asking me about math? Yeah.

Q. We can go to the next one. Finish review of law review article, three-and-a-half hours, $1,032.50. Now we're at $2,360. Do you agree with that number?

A. Yes.

Q. The next one. That was $221. The next one is February 29th, 2010, research re

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

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

next one.
A. Yes, it was referenced, but all of it was not about research, so no, but the math is right.
Q. Do you know what else this one was about, for example, March 31st, 2010, two hours, $800?
A. Do I know what it was about, are you asking?
Q. What this research or this billing would have been about, can you advise the court?
A. I can't advise the court on anything.
Q. Well, you say that it's not all about research. I'm curious what did you know about this bill.
A. About that particular bill? All I know is that there were always -- in California, you have to respond to anything that's thrown at you, and most of it was just responding to this -- I won't use the word junk, but the things that were thrown at us. It was defensive.
Q. My question is not about responding to pleadings or responding to motions or going to court. My questions right now are solely limited to the issue of research.

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

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

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

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

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

because for whatever reason, Mr. Dorn's counsel asked Mr. Freeman to do research in support of John Kachmarsky's petition.

MR. KACHMARSKY: I object to that. That is not what he said in his deposition.

MR. BOYD: Well, Your Honor, we can pull the deposition. We can go look at the deposition if we need to, but that's --

MR. DAN SLOTCHIVER: Mr. Freeman will be here to testify.

MR. BOYD: So, Your Honor, the point is Mr. Freeman raised the issue in his expert opinion. We did not raise the issue in the Freeman deposition. I was not there to talk to Mr. Freeman about extraordinary legal research. I asked him about his opinions.

He raised the opinion regarding research. I asked him why that was relevant, and he referenced the reference that I made in connection with the Kachmarsky fee petition. But again, the witness knew nothing about either of those statements, had no connection to either of those statements, and she's testified as to her opinion. She's answered the question. She's given him his understanding.

We can go through each one of these entries -- we can go through each one of these entries, and the only thing she can agree to at this point is arithmetic, whether the numbers, in her opinion, agree.

MR. DAN SLOTCHIVER: And that's what I've asked her to do. I've asked if she'll agree that the numbers do add up, and if she won't, we can go through them and add them up one by one.

With reference to the comment that it wasn't asked, it was clearly asked. He asked Mr. Freeman directly that question at the deposition. We can highlight it right here and show it to the court, question by Reese Boyd: But would you agree with my statement that extraordinary research is something that in any fee petition scenario, the court ought to take a look at it?

And Your Honor, this is not an individual's right, no different than a fee petition by somebody submitted who's been appointed by the court and regulated by the court. In the same manner, the trustee, they're regulated by the court. It's not really a big hop and jump. So I think they really are -- we're talking the

same thing.

THE COURT: Mr. Boyd, I think I should allow the questions by Mr. Slotchiver. She's answered. She can tally them up. That's all he's asking her right now.

MR. BOYD: Thank you, Your Honor.

THE COURT: Mr. Slotchiver?

MR. DAN SLOTCHIVER: Thank you, Your Honor.

BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, I'll show you the next one. If you want, we'll take the --

A. Let's go back to the last one where it talked about court appearance, appearance in court.

Q. Right.

A. That I happen to know that every time they went to court, they sat for hours, so probably three hours and 35 minutes or 45 minutes was sitting in court waiting to appear.

Q. So is it your opinion, then, that every single time they went to court, they would sit in court for three hours and 45 minutes?

A. I don't know every time. I know there were many times when they were there most of the

day.

Q. And are there other times when they go there briefly?

A. No. There was never a time when they went there briefly.

Q. Do you have any evidence to support your position that on March -- that the bill referenced on March 31st, 2010, this particular entry, that three hours and 45 minutes of the four hours was spent sitting in court?

A. I can't say that it was that long, but I know how long it takes to drive back and forth, et cetera, et cetera. There's no way it was --

Q. Would you agree with me that the tally, if we take the number, since we don't know what portion of it was related to anything, because it's not on the sheet of paper, would you agree with me that the tally, adding this number, the running total is now $4,635?

A. Yes.

Q. Let's go to the next one. Would you agree with the running tally on this one?

A. Yes.

Q. Now up to $4,835?

A. Yes.

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

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

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

MR. DAN SLOTCHIVER: Thank you, Your Honor. Then in that vein, we will do that.
Tomorrow -- you had asked that I identify who we plan to call as witnesses --
THE COURT: Yes, yes, sir.
MR. DAN SLOTCHIVER: -- on a daily basis. Tomorrow I anticipate attempting to finish with Susan Cohen. I believe that it will take the better part of the day, and when we finish with her testimony, we intend to call Paul Cohen. But when I add Susan Cohen's testimony and I add the cross-examination by the parties, I think it will take the majority of the day, if not the whole day.
The only guidance I would ask from you, Your Honor, is that after Paul Cohen, that I would be hard-pressed to believe that we will finish both of them tomorrow. Maybe if we work a little later, we can actually finish them.
The next witness I would call would be John Freeman, and the guidance I would ask from the court is I would prefer not to have Mr. Freeman travel to Myrtle Beach tomorrow under the possibility that he'll be called, and I would 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.)

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 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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THE COURT: We are back on the record this morning in the matter of the Abbie Dorn Special Needs Trust, 2008-GC-26-50, and the matter of Abbie Dorn Conservatorship, 2008-GC-26-25.

Mr. Slotchiver?

MR. BOYD: Actually, Your Honor, before we --

THE COURT: Mr. Boyd?

MR. BOYD: Before we get started, I was wondering if I could get, just as a housekeeping item, just a little bit of guidance. I want to clarify, if we can, the court's instructions from yesterday morning.

My understanding about the treatment of the witnesses in the case is that Mr. Slotchiver gets to call his witnesses, and everybody will have an opportunity to cross, and then I presume we'll go next, Your Honor. I'll get a chance to call my witnesses.

THE COURT: In opposition to his petition and in support of yours.

MR. BOYD: Yes. And I'm not -- no second bite at the apple, I understand that, Your Honor, but then I'll get a chance to call all the witnesses, including those that have already

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

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

things --
THE COURT: In support of your petition.
MR. BOYD: Yes.
THE COURT: Yes, at the same time that you're questioning her in opposition to Mr. Slotchiver's petition. Or are you asking an opportunity to re-call her?
MR. BOYD: I'd like the opportunity to re-call her, Your Honor, because she's been on the stand for quite some time. She's been under Mr. Slotchiver's questioning for an extended period of time. I'd like the opportunity to call her. My understanding was the court gave the instruction that we would have the opportunity to re-call witnesses.
THE COURT: I think you will have the opportunity, if it becomes necessary, but I thought we were going to try to streamline this a little bit, and during your examination of the witnesses, you would also cover with them any testimony in support of your petition.
MR. DAN SLOTCHIVER: That was my understanding.
MR. BOYD: That was not my

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

court's ruling Monday morning, Your Honor, was that you were going to let Mr. Slotchiver call his witnesses. We'd have cross. I interpreted that to be somewhat limited, that I would be limited to cross, as I would be typically, and I'd get to call my witnesses, Ms. Hedgepath would get to call her witnesses, et cetera, et cetera, and perhaps we work it that way.

It's not my intent to duplicate testimony. I'm not intending to ask her the same questions or give her a second bite of the apple. I just prefer -- I think it's -- and I think my client's procedural due process rights should allow the opportunity for her to be cross-examined now on Mr. Slotchiver's examination and then to simply have a --

THE COURT: Take a break.

MR. BOYD: Take a break, quite frankly.

THE COURT: From being on the stand.

MR. BOYD: Yes, ma'am, because I would present this case -- obviously, the flow of the testimony, Your Honor, the presentation, every case has a theme, Your Honor, and I'd like the opportunity to bring her back and talk about those

areas that I don't need to deal with in response to Mr. Slotchiver's testimony.

MR. DAN SLOTCHIVER: And Your Honor, once again, the case they filed is just purely it's simpler to be able to sign the checks without authority, so we're asking you to give us that permission. I fail to see -- this is not a scenario we've got two complicated lawsuits that are different than each other.

Our lawsuit is very different than theirs in the sense that we are alleging breaches, and we're alleging failure to act appropriately. Mr. Kachmarsky's similarly -- his counterclaim has propounded similar allegations, but the lawsuit that they're talking about is more as an ease to the court, which is we just want to reform the trust so that we don't have to come to the court every time to get permission. I fail to see how that can't be handled in a cross-examination.

Frankly, Your Honor, it appears to me that that argument is one for the court to consider, and primarily, my speculation is the court's going to consider that based on the behavior that's been presented and will be presented to the court, and do you determine

they've acted appropriately, and do you determine that it would be a prudent measure to allow them to act without court authority, despite everything that's come up there.

They're trying to raise their case to a level that deserves a separate type of litigation with new calling of witnesses. And Mrs. Cohen has been on the stand yesterday, and I anticipate she'll be on the stand for a good part of today, and then she'll be cross-examined, but other than saying why do you want to reform the trust and her saying because it's easier than having to petition to go to court every time to do it, I can't fathom what else their case can really be about.

Now, the defense obviously -- or the opposition's going to be that we don't think you should be -- we don't think your past history has indicated that you should be allowed to be given this change in the trust, but they're very different arguments.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, exactly. First of all, Mr. Slotchiver's oversimplifying the case. The case that the Cohens brought was a case to

approve -- affirm second payments that had already been made, but also to reform the trust, but again, it's effectively a separate matter.

It's the same question that would arise -- and again, I'm basing my impression/my understanding on what I understood the court to rule Monday morning. My understanding was the court specifically said that we'd have the right to re-call witnesses.

THE COURT: I did say that.

MR. BOYD: And that's -- I think that should -- that was the decision.

THE COURT: So you don't want to have to cover in your examination of the witnesses what you would have elicited in your petition?

MR. BOYD: It's not my intent to duplicate testimony, Your Honor. I'd just like the opportunity, when Mr. Slotchiver rests, to be able to present my case, including those things from Mrs. Cohen, from Mr. Cohen. I don't know that it will even be necessary, Your Honor. I just want to clarify that that would be an option.

THE COURT: I'm going to give him that option, okay, Mr. Slotchiver. I don't want to direct how you try your case and interfere with

that. We talked about that briefly this morning when Ms. Moore notified me that she was sick. You didn't want to take Professor Freeman out of order. I don't want to hinder the Cohens' case and how their attorney sees fit to present that.

MR. DAN SLOTCHIVER: Your Honor, I've had trials before where the issue became you could cross-examine or you could do direct testimony, but you can't do it both ways. Is that your ruling, that they won't be able to cross-examine the Cohens on these issues and at the same time articulate the same issues in their case?

THE COURT: To the extent that Mr. Boyd can question the witnesses while they're on the stand the first time in support of his petition, I'm going to ask him to do that. If he sees the need to call them back to examine them in support of his petition after the entire case has been -- you finish your case, then I'm going to give him the opportunity to do that, as long as he doesn't duplicate the testimony and go into matters that he should have covered under their initial examination.

Ms. Hedgepath?

MS. HEDGEPATH: For instance, if I

question Mrs. Cohen on the stand as Mr. Slotchiver's witness concerning the reasonableness of the amount of fees, if I go into the amount of fees, is that going to preclude me from questioning her about fees, amounts, and so forth incurred when Mr. Boyd calls her?

THE COURT: I think that would be something to cover during the initial examination of her. I would not want you to go back into that if Mr. Boyd has to call her back in support of his petition. I think you can then examine her on anything he elicits in a second call of her, but not something that you could have covered the first time.

MS. HEDGEPATH: Because I can see Mr. Boyd is asking for affirmation of fees already paid, I believe, and Mr. Slotchiver is alleging that the fees already paid are unreasonable, and I don't want to get caught short on either one of them. So are you saying that that should be covered while Mrs. Cohen is on the stand with Mr. Slotchiver?

THE COURT: Yes, ma'am, and that's what I'm telling Mr. Boyd he needs to do. If it turns out that he needs to re-call a witness in

support of his petition for something that he didn't cover, that wasn't covered, then you could examine them with regards to that new testimony.

It just seems like to me that we should be able to cover most of it. I don't want to hinder you, Mr. Boyd, and your clients in support of their petition, but I would like to get through this testimony and make sure that we get through it in an orderly manner. If you do need to re-call a witness, I'm happy to hear that.

MR. BOYD: Understood, Your Honor. Thank you.

THE COURT: All right, okay. Mr. Slotchiver?

MR. DAN SLOTCHIVER: Thank you, Your Honor. We would re-call or continue the examination of Mrs. Cohen.

THE COURT: Mrs. Cohen, if you could take the stand, ma'am. I'm going to ask the court reporter to swear you in again.

SUSAN COHEN

having first duly affirmed, testified further as follows:

MR. DAN SLOTCHIVER: May it please the court?

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, we chatted with you for a good amount yesterday afternoon. First, let me confirm, have you spoken with anybody about your testimony since we left court yesterday?

A. No, I have not.

Q. In making a decision as trustee, whatever the decision would be, paying a bill, hiring a medical expert, whatever it happened to be, did you have a process you would go through?

A. For -- do you want me to go through them one at a time?

Q. What would your process be in making decisions?

A. My process would be, for instance, in hiring somebody, I would put out -- put in ads, and I would interview them, and then I would bring them in for a trial period. Usually, the first week was the initial trial, but they always had 90 days, and if they weren't able to learn the job -- I mean, obviously, if they weren't able to do it in a week, then I didn't keep them, but if they weren't able to do it in 90 days, then I

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

right decision?
A. I believe I've been very, very careful about that. I've examined everything very, very closely. I've spoken numerous times to counsel. I've spoken to many rabbis to make sure I was going the right direction, because I needed confirmation.
Q. Mrs. Cohen, I'm just asking would you agree with the statement as a generality that it's important, once you make a decision, not to just live with the decision, but to continue to examine and reexamine that decision?
A. That's exactly what I've done, yes.
Q. Jeffrey Cohen is your son. Is that correct?
A. That's correct, and Abbie's brother.
Q. I just want to talk about some people you hired for different things.
So you hired Jeffrey Cohen to do some work?
A. That's correct.
Q. And you have hired Webster Rogers to do some work?
A. That's correct.
Q. And you employed AccuChex to do some

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

Jeffrey if he would move to Myrtle Beach, because I was having a hard time, and so I talked -- and he talked to his rabbi, and we decided he would come once a week.
Q. I'm going to ask, Mrs. Cohen, that you stick to -- if you'll answer the questions, because I'm just trying to get the numbers right now.
A. I was. What was the question?
Q. I said are you testifying that you only paid him $25 an hour when it was an hourly rate?
A. Yes.
Q. Do you remember him telling you that he didn't want to get paid?
A. Initially, that was correct. That was --
Q. And if you could just answer the question, please.
A. Initially, yes.
Q. And do you remember him insisting to you that he doesn't want to get paid, he wants to do it for free?
A. In the beginning, that's correct.
Q. And would you also agree with me that

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

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

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

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

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

that's been provided to me through discovery or that's been submitted to the court as a document that reflects the work that Jeffrey Cohen did to substantiate payment of this $88,000 number?
A. I believe the ledger sheets that you were trying to get me to say I knew about.
Q. Ma'am, I believe yesterday you said you weren't familiar with the ledger sheets.
A. I wasn't. That's why.
Q. And if you're not familiar with the ledger sheets, are you now testifying that you are familiar with them --
A. No.
Q. -- and they do substantiate --
A. I didn't do them.
Q. If I could finish the question, please. Are you now testifying that you are familiar with the ledger sheets and --
A. No. I don't know anything about them.
Q. So the answer to the question that I asked you, then, would be no, that you have no physical evidence to support --
A. That's your answer. It's not mine.
THE COURT: Could you answer his question, ma'am?

BY MR. DAN SLOTCHIVER:
Q. What is your answer, then?
A. You showed them to me, though. I said I didn't know how to do them, so that was clear substantiation that I don't know how to do them, that he did them. I don't see it any other way. I don't know how to do those.
Q. You told me you had never seen those ledger sheets, right?
A. I hadn't. I don't know how to do them.
Q. Ma'am --
A. I don't know how to read them, so I -- you showed me those.
MR. DAN SLOTCHIVER: Judge --
BY MR. DAN SLOTCHIVER:
Q. I showed them to you yesterday, and you said you had never seen them before. Do you remember that?
A. I had never seen them before.
Q. Then how do you know he did them?
A. Because you handed them to me. I couldn't have done them. I don't know how to.
Q. You don't know who did them, do you? Is that a fair statement?

A. I know that he goes on the computer every day.
Q. Ma'am, I've --
MR. DAN SLOTCHIVER: Judge, we can do this all day long, but I'm trying to move along. She wants to answer what she wants to answer.
THE COURT: Your last question I think she was trying to answer, Mr. Slotchiver.
BY MR. DAN SLOTCHIVER:
Q. If you can answer yes or no. Do you have knowledge as to who created the ledger sheets?
A. Well, he had to do the initial --
Q. If you can answer yes or no.
THE COURT: Ma'am --
THE WITNESS: Yes, he would have done the initial work and then --
THE COURT: Ma'am, ma'am --
THE WITNESS: I'm sorry.
THE COURT: Answer his question yes or no.
THE WITNESS: Do I have knowledge?
BY MR. DAN SLOTCHIVER:
Q. Do you have direct knowledge as to who created the ledger sheets?

THE COURT: Yes or no.
THE WITNESS: Well, yes, I would believe that since I don't know how to do them, and he went on --
THE COURT: Ma'am, just --
THE WITNESS: How can I --
THE COURT: Just yes or no. Do you have knowledge who created the ledger sheets?
THE WITNESS: I have an educated guess.
THE COURT: Thank you.
BY MR. DAN SLOTCHIVER:
Q. Are you familiar with the term self-dealing?
A. Of course.
Q. What is your understanding of the term self-dealing?
A. Self-dealing is where you do something for your own benefit.
Q. I'm going to read to you a definition of self-dealing in the Black's Law Dictionary and ask if you would also agree with me as to the definition of self-dealing. Self-dealing in Black's Law Dictionary, which is an older edition, because it's my old one, but I'm going to ask you

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

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

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

count down the lines?
Q. What page is it on, first?
A. You mean on this one?
Q. Yes.
A. Oh, dear. This is so hard to read. It's this one right here.
Q. You're referring to Page 8?
A. Yeah, eight on here.
Q. And Paragraph 9.
A. Do you want me to read it?
Q. Well, let's put it on the screen. No. 9, you said, right?
A. That's correct.
Q. The one that begins with -- I'm looking at the wrong document.
A. No, that's not it.
Q. This is on the order of transfer of jurisdiction, Page 8.
A. Should I read it? That the sums and amounts --
Q. If you'll give me one moment. Page 8, please, Paragraph 9. I want to make sure we're looking at the same document. Begins with the words: That the sums?
A. That's correct.

Q. Let's look at it. So it says: That the sums and amounts referred to hereinabove. Would you agree with me that hereinabove is referring to matters that have already been talked about in this order?
A. Yes.
Q. And previously paid and disbursed. Would you agree with me that that means funds that have already been paid, previously paid and disbursed?
A. I assume that's what it refers to, yes.
Q. And those to be paid at the conclusion of these matters?
A. That's correct.
Q. And the order in front of the court on this date deals with the order of transfer of jurisdiction.
A. It also -- we had talked about with the judge at the time, Judge Carter told me that we could deal with the court so this referred to that.
MR. DAN SLOTCHIVER: I'm going to object, Your Honor, and ask that it be stricken to any hearsay statement that she asserts that she

was given by Judge Carter without any documents to support same.
THE WITNESS: But it's right here.
THE COURT: Mr. Boyd?
MR. BOYD: Your Honor, the document -- the document is evidence issued by the court in the hearing, and to the extent that the witness can testify that the judge made a statement reflecting her present state of mind with regard to the document, I think she's got a right to testify.
MR. DAN SLOTCHIVER: The problem, Your Honor, is that it would allow a witness to say whatever they wanted to say whenever they wanted to say it. There's no way to validate it. There's no supporting document. There's no supporting transcript.
MR. BOYD: Your Honor, she can give her present-sense -- she can give her present-sense impression.
MR. DAN SLOTCHIVER: Your Honor, her present-sense impression is not -- does not govern a trust case. She has to have support that she can show. The mere fact that she has a belief, even if she does have that belief, does not excuse

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

to have proof of it. She can't -- it would be improper for her proof to be: The judge told me this at a hearing.

THE COURT: I'm going to strike that testimony. I don't think it's admissible.

MR. BOYD: Thank you.

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. Now, other than Paragraph 9, what other document do you have that shows that actions after the dissolution of marriage were appropriate?

A. The California document.

Q. Could you show me what California document?

A. I don't have that one with me. I only have this one with me.

Q. If you'll tell me what document it is, I'll be happy to pull it up.

A. It's the conservatorship orders where they said that I could do the divorce, that I could handle the divorce to the conclusion.

Q. Let's pull that up. I believe it's 101. I'm going to show you a copy of Page -- of Exhibit 101 and ask you if this is the document

you're referring to?

A. I don't think so. It had a lot more writing on this. Wait a minute. This may be it. Petitioner -- although the one I have is much -- has a lot more writing on it. Do you want me to read it?

Q. Well, if this is not the document, you're welcome to look in your files to get one. If it is --

A. I don't have it with me.

Q. Why don't you show which paragraph, and we'll put it on the screen also.

A. This says: Petitioners hereby amend the petition to --

Q. Can I see it?

A. That's not it. Wait a minute. Wait.

Q. Take your time.

A. These two paragraphs.

Q. I'm sorry?

A. These two paragraphs.

Q. Let me see, if I may.

A. Petitioner's, this one, A and B.

Q. A and B. So we're looking at Exhibit 101, 1A and B, which is on the second-to-the-last page on a petition filed by

Louis Michelson.

A. Michelson.

Q. Michelson. On a petition, okay. Can you tell me what language -- is it A or B?

A. Both.

Q. Well, let's look at it, then. Petitioner's amend their -- you're relying on a petition for the authority. Is that correct?

A. I don't know that this is the right one. I have something with all these written up as orders that -- not the petition, but the orders.

Q. Do you have it here with you?

A. No. I didn't bring that one. But it gives me the orders, and it says what he asked for in the petition. It said you could employ attorneys and that it could all be paid for by the -- without notice, hearing, blah, blah, blah.

Q. Let's look at what you pointed to here. A: Petitioner amends their petition to Checkbox 1D thereof and to request that the court grant them the authority to independently exercise the power under the probate court to employ attorneys to file an action for dissolution of the marriage.

We agree with that language, correct?

A. Yes.

Q. Now, look at the box below that we have on the screen. Judgment of dissolution is granted. Isn't that exactly what you were authorized to do?

A. No.

Q. To file for -- if I could finish, to file for a dissolution of marriage, and here, if I might finish, the language states the judgment of dissolution is entered.

A. No, that's not what I was authorized to do.

Q. Can you show me a document that gives you more authority?

A. (Demonstrating.)

Q. What document is that?

A. The same one we talked about.

Q. Where does it give you more authority?

A. To the conclusion of these matters. And I spoke with Robin Morris. She told me --

MR. DAN SLOTCHIVER: I'm going to object, Your Honor. I'm going to object to the statement.

BY MR. DAN SLOTCHIVER:

Q. To the conclusion of these matters, the reference is made to a dissolution. Mrs. Cohen, isn't it true that --
A. No, not in this one.
THE COURT: Ma'am --
BY MR. DAN SLOTCHIVER:
Q. Isn't it true, Mrs. Cohen, that you -- that a motion was made and an order was granted in the California divorce action allowing the bifurcation of the case?
A. I objected to it.
Q. But it was granted?
A. It was, but that didn't handle any of the other issues.
Q. And isn't it true that when it was bifurcated, it divided the case into two sections: One, dissolution of marriage; two, everything else. Would you agree with that?
A. I would not. There was one case number.
Q. But the bifurcation divided it, and thereby allowed a dissolution of marriage to be entered September 11th, 2008?
A. It's irrelevant. It was one case.
Q. You agree with that, the dissolution

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

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

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

Q. And that the litigation related to the visitation with the children is ongoing?
A. Not just the visitation, everything.
Q. Are you aware that an order was entered into by this court on August the 2nd, 2011, stating exactly what I read to you, the litigation involving the dissolution of the marriage was included by order of the California court on September 1st, 2008, the litigation related to the visitation with the children is ongoing?
A. Am I aware of it?
Q. Yes. You just disputed it. I'm asking if you knew that it was ordered by the court.
A. What was ordered by the court?
Q. That this language was placed in an order by the court, signed by this judge on the bench on August the 2nd, 2011, and filed in the court on August the 2nd, 2011?
A. So what are you asking me?
Q. You agree that the dissolution was resolved?
A. The dissolution?
Q. The dissolution.

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

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

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

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

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

BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, do you agree with me that out of the legal fees, that none of the legal fees incurred by Lisa Meyer or the MOLM firm, at least up until the date of your deposition, which was in May of 2011, that none of those fees were related to the issue of visitation?
A. None of them?
Q. None of them.
A. Are you asking me if none of them --
Q. I'm asking if you agree with me that no legal bills, no legal fees, no legal expenses incurred -- excuse me. I said it wrong. Glad you corrected me.
Would you agree with me that no expenses incurred or legal fees incurred relative to the child support issue --
A. Absolutely not.
Q. If I could finish. -- were paid to the Meyer firm, at least between the time they were hired and the date of your deposition? Would you agree with that statement?
A. No.
Q. I'd like to show you your deposition, Page 81, and ask that you would read along with

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

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

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

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

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

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

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

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

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

Court for an order which specifically allows them to use funds from the special needs trust to pay the attorneys fees in California and South Carolina who are defending the trust.

You agree with that reading, correct?

A. I agree you can read, yes, but it's not what I asked.

Q. So you believe that your counsel misquoted you to the court?

A. I think that he may have understood it in a different manner. What I said I wanted was the three documents to agree. That was my understanding, that there was just some language that the family counsel had that it now uses all the time. He wanted to make it exactly as the family counsel said.

Q. What three documents are you referring to that you wanted to agree?

A. This document in California that said we could use the money and the one that I didn't understand.

Q. Well, you said that -- I'm sorry. Let's go through them one at a time so I make sure I understand which ones you're talking about.

A. This one.

Q. The document you're referring to now is?

A. The order of transfer of jurisdiction.

Q. Order of transfer of jurisdiction, which we spoke about that had language in it relevant to quote-unquote dissolution of marriage. That's No. 1.

A. But it says to conclusion of these matters, of these matters, conclusion of these matters.

Q. Mrs. Cohen, do you understand that the matters before the court that were filed at that time were matters dealing particularly with transferring jurisdiction to South Carolina?

A. It was talking about dissolution and ending all the matters in the marriage. In the marriage is what Paragraph 9 refers to.

Q. And I think we've gone through that before over and over. Unless you have other language to support it, let's move on to the next --

A. I have reliance of counsel.

Q. What other documents that you wanted to make consistent? That was one. You said there were three you wanted to -- you wanted to have

consistency between them. What was the other two documents?

A. The third one was I don't know which one, the one -- one of the ones you had pulled out. I don't know.

Q. I'm sorry?

A. All I know is that this one clearly gave me authority. Robin Morris said that marriage is --

MR. DAN SLOTCHIVER: I'm going to object to --

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. What was the second document?

A. I believe it may have been the California document, but I'm not sure.

Q. Which California document?

A. I don't -- not that one, but the one I have at home, but at any rate, this was the one that I was primarily relying on.

Q. And the third document?

A. And Bret told me that --

MR. DAN SLOTCHIVER: I'm going to object to --

BY MR. DAN SLOTCHIVER:

Q. If you want to talk about counsel, we can do it, but you open the door.

A. I'm sorry. Okay. No, I don't. I don't know.

Q. Third document?

A. California, this one, and I don't know what the third document was.

Q. What did you believe the inconsistency to be?

A. I don't know. The language didn't say exactly the same thing.

Q. Did you ever -- based on this e-mail, it says that this issue is starting to come up in California litigation. When it references this issue, is it -- would it be fair to say the issue they're talking about is the expenditure of trust money to fund the visitation case?

A. The issue. Yes. Vicki was giving me --

Q. I'm just asking for a yes or no, please, at this point.

A. Yes.

Q. And this is in 2010, when the Meyer firm was involved?

A. Yes.

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

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

THE COURT: I'll strike that.
MR. DAN SLOTCHIVER: Can we take a short recess?
THE COURT: We may. Five minutes? Ten? Five?
MR. DAN SLOTCHIVER: Either one.
MR. BOYD: Actually, I need to make a phone call, Your Honor. If I could have --
THE COURT: Let's take ten minutes, then.
MR. DAN SLOTCHIVER: Thank you, Judge.
THE COURT: Thank you.
Instruct the witness not to speak with counsel about her testimony.
THE WITNESS: Okay. Thank you.
THE COURT: Thank you.
(A brief recess transpired from 11:15AM to 11:20 AM.)
THE COURT: We're back on the record in the Dorn matter.
Mr. Slotchiver?
MR. DAN SLOTCHIVER: Thank you, Your Honor.
THE COURT: Thank you.
BY MR. DAN SLOTCHIVER:

Q. Mrs. Cohen, do you agree that you were the original person -- you and your husband were, from the inception, listed as the trustees and the conservators for your daughter?
A. From the original? You mean from California?
Q. You were never replaced, you were the original people?
A. Yes.
Q. And you had ample opportunity, I take it, to read the trust document?
A. Yes.
Q. Did you read the trust document?
A. Yes.
Q. Did you have any questions about the trust document --
A. Yes.
Q. -- at the time that you were appointed as trustee?
A. Yes.
Q. I want to direct your attention to the trust document, which is Exhibit 1, and Page 10 -- or Paragraph 10, excuse me.
A. I can't see it if you're going to ask me to read it.

Q. Let's look at the last sentence of it, if we can blow that up.

Mrs. Cohen, what does the word shall mean? Would you agree that it means must, it's a compulsory word?

A. I guess it could be.

Q. Would you agree with me the word shall is a compulsory word, it means equivalent to must?

A. It's somewhat equivalent. It's not exactly equivalent.

Q. Did you rely on this paragraph of the trust as part of your opinion that you had the right to hire and pay attorneys related to the visitation issue?

A. You asked me if I had questions. It was a question.

Q. Well, at the time the trust was created, I take it that the visitation issue had not yet been pursued?

A. It would have had nothing to do with visitation.

Q. And my question to you is: With reference to the visitation issue, did you rely on this trust language?

A. I had -- I spoke with counsel, and

I --

Q. Ma'am, not what you spoke to counsel about -- and I'm sorry to interrupt you -- I want to know did you rely on this language in your opinion that you had the ability and the authority to pay attorneys?

A. I did not rely on that language, no. I had already asked about it.

Q. So this language was not part of your decision-making power?

A. No.

Q. Fair enough. And let's look at 12. 12 says: The trustee may employ attorneys, accountants, and financial advisers and consultants at the expense of the trust to represent the beneficiary in connection with any and all matters involving or in any way related to beneficiary or any property in which he has an interest or responsibility. Any and all legal, equitable, judicial, or administrative hearings, actions, suits, proceedings, attachments, or distresses involving beneficiary in any way, including, but not limited to, claims by beneficiary arising out of property damage or personal injury.

I take it this section was used to allow you to assist in the litigation over the injuries sustained by Abbie?

A. To assist?

Q. Well, to have authority over it. This empowered you to hire lawyers --

A. Over the litigation.

Q. -- over the PI case, the injury case?

A. No. I didn't hire the lawyers in the PI case.

Q. It says here at the bottom: The compensation of trustee's attorneys-at-law shall be subject to prior approval of a court of competent jurisdiction.

Did you rely on this paragraph?

A. For what, the PI, the personal injury?

Q. Did you -- let me clarify, please. Did you rely on this paragraph in making your determination that you had the authority to spend money from the trust related to the visitation action?

A. No. I didn't rely on that paragraph.

Q. Let me show you -- I'm trying to make sure I understand all the bases that you had, so since you don't remember the other two, I'm just

going to go a little bit through the process of elimination, but let me show you under the complaint -- under the complaint that you filed, you attached a copy of the letters of conservatorship.

Under 101, the letters of -- under the appointment, the order appointing the probate conservator, Attachment 23, the second paragraph: The conservators are granted the independent power under Probate Code Section 2591(q) to employ attorneys to file an action for dissolution of the marriage between the proposed conservatee and her husband and to pay the attorneys fees thereby incurred.

Do you rely on this as empowering you to spend the money?

A. What document is that?

Q. I'm sorry?

A. What document is that?

Q. This is under the conservatorship papers, Document 101.

A. This was the beginning, and then this was the confirmation.

Q. So did you, in fact, rely on this language?

A. On that language? It was a consideration, but I would not have relied on anything without this and without attorneys' opinion.

MR. DAN SLOTCHIVER: Well, I'm going to ask to strike with regard to the attorneys' opinions.

MR. BOYD: Objection, Your Honor. I'm not sure, again, what the basis is for striking the answer. The witness answered the question. He may not like the answer, but there's nothing, from an evidentiary perspective, that's objectionable about it.

MR. DAN SLOTCHIVER: Is it my understanding, then, that Mr. Boyd would allow me to depose and open --- and that he's opening the door for all attorneys to be subject to the court for cross-examination?

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, we've been down this path before. She's testifying the same way she testified in her deposition.

MR. DAN SLOTCHIVER: I agree. The difference is that it's not an appropriate response for consideration by the court. I

understand that she may have testified the same before. As you know, we have very liberal rules on depositions about what we can object to.

THE COURT: Might I say this: I don't know if this will have any impact or not. I missed what she said. I did not -- I was making a note. I did not hear the last part of her statement.

MR. DAN SLOTCHIVER: She referenced advice of attorneys.

THE COURT: Could you read her statement, please?

(The Court Reporter read the answer commencing on Page 352, Line 24.)

THE COURT: I'm going to allow that.

BY MR. DAN SLOTCHIVER:

Q. So these are the two documents you relied on, the order of transfer of jurisdiction and the conservatorship papers. Is that correct?

A. This was the primary document.

Q. The order of transfer, okay.

Did you consider the expense that -- or strike that.

Was part of your motivation in filing the reformation action to eliminate the expense of

having to get court approval and thereby having a wait period and monies involved with lawyers, and you wanted to avoid that by getting the court to say you don't have to do it, you can sign it on your own?

MR. BOYD: Objection, Your Honor. That's not a question; it's a story. I'm not even sure what he's asking.

THE WITNESS: I don't know what --

THE COURT: Excuse me, ma'am.

MR. BOYD: Could you restate the question?

THE COURT: If you could shorten that a little bit.

MR. DAN SLOTCHIVER: I'd be happy to.

BY MR. DAN SLOTCHIVER:

Q. Do you agree that it would be prudent for you, as a trustee, to seek court approval before payment of fees?

A. I got court approval.

Q. Did you review the pleadings filed with the court in South Carolina in the reformation action before they were filed?

A. Before they were filed?

Q. Yes.

A. Oh, you mean when it was -- when I had it, so it would have been filed already, right?

Q. You, as trustee, employed lawyers to file a reformation action, correct?

A. Right.

Q. Did you review those pleadings before the reformation action was filed?

A. I don't remember.

Q. Do you believe that it would be prudent for you to review pleadings filed on behalf of the trustee before they were filed?

A. Yes, and I probably did, but you're asking me for a yes or no. I don't remember.

Q. Do you remember reference being made in those pleadings to the fact that it is prudent for this court to affirm the payment of such fees and to approve the payment of future fees?

A. That sounds right.

Q. So you would agree that it would be prudent for the court to approve fees?

A. They did.

Q. I have a little bit of a disconnect. I'm trying to understand if you had full approval, why are you filing a petition with the court stating it is prudent for this court to affirm the

payment of fees and to approve the payment of future fees?
A. Just for the documents to be in line. I already had approval.
Q. You made an allegation in the petition you filed, Paragraph 10 of the reformation action, that states: The petitioners were previously granted authority to employ attorneys on behalf of the protected person for matters related to the divorce action and to pay for such services from the trust.
Do you remember making that allegation?
A. Read it again.
Q. Paragraph 10.
A. Paragraph 10?
Q. Do you remember this allegation?
A. I don't particularly remember it, but obviously, it seems to be accurate.
Q. Is the basis for this allegation --
THE COURT: Mr. Slotchiver?
MR. DAN SLOTCHIVER: Yes, ma'am.
THE COURT: Is that the petition?
MR. DAN SLOTCHIVER: It's the petition filed by -- on behalf of Mrs. Cohen for their --

when they summonsed for relief. The day after we filed our petition, they filed theirs the next day for the reformation action.
THE COURT: This has been amended, so --
MR. BOYD: What exhibit number are you asking her to read in, for clarification?
MR. DAN SLOTCHIVER: It's not an exhibit. If it is, I can find it. I don't believe I put this into evidence.
MR. BOYD: That's what I was --
THE COURT: Because I have the amended petition.
MR. BOYD: If you're going to ask her to refer to a document, it should probably be admitted into evidence, Your Honor.
THE COURT: The amended? I would think so.
MR. BOYD: Because what she was reading was not matching my electronic copy, but now I understand.
MR. DAN SLOTCHIVER: It's not the amended copy, Your Honor. This is --
MR. BOYD: If you're going to ask her to refer to it, Your Honor, it should be in the

record.
MR. DAN SLOTCHIVER: This is a --
THE COURT: The initial petition.
MR. DAN SLOTCHIVER: That she filed as the trustee.
THE COURT: Okay. Would you like to admit that into evidence? Mr. Boyd is requesting that you submit that if you're going to ask her to refer to it and respond to questions regarding it.
MR. DAN SLOTCHIVER: I'm happy to put it in evidence.
THE COURT: I think it might be appropriate. If that's somebody's copy, we can certainly make a copy.
MR. DAN SLOTCHIVER: It is.
THE COURT: What number?
THE REPORTER: 106.
(PLF. EXH. 106, Summons for Relief, was marked for identification.)
THE COURT: Any objection, Mr. Boyd?
MR. BOYD: No objection, Your Honor.
THE COURT: We'll just try to make a copy.
MR. DAN SLOTCHIVER: Thank you.
THE COURT: 106 without objection.

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

California was authorized?
A. Yes.
Q. And that any amount of money that you would spend would be authorized?
A. Yes.
Q. And reasonable?
A. How does one determine reasonable? I don't know.
Q. Well, let's talk about authorized first. So you were at liberty, in your opinion, to do whatever you wanted to, you were authorized to do whatever you wanted to, related to the domestic action. That's your opinion?
A. It wasn't my opinion; it was counsel's opinion.
Q. You stated that you don't know what reasonable is. Is that correct?
A. It's relative. If I spend the same amount that he did, because he had a very aggressive attorney, then it's what needed to be done for Abbie's benefit.
Q. Would you agree with me, Mrs. Cohen, that whatever money Dan Dorn spent was in his individual capacity, not as a trustee? Would you agree with that? Yes or no, please.

A. Most of the money was from his parents, so no, I wouldn't agree with it.
Q. Was he involved in the matter as a trustee?
A. No.
Q. Was he spending trust money?
A. No.
Q. Were you spending trust money?
A. Yes.
Q. Do you understand that there is a distinction?
A. Yes.
Q. What amount of money would have been too much?
A. I have no answer to that. I have no idea.
Q. If it, for the same action, cost $2 million, and there was $2 million available, would you have spent it?
A. I can't answer that. I have no idea.
Q. Do you understand the costs that have been incurred as a result of the filing of the reformation action?
A. That's your fault, not mine.
MR. DAN SLOTCHIVER: Judge, if she

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

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

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

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

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

going to ask you. Did you consider the expenses that you would be incurring when you made the decision to have the reformation action filed?
A. I didn't know about any expenses other than a court filing fee.
Q. Once the action was filed and Judge Edmonds appointed counsel to serve in these multiple roles, did you revisit the issue to consider the expenses involved?
A. Yes. What options did I have? Can I take them away and say I don't want those people appointed?
Q. Did you consider dismissing the action for reformation?
A. Yes.
Q. You did?
A. Yes.
Q. Did you make a determination to dismiss it? Obviously not, correct?
A. I spoke with counsel about it. They decided not to.
MR. BOYD: Your Honor, can we ask the witness not to get into matters of attorney-client privilege?
THE WITNESS: I'm sorry, I'm sorry,

I'm sorry.
THE COURT: Ma'am, I recommend that you not breach the issue of your counsel's advice to you.
THE WITNESS: Okay. I'm sorry.
THE COURT: So as to not open that issue up for cross-examination.
THE WITNESS: Okay.
BY MR. DAN SLOTCHIVER:
Q. Let me show you first -- well, let me ask you first, Mrs. Cohen, are you familiar that there -- I think we talked earlier about John Kachmarsky and the fact that he had submitted a fee petition. We talked about it in connection with your counsel's argument about the reasonableness of paying for research, talked about that yesterday, I believe. Do you remember that?
A. Yes.
Q. So you are familiar that fee petitions have been filed with this court?
A. Yes.
Q. Let's look at some of the expense -- and you understand -- strike that.
You understand that throughout this

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

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

Q. And you're familiar with the fact that they're still sitting here today billing, and would you agree with me that the cost to the trust becomes quite extraordinary?
A. Yes, I would.
Q. And is it still your opinion that despite that, you would not be willing or have not been willing --
MR. DAN SLOTCHIVER: Strike that, Your Honor.
BY MR. DAN SLOTCHIVER:
Q. Do you agree with me that despite all of that, you have not withdrawn your petition for the reformation?
A. That wouldn't have caused you to drop this nonsensical suit. I don't know why you're asking me that.
Q. Let's move on. Mrs. Cohen, you were appointed -- do you understand that you were appointed as a co-trustee?
A. Yes.
Q. And do you understand that as a co-trustee, you have duties that you share with your co-trustee?
A. I, in fact, do it all, or pretty much.

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

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

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

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

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

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

bought a house for cash.
Q. If you bought a house worth $100,000, and you had a $100,000 debt on that house, what net do you have? What net monies do you have?
A. If you're paying $1,200 a month, you're not going to have any debt. You're just going to have the payments a month. You still are not going to be broke.
Q. Do you agree with me that --
A. What line? I'm sorry.
Q. -- the fees charged to the trust --
A. What line?
Q. Not a line. Would you agree with me that the fees charged to the trust for the hourly rate of the MOLM firm were outrageous?
A. They were in line with Dan Dorn's fees.
Q. I would ask that you be instructed --
A. In context.
MR. DAN SLOTCHIVER: Judge, I would ask that she be instructed to answer the question.
THE COURT: Ma'am --
THE WITNESS: No.
BY MR. DAN SLOTCHIVER:
Q. You would not agree they were

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

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

a letter -- yes, there is a letter.
MR. DAN SLOTCHIVER: Your Honor, I've asked a very direct question.
THE WITNESS: Yes. There is a letter from Robin.
BY MR. DAN SLOTCHIVER:
Q. That letter, if there -- is that letter --
A. No, it's not in your --
Q. Can you show me in the exhibits that we've been given or the discovery we've been provided --
A. Why would you show a letter? Your exhibits. Didn't you ask me your exhibits?
Q. I'm asking you to show it to me. I'll give you every exhibit and all the time you want to look at it.
A. Not in your exhibits, but I have a letter.
MR. DAN SLOTCHIVER: Your Honor, I don't want to argue with the witness.
THE COURT: Ma'am --
THE WITNESS: But what's the question? Is there a letter?
THE COURT: Ma'am, if you could stop

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

as an individual, did you cooperate with providing counsel requested discovery documents?
A. Yes.
Q. Are you aware that a gigantic portion of this case that we've been talking about since yesterday that's been filed for two-and-a-half years --
A. Yes.
Q. If I can finish. -- that you've been deposed on, that experts have been hired on, is devoted to the issue of did you have authority, and was it reasonable? Are you aware of that?
A. Yes.
Q. And is it my understanding that you are not able to provide any document provided by a counsel to you, a memorandum, or a letter or something of the sort confirming that you have that authority?
A. There's a letter from Robin Morris.
Q. Are you aware that Robin Morris advised the court in an earlier hearing -- we've got the transcript -- that she provided her entire file, her entire file, to Bret Davis and did not maintain it?
A. Yes, I know that.

Q. And are you aware of the fact that we --

MR. DAN SLOTCHIVER: Judge, I'd like to go off the record and take this up with the court. I'm very concerned about this information.

THE COURT: All right. Let's go off the record.

(Off-the-record conference.)

THE COURT: We're back on the record in the Dorn matter.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: Thank you, Your Honor. Before we proceed, can we put on the record the discussion that we had off the record?

THE COURT: Yes, we may. Would you like to start?

MR. DAN SLOTCHIVER: Absolutely. Your Honor, a few moments ago, we stepped outside because there was testimony from Mrs. --

And I'm going to state what I believe we discussed. If anybody disagrees, obviously, I'm sure they'll stand up.

But there was testimony from Mrs. Cohen that she had relied on a letter. I asked her what letter. She said it was a letter

from Robin Morris. We stepped outside and discussed the fact that that letter had not been provided to us in discovery.

Conversation ensued that there was, in fact, a letter delivered to us on Friday in discovery which copied -- which was a Robin Morris letter. Frankly, I had not read it, because as stated to the court yesterday, I advised the court that we anticipate some objections to some evidence coming in because of what I characterize as a document dump on Friday.

The court asked when the document became available, when they learned about the document. Mr. Boyd stated that in a conversation he had had with Ms. Morris, she had advised that she may have the document on a computer, but the computer was old, and she hadn't found it, and subsequently, she sent this document over.

We then objected. I objected based on the fact that the document had not been previously submitted to us, based on the fact that there were discovery requests outstanding, that we had come to the court on several occasions seeking to receive supplemental discovery, and that we believed we should have received that.

The conversation then went into the issue that we had a hearing, wherein Robin Morris was present, dealing with that file and wherein the testimony was that her entire file had been delivered to Bret, she did not maintain her file, and that it had been commingled.

And then Bret Davis -- Reese Boyd testified or argued that I had the right to take her deposition. My assertion, in turn, was that I opted not to because they had not provided -- because they were asserting an attorney-client privilege. I don't -- I decided not to pursue it because they weren't seeking to introduce something because they can't have it both ways. You can't assert an attorney-client privilege on the one hand and then introduce the document on the other.

Based on this, the court reviewed the e-mail exchange, not the document itself, but the e-mail exchange from Robin Morris to Reese Boyd, which, in turn, was sent to us, and noted on it that the letter that Robin Morris wrote, which is the one that's being referred to, was actually a letter to Mrs. Cohen's original counsel in California, Ms. Korol, I believe, with a carbon

copy to Mrs. Cohen, for which we asserted that if it was a letter written to her counsel or a letter written to Mrs. Cohen, they had a duty to provide it.

The court asked if counsel for the Cohens had taken the position that the California litigation, the California legal files, were protected by the privilege, and this has been a very lengthy trial, the whole process of two-and-a-half years, but we reminded the court that we had actually argued that, and they opposed us getting the files from California based on privilege, and Your Honor ruled that Mrs. Cohen's counsel was correct, and you ruled against us, and that we were not provided that.

Based on this, we have asked that this letter be stricken because it wasn't provided to us either in a timely manner or at all, that had we known that there was a potential letter in the computer, that we could have easily utilized John Akerman, in the back of the courtroom, to do a forensic look at that computer utilizing certain search words that would have come up with that document, and had we done it, we could have seen it and had an opportunity, if we wished to, to

take the deposition of Ms. Morris regarding that, but we did not.

So my understanding is that the court's ruling based on this general situation is that at this point, the court is not going to allow the introduction of that letter, it's going to strike the testimony with regard to the fact that there was a letter to rely on, and that the court will entertain the -- will entertain questioning pertaining to that letter in the future. It wasn't clear to me if it's on cross-examination or in the case to be brought by the Cohens. I'm assuming in the case to be brought by the Cohens. Is that correct?

THE COURT: When they seek to introduce it, when they seek to introduce it.

MR. DAN SLOTCHIVER: When they seek to introduce it, and at that time, the court has advised that we -- that our right to object is still reserved.

THE COURT: Yes.

MR. DAN SLOTCHIVER: And we can bring up the objection at that time, and the court will make a ruling, but at this juncture during the examination, it is not allowed.

THE COURT: Yes, sir.

Mr. Boyd?

MR. BOYD: Your Honor, I would just briefly -- again, the matter that is in discussion, the letter in question, the Cohens initially learned, I learned, that Ms. Morris had been served a subpoena in this matter for the entirety of her file. We sought to work with Mr. Slotchiver and Mr. Dorn's counsel.

As I stated in our conference, and as the court is well aware, we had a hearing on the matter, and the court ruled that the entirety of the file, for various reasons, the fact that the file had been merged into another attorney's file, that Ms. Morris had retired, that there were likely materials in there that were attorney-client privileged, that it was not subject to wholesale disclosure.

THE COURT: And I do recall Ms. Morris at that hearing said: I don't have anything. I have -- the subpoena was for her file, and she said: I don't have anything. And that was one of the reasons that I did not require her to -- she did respond, I understand, to the subpoena by saying: My answer is I have nothing.

MR. BOYD: And I believe, yes, Your Honor, that's correct. And I just want to clarify that the letter that I mentioned in our off-the-record communication, I mentioned that I did follow up with counsel. On August 8, 2011, I wrote Mr. Slotchiver a letter addressing various discovery issues, Your Honor, designation of expert witnesses, et cetera.

The letter includes a paragraph, which I'll just, if I may -- I stated to Mr. Slotchiver: With respect to the deposition of Robin Morris, I would again suggest that you provide me with a list of questions for submission to Ms. Morris as written interrogatories. That way we could evaluate each question as to attorney-client privilege and advise you to submit the questions to Ms. Morris, as the privilege is waived with respect to the question, or alternatively, assert a privilege accordingly.

Even if you are not inclined to depose Ms. Morris by written interrogatory, the written questions could be the basis for potentially agreeing on a document to limit the scope of deposition, consistent with the Cohens' attorney-client privilege.

So, Your Honor, I was doing my best to cooperate with the discovery of information that Robin Morris might have in her file, and at that time, Your Honor, I knew the same thing that everyone else knew, which is what Robin Morris had represented in court, and I produced the letter within 48 hours. I think it was -- it came in one day, I produced it the next day. She had told me she had nothing, and then later she said: I found something, and she e-mailed it to me, and I immediately, relatively speaking in today's world, in the throes of trying to get ready for trial, Your Honor, we produced it as quickly as possible.

MR. DAN SLOTCHIVER: And I take exception to the comment, Your Honor, that she said she had nothing. According to Mr. Boyd in chambers, she told him she thought she had something, it was in a computer, the computer was old, she hadn't found it.

Secondly, Your Honor, with reference to the comment about he tried to work with me. I appreciate counsel advising me the limitations on which I'm allowed to practice, but under the limitations he provided, that I would submit written questions, and he'll consider those and

make a decision, I opted to let him follow the standard rules of discovery, let him provide documents that he claimed was not privileged, and other than that, I opted, based on the fact there were none, not to take the deposition.

MR. BOYD: Your Honor, I was simply trying to meet our obligations under the rules consistent with the court's order on the attorney-client privilege. And yes, Ms. Morris did tell me, in fact, that she could not find anything.

THE COURT: Anyone else?

MR. KACHMARSKY: Judge, I would like to at least have an opportunity to look at the letter before you finalize your ruling on it, I mean, because I don't even know what it says.

THE COURT: All right.

MR. KACHMARSKY: It'll take a few minutes.

THE COURT: We'll take just a couple minutes. We'll go off the record. Y'all want to take a minute and let me know when you're ready?

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: I'll step back in when

you're ready.

(A recess transpired from 2:13 PM to 2:25 PM.)

THE COURT: We're back on the record in the Dorn matter.

Mr. Kachmarsky asked for an opportunity to review the documents, the e-mail letter from Ms. Morris.

MR. KACHMARSKY: I have, Your Honor, and I will withdraw my request for you to withhold your ruling at this point.

MR. DAN SLOTCHIVER: If I may, Your Honor, I had an opportunity, and I wanted to put it on the record, to pull a part of the transcript.

THE COURT: From the hearing?

MR. DAN SLOTCHIVER: From the hearing. I can't put it on the screen, but I'll read it slowly, if I may, and it's pretty brief.

THE COURT: And this was the hearing --

MR. DAN SLOTCHIVER: This was -- actually, I've got the original transcript, if you'd like, Your Honor. I'd be happy to give it to you.

THE COURT: No. Unless Mr. Boyd has an objection, I'm happy to just let you read.

MR. BOYD: I'll listen, Your Honor.

Can you remind me the date of the hearing?

MR. DAN SLOTCHIVER: Yes. The hearing was July 25th, 2011, a year-and-a-half ago.

THE WITNESS: I'm sorry. Are you talking to me or --

MR. DAN SLOTCHIVER: No.

THE COURT: No, ma'am. Thank you.

MR. DAN SLOTCHIVER: In the hearing -- and I'll read to you part of the responsive testimony, because I think it makes sense. In the argument made by Reese Boyd on Page 21: Your Honor, Ms. Morris then responded to the subpoena on June the 6th. Dear Dan, the documents you're requesting, no mention of a subpoena -- excuse me, no mention of a deposition, by then a subpoena or in response. Dear Dan, documents you are requesting via subpoena dated May 23rd are privileged pursuant to the attorney-client privilege. Further, I have no documents responsive to this request.

So she did raise the issue of

attorney-client privilege, but however, without waiving the privilege, she responded affirmatively to the subpoena: I have nothing responsive in my possession.

Two short other excerpts. Then there's, on Page 25, direct testimony from Ms. Morris, Line 24: Your Honor, I would just simply like to reiterate that under the rules of -- Page 26 -- ethics, my understanding is after having reviewed them, both during my retirement and after my retirement and subject to the subpoena, that I have no obligation to keep copies of records or to retrieve copies of records, plus, my representation has ceased, and the client requested that I turn over the file to subsequent counsel.

Mr. Slotchiver apparently wants me to go rifle through another lawyer's -- another attorney's file in the midst of litigation in order for me to find something that he took from my office. Your Honor, I think that that, in and of itself, would be some breach of confidentiality.

I have no authority to go into Bret's office and go through his file looking for pieces

of paper. I have not had my hands on this file for three days short of two years. I have no idea where it is, what's happened to it, what condition it might be, and I think it would put me -- excuse me. And I think it would put an undue burden on me and certainly, I think, create a fairly substantial privilege issue for me to be ordered to go into an attorney's file in the midst of litigation.

And this file was transferred to him so -- well, before any of this litigation was initiated, so there is no issue here as to whether it was done for some improper purpose, which is the inference that I have been receiving from Mr. Slotchiver when he first contacted me.

So I wanted to point out to the court that it's not just argument of counsel that's addressed the fact that there was no document and asserted the privilege, meaning counsel for the Cohens in today's case, but it's also argument from the lawyer who purportedly wrote this letter that we're talking about, who herself made the same assertions, and I wanted to have clarity for the record on that.

I'm happy to submit a copy of the

transcript to the court for its review. I don't believe the court had one, so I'd like to put it into evidence if I may. It's still a sealed copy. Fair enough?

THE COURT: Any objection?

MR. BOYD: No objection.

THE COURT: No objection. Court will admit that.

MR. DAN SLOTCHIVER: You can mark this as our next exhibit.

(PLF. EXH. 107, 7/25/11 Hearing Transcript, was marked for identification and admitted into evidence.)

MR. DAN SLOTCHIVER: And it's still a sealed copy, Your Honor.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: And Your Honor, why don't we go ahead, while we're here, and admit the original transcript also. I can put it in a file or mark it as an exhibit. We've referenced it.

THE COURT: Whose deposition?

MR. DAN SLOTCHIVER: The transcript of Susan Cohen.

THE COURT: Her deposition?

MR. DAN SLOTCHIVER: Yes, from May 18th of '11.

THE COURT: So that would be 108?

MR. DAN SLOTCHIVER: Yes.

(PLF. EXH. 108, Deposition of Susan Cohen, was marked for identification and admitted into evidence.)

MS. HEDGEPATH: Excuse me, Your Honor. What was 107?

THE COURT: 107 was the transcript of the hearing held on 7/25/11 with respect to Ms. Morris.

MR. DAN SLOTCHIVER: I believe, Your Honor, I have nothing further.

THE COURT: And let me just go back and -- just give me one second.

Got it. So at this time the court is going to strike the testimony of the witness with respect to a letter from counsel that she referenced in her testimony.

MR. DAN SLOTCHIVER: Your Honor, as the striking, would the record then reflect that there are no documents responsive to the question?

THE COURT: At this point, there are no documents responsive to the question.

MR. DAN SLOTCHIVER: Thank you, Judge.

THE COURT: I have indicated to counsel that at whatever time that Mr. Boyd may seek to introduce that letter from Ms. Morris, that I'm happy to allow him to try to do that and hear any objection at that time as to why it should not be allowed at that time.

MR. DAN SLOTCHIVER: Thank you, Judge.

MR. BOYD: Thank you, Your Honor. And Your Honor, just for the record, I don't -- I listened to the transcript reading. I don't think there's anything that was said in that transcript that's inconsistent with anything that we represented, so I appreciate the court's ruling.

THE COURT: Thank you.

I'm sorry, Mr. Slotchiver. Did you say you were finished with the witness?

MR. DAN SLOTCHIVER: I am.

THE COURT: Thank you.

THE WITNESS: Should I leave?

THE COURT: No, ma'am. I'm sorry. We're going to give the other attorneys an opportunity to now question you.

Mr. Boyd?

MR. BOYD: Your Honor, can we take

about a five-minute break. I apologize. I'm a little out of sorts here at the moment.

THE COURT: Yes. And let me ask you, I'm not sure if -- I'm assuming Mr. Kachmarsky would go after Mr. Boyd, but if --

MR. DAN SLOTCHIVER: The order we had done yesterday was from here to Lynette to John.

THE COURT: Okay. I'm happy to go with that order.

So we'll take about five minutes.

MR. BOYD: Thank you, Your Honor.

THE COURT: We're going to go off the record.

(A recess transpired from 2:32 PM to 2:44 PM.)

THE COURT: We're back on the record in the Abbie Dorn matter.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: One brief matter before we start. At the very beginning of the trial yesterday, I advised the court that we had some issues that may need to be brought up, and I'd rather bring it up now than later, and the particular issue deals with the -- we've talked about the letter that we were delivered on Friday,

but in addition to that letter, there were other documents provided to us on Friday, and we would -- before we start -- what I don't want to do is open the door and start the testimony of Mrs. Cohen, whereas, she's asked about these documents, and they come in without first having an opportunity to object to any documents delivered to us on Friday coming into evidence.

They seem to primarily be by way of communications between counsel of the two parties, but I believe it would be improper to bring those documents in now, in light of the fact they were only delivered to us on Friday, and we don't have to rehash that we've talked about the discovery process and what we've gone through in this case.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, this case is not a simple case, Your Honor. There are so many, literally thousands, of documents involved in this case, Your Honor, that it is really difficult to get your arms around the documentation. We've stated it in court many times. We have literally produced thousands of pages of documentation at the request of Mr. Dorn and his counsel.

The settlement -- the

correspondence -- and I would ask the court to consider, Your Honor, that the purpose of the discovery rules generally are to avoid surprise, ambush, et cetera, unfair advantage. My original impression of many of the documents that were produced on Friday was based on my assessment that they related to settlement discussions and Mrs. Cohen's efforts to settle the case, and therefore, they probably were not something that would be admissible.

But unfortunately, Your Honor, what this case has become over time, if the court will really think about it in these terms, is effectively a relitigation of the merits of the California proceeding in the South Carolina probate action, because effectively, what's on trial here today, Your Honor, is the reasonableness of the trustees' actions.

And in fact, there were documents that were in the file, some of them came to me over time. I questioned whether they were admissible. They were settlement oriented. But in fact, Your Honor, what has become a central question of this case is the efforts of the trustee to settle the California litigation on reasonable terms, in

effect, to stop the bleeding.

And so the question really came to the floor when Dan Dorn made some statements regarding settlement in his deposition, which was just earlier this month, Your Honor, and that discussion related to the possible settlement of the California action is what brought those documents back to the fore, Your Honor.

There was no intent to surprise anybody. I really took a different view of those documents. I mean, quite frankly, Your Honor, I think the documents are relevant, and they're relevant to the reasonableness of the trustees' actions.

THE COURT: Are they documents that you're going to be seeking to introduce today? Do you anticipate that? It is 3:00. I'm prepared to go a little while. Or are they documents that you're going to be seeking to introduce through your client today?

MR. BOYD: Your Honor, if we get that far.

THE COURT: Or will they -- this is what I would propose, okay. As everybody knows, Ms. Moore is not here, and in going forward today,

I told her, based on my conversation with you, Mr. Slotchiver, this morning, that she would have an opportunity to review the transcript of today's hearing this evening, in the morning, a rough draft, something of that, maybe a recording of it, and I don't want to make a ruling.

Now, I've made a ruling as to the admissibility or the statements that Mrs. Cohen made with respect to reliance upon counsel's advice during her examination by Mr. Slotchiver.

MR. DAN SLOTCHIVER: Yes.

THE COURT: I would rather not go forward, talk about documents that may or may not get introduced today, without Ms. Moore having an opportunity to be here. I don't want there to be anything that's going -- she represents Abbie Dorn as the guardian ad litem. I'd prefer, Mr. Slotchiver, let's wait and see how far Mr. Boyd gets with his examination or whether we get to the point of him wanting to admit some of these documents.

MR. DAN SLOTCHIVER: And I'm happy to respond at that time, as long as he doesn't go into it today. He's made some arguments that I'm happy to address with the court. We have vast

differences of opinion.

THE COURT: I understand.

MR. DAN SLOTCHIVER: But I can wait, if that's the court's desire.

THE COURT: I would rather do that, I mean, just listening to his argument, understanding you want to respond to it. I don't want to hinder Ms. Moore in any way in making a ruling that she might want to take a position on, and I think she's entitled to be heard on it. I think this is certainly an important issue that I would rather try to wait, if we can, until possibly tomorrow.

MR. BOYD: I don't have a problem with that, Your Honor.

MR. DAN SLOTCHIVER: Can Mrs. Cohen be advised not to reference these documents in her testimony?

THE COURT: Yes, ma'am. And I will ask Mr. -- instruct Mr. Boyd not to ask her about any of the documents that --

And these are documents that you just received last week. Is that correct?

MR. DAN SLOTCHIVER: Friday, yes.

THE COURT: Okay. So Mrs. Cohen, if

you will not make reference to any documents that you're aware that your attorney just received through discovery last week or received last week.

MR. BOYD: I will not ask her about those documents, Your Honor.

THE COURT: Thank you.

THE WITNESS: You're talking about all those settlement documents?

THE COURT: Yes, ma'am.

THE WITNESS: Okay. Thank you for clarifying.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: Thank you, Judge.

THE COURT: Thank you.

And then at whatever time, Mr. Slotchiver, I need to hear from you, I'm happy to do that. Thank you.

MR. BOYD: Thank you, Your Honor.

THE COURT: Mr. Boyd?

THE WITNESS: And also you meant the thing we just talked about?

THE COURT: Ma'am?

THE WITNESS: You also meant what we just talked about?

THE COURT: Yes, ma'am.

THE WITNESS: Okay. Thank you. I just wanted to be sure.

THE COURT: Certainly.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY MR. BOYD:

Q. Good afternoon, Mrs. Cohen.

A. Good afternoon.

Q. I'm going to call you Susan, if that's okay.

A. That's fine.

Q. Susan, you've been asked to look at a great many documents over the last couple of days. Let me start by asking you to take a look for a moment at what was previously marked. I'm just going to try to take the exhibits that you've been asked to look at. This is Exhibit 4, what's been previously marked as Exhibit 4. Take a look at that.

MR. BOYD: Your Honor, may it please the court, I'm going to ask for the admission of certain documents that have previously been produced with --

MR. DAN SLOTCHIVER: Are we --

THE COURT: Mr. Slotchiver, you look

puzzled.
BY MR. BOYD:
Q. Take a look at that document. Mrs. Cohen, I'd like --
MR. DAN SLOTCHIVER: I'm just a little puzzled. I see the Bates numbers on these documents are not the same Bates numbers as the ones that we were provided in discovery.
MR. BOYD: You were provided with both these documents. There's a distinction between the two.
BY MR. BOYD:
Q. Mrs. Cohen, do you notice the document that I've just handed you --
MR. BOYD: Your Honor --
BY MR. BOYD:
Q. Do you notice these documents, these documents that you previously provided in this case?
A. Yes.
MR. BOYD: Your Honor, without objection, I'd ask that this be marked as Exhibit 1 for the --
THE COURT: For identification purposes?

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

0491 on the bottom?
Q. There's some additional -- there's some additional -- you had referenced $150,000, Mrs. Cohen.
A. That's correct.
Q. There's some additional wording at the bottom of the first page.
A. This? Okay. This one? I'm sorry. Reese, are you talking about this document?
Q. Yes, what's been labeled Bates No. Cohen 4093.
A. Oh, that's a Bates number, okay. I'm sorry. Okay.
Q. And I believe you had earlier testified, Mrs. Cohen, that you thought there was perhaps some double accounting?
A. Yes.
Q. Double counting in the accountings?
A. I believe so.
Q. Are those numbers in any way related?
A. Yes. They're the same numbers that had already been counted in.
Q. And the reference to $150,000 at the bottom of that page, what does that -- what does that -- do you recall what that's a reference to?

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

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

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

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

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

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

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

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

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

her die, and I desperately wanted to not let him be able to do that. He clearly had lost interest totally, and once we moved -- once we moved to the Centre for Neuro Skills --

MR. DAN SLOTCHIVER: Your Honor, I would object to her opinion as to what Dan Dorn did or did not want to do in his own head. What he told her is different, what he said to her is different, but her opinion that he lost interest and her opinion that he wanted her to die, there's no foundation for that, and I would ask that be stricken.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, she's giving a -- she's basing her answer on his present state of mind at the time and a genuine concern that she had for the safety and well-being of her charge.

THE COURT: I think she can say what he may have told her, but I don't think she can then jump to the conclusion of what she thought based on what he said, so I'm going to strike that testimony.

MR. BOYD: I understand, Your Honor. I understand. Thank you.

BY MR. BOYD:

Q. Let me ask you this question, Mrs. Cohen: Did Dan ever say anything that caused you to have concerns about him being involved in her medical decision-making?

A. Did he say anything? Not at that time, but when he started calling the Centre for Neuro Skills, I was concerned.

Q. Why were you concerned, Mrs. Cohen?

A. Because he never asked how she was. All he talked about was the fact he called her -- oh, I can't hearsay. You can't talk about that, right?

Q. If he made a statement that gave you cause for concern.

A. Okay. Her case reviewer contacted me and said that --

MR. DAN SLOTCHIVER: Your Honor, objection to hearsay.

THE COURT: Yes, ma'am. You can't say what someone told you. You cannot state what someone may have told you, ma'am. They're not here to testify or be cross-examined. That would be hearsay.

BY MR. BOYD:

Q. Let me leave it to you this way, Mrs. Cohen: You felt like -- did you feel like it was in Abbie's interest to cooperate in the divorce?

A. Very much so.

Q. Fair enough. Let's leave it at that.

So you decided to cooperate with the divorce, and did you think it was going to be a simple matter?

A. Yes. I thought it was going to be a very simple matter, that we could just sign a few papers, and it would be over.

Q. What happened, Mrs. Cohen, to turn the divorce proceeding into something very unexpected?

A. Well, when I went to the house after I had spoken with Dan, the only thing I wanted was for Abbie to see the children, and I asked if he would bring the children up, after he told me he wanted to move on with his life, and he said: No. I'm too busy.

So I said to him: All right. Then Paul and I will drive the two-and-a-half hours, we'll pick up the kids, and we will bring them to Bakersfield, and we will return them home. He said: No. I won't permit you to do that. So I

said to him: Well, then we'll get an ambulance, and we'll bring Abbie to Los Angeles, and he told me he wouldn't let her in the house.

Q. And let's try to address -- because the issue, Mrs. Cohen, one thing that I'd like to understand, when did you begin to realize that the divorce proceeding was not going to be what you had anticipated?

MR. DAN SLOTCHIVER: Your Honor, if I may?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: I want to grant a certain amount of latitude, but my concern is that this case is not about when she knew the divorce was going to be complicated or the fact that the divorce was, in fact, complicated, assuming we get there. The allegations in this case are breach of fiduciary duty, unreasonable activity, and unauthorized activity.

So now we're focusing on the divorce, and I don't believe that it's -- we're not at that place right now, and I would ask that this conduct that we're talking about now, it would be irrelevant at this particular juncture. I'm not really sure that we're in an area right now that

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

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

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

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

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

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

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

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

one thing I cared more about than anything was Abbie be covered for health insurance. I had -- I had talked to Russ Kussman a number of times about --

BY MR. BOYD:

Q. Mrs. Cohen, who is Russ Kussman?

A. Russ Kussman was the malpractice attorney, and Dan had filed the lawsuit.

Q. And continue, Mrs. Cohen. You were explaining the reasoning for the transition to the Meyer Olson firm.

A. Okay. My biggest concern was about the health insurance, and so I called Robin Morris --

THE WITNESS: Can I mention the letter? No?

THE COURT: No, ma'am.

THE WITNESS: Okay. I thought you said I could.

BY MR. BOYD:

Q. Please don't make references to any --

A. I'm sorry. I'm getting confused.

Q. -- letter, Mrs. Cohen.

A. Okay. Well, how do I put this? So based on legal advice --

THE COURT: No, ma'am.

THE WITNESS: No, okay. Okay. I was concerned. That's okay?

BY MR. BOYD:

Q. Yes.

A. Okay. Since my biggest concern was Abbie's health insurance, and I was concerned that Abbie would lose her Medicaid and that we would have to pay everything back to Medicaid, and she'd already been in the hospital at that point for pneumonia, so certainly, there was a risk of her being hospitalized again, and considering what we'd just been through and the current bills at that time, I was concerned that not only would all the trusts be enough, but it would go way beyond that if we, in fact, lost Medicaid.

Q. Did you ever, Mrs. Cohen, make any progress toward resolving the demand for child support prior to moving the case to the MOLM firm?

A. I made no progress. That was one of my concerns, and I made no progress on it at all. It was an intractable issue.

Q. Was it your desire to become involved in a protracted divorce proceeding in California?

A. Absolutely not. I just want to take

care of my daughter and be left alone.

Q. Did you ever attempt to settle the California proceedings, Mrs. Cohen?

A. Many, many, many times.

Q. Once you got her --

MR. DAN SLOTCHIVER: Your Honor, I would place an objection on the record.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Beyond the fact that settlement negotiations generally aren't permissible in court, we get to a second tier in this particular case, which is that I don't want to open the door to talk about settlement negotiations. Mrs. Cohen was a fiduciary. She was -- whether they tried to settle or not, I guess it goes into the question of what did they discuss and was it reasonable, and I don't believe it's appropriate to go into settlement negotiations between the parties.

She brought it, and she ended up litigating it and never withdrew it. I think those are factors that are before the court properly. If we go into settlement negotiations, we're going to talk about all types of issues and conversations and this and maybe that, and we're

getting into a whole different field that I don't believe is appropriate in this particular action.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, I'm not offering discussions of settlement. Again, this case has become, in effect, a trial over the reasonableness of the trustees' actions. I'm not offering and don't intend to offer any settlement discussion for the purpose of -- for instance, if there was an offer, hypothetically, to pay an opposing party $10, I'm not offering any settlement discussion for the purpose of showing that the $10 was justified or is somehow a reasonable amount or that the party is liable.

Your Honor, the multiple attempts by the trustee to settle the case go to the reasonableness of the conduct. This is a case where Mr. Dorn has testified, Mrs. Cohen has now testified, that Mr. Dorn approached Mrs. Cohen, said: Mrs. Cohen, I would like a divorce. I'd like to move on.

MR. DAN SLOTCHIVER: Your Honor, Mr. Dorn has not testified in this case yet.

THE COURT: No, he's not.

MR. BOYD: I'm sorry, Your Honor. In

his deposition, he testified. And in effect, through his actions, put the trustee in a box that she could not get out of, Your Honor, and that goes to the reasonableness of her conduct.

And I just look at Rule 408, Your Honor, at the last sentence. It says: This rule -- which is compromise and offers to compromise South Carolina Rules of Evidence 408. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias, prejudice of a witness, negating a contention of undue delay, proving an effort to obstruct a criminal investigation.

So I'm not offering any settlement offer specifically for the purpose of showing that the offer was indication of any amount that was reasonable for one party to pay another. I'm offering it as evidence of the fact that the trustee was trying to behave reasonably. The whole crux of petitioner's case is that the trustee is a fiduciary, she has certain obligations, and she behaved unreasonably.

MR. DAN SLOTCHIVER: Your Honor, I believe this court can take judicial notice that any party to any action has the right to withdraw

that action, and as such, it's not a question of did she get enough to be willing to settle it. The question is was she authorized and was it reasonable to pursue this litigation on behalf -- in her capacity as a trustee. Now, none of the exceptions he referenced apply to this situation right here.

Secondly, if I may just put it on the record, the issue is when we start talking about negotiations, if we do it, we're going to open the door wide open to talk about any negotiation, what was a good negotiation and what wasn't, when this case is about was there authority and was it reasonable to pursue it. Regardless, even there was authority, was it reasonable to pursue it and at what cost.

I don't believe that a factor is could it have settled, because before you get there, you've got to decide -- I would argue that you would -- I would suggest you would have to decide did she have the authority, was it reasonable, and could she, at any time she wanted to, have walked away, walked away if not from the support action, walked away from the visitation action.

And once we get into settlement, the

next thing I anticipate is letters coming in about settlement, and then the court's going to have to review letters about settlement discussions back and forth between the parties, and the problem with that, Your Honor, is that then we're going to go back into the same issue that I raised at the beginning before testimony about a document dump that took place on Friday afternoon. And for the record, I wasn't even at the office on Friday. So I think we're walking into the same position that we talked about earlier.

MR. BOYD: Your Honor, the issue has been raised repeatedly today that Mrs. Cohen at any time could have dropped the action and walked away. In fact, she'll testify that that's not the case. In fact, it's been made in reference to both this proceeding and the proceeding in California, when, in fact, with respect to the petition that the Cohens originally filed, Mr. Kachmarsky filed a counterclaim. Well, once that counterclaim was filed, it, in fact, was not the province of the Cohens simply to drop their petition and go away. That's a matter of record. It's clear. And the evidence in the case is, will show, that the trustee was concerned that by

agreeing to simply dismiss the divorce proceeding --

MR. DAN SLOTCHIVER: Well, now he's testifying for his witness as to what her concerns were. I'd object to that also, Your Honor.

MR. BOYD: Your Honor, I'm simply responding to counsel's arguments, because I do think the whole issue here is was the trustee acting reasonably in furtherance of what she believed to be in the best interest of the ward. And she's just testified just moments ago -- I'm not testifying for her; I'm reiterating what she just said. She just indicated that her primary concern was preserving the insurance that Abbie was entitled to, and if she had concerns about the fact that if there was an award for child support out of the trust, and she did not want any insurance or Medicaid eligibility to be compromised by that, Your Honor, it was entirely reasonable for her not to go along with just walking away when a claim for child support was outstanding.

THE COURT: I think this is admissible.

MR. DAN SLOTCHIVER: Your Honor, she

certainly could have walked away from the issue of visitation, which necessitated $900,000 of expenses, and she could have still stayed in there and argued it's reasonable to continue the support, keeping in mind that she's testified earlier today that when the Meyer firm became involved, there was no action whatsoever, repeatedly, no action whatsoever on the support case. Everything was related to the visitation case. So they're trying to combine them all together. The reality is they're two separate issues.

I believe the court can take notice she could have walked away from the visitation case. She could have stopped pursuing it, stopped pushing it. She could have still defended the visitation case. And if she had continued to -- or excuse me, the support case. And if she had continued to visit the support case, there would certainly be a question about the authority, but at the same time, there would be a whole different position about the reasonableness of defending against a support case, and that's -- what they're trying to do now is to bring in the visitation case, and in light of the testimony that shows

that as soon as Meyer got involved, it stopped, and in light of the graphs that we've submitted to the court showing out of $1.1 million, $900 or so thousand dollars was related solely to the visitation, I don't believe it's proper to allow them to talk about settlement negotiations with reference to visitation, because it's improper. It's not before the court in that regard.

MR. BOYD: Your Honor, she's also testified repeatedly this morning that she could not set the agenda, the court had set the agenda, and that there were reasons fully beyond her control as a trustee that she could not control, that she could not bring the child support issue to the fore.

THE COURT: I'm going to allow the testimony.

MR. DAN SLOTCHIVER: Yes, Your Honor. But if I could point out, John Kachmarsky's counterclaim made reference -- that was in April of 2011. By that point, most of the money had already been spent. So are we going to allow the testimony about settlement negotiations from the beginning until the end, or can we limit it to anything that took place after April of 2011?

MR. BOYD: Your Honor, I don't have the transcript yet, but I was simply noting that today there has been discussion of this action in South Carolina, that the Cohens simply could have walked away from it, and that has not been the case since Mr. Kachmarsky filed his counterclaim.

MR. DAN SLOTCHIVER: I would take exception. They could have walked away from the case that they filed, and they could have still defended the case that Mr. Kachmarsky brought. And frankly, it's very similar to the same case that I brought, so the fees would not have been much more substantial, but we would have avoided all fees related to the reformation case.

And I've been involved in many cases, Your Honor, I'm sure you've seen many where there are substantial causes of action listed. Sometimes the court will, on its own, or sometimes the parties will, on its own, dismiss one, two, three, some of the causes of action. It doesn't mean that the case -- that you can't walk away from causes of action.

I've had courts say to me: You have five causes of action. Why don't we get rid of two and keep the other three. I've had lawyers on

the other side say: I'll dismiss these parts of it. That happens all the time. And to argue to the court that you can't do it, it might be a belief that Mrs. Cohen had, but it's not an accurate statement.

THE COURT: And I think you can argue that, Mr. Slotchiver, at the appropriate time in your closing arguing law to the court.

MR. DAN SLOTCHIVER: Thank you, Judge.

THE COURT: She certainly got into this testimony this morning. I'm going to give him an opportunity to explore that.

MR. BOYD: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. BOYD:

Q. Mrs. Cohen, let me just switch gears to something that may be a little easier to address. I want to ask you to take a look -- I want to go back to the issue of expenses. I'm going to ask you to take a look, Mrs. Cohen, at what's previously been marked and admitted into evidence as Exhibits 94, 95, 96, 97, 98, and 99.

MS. HEDGEPATH: I'm sorry, Mr. Boyd. My back was to you. Do you mind repeating those numbers?

MR. BOYD: These are the annual accountings that were previously filed.
MS. HEDGEPATH: And the exhibit numbers, Your Honor?
MR. BOYD: Just a second. Those are Exhibit Nos. 94 through 99.
MS. HEDGEPATH: Thank you.
BY MR. BOYD:
Q. Mrs. Cohen, I'm also going to hand you a document which is a summary of the accountings which we previously produced electronically in this matter, and these are the portions of the electronic accounting records related to legal fees, legal fees and professional fees.
MR. BOYD: And Your Honor, I would stipulate Your Honor will recall that these are the legal fees as set forth in the electronic versions of the trust accountings that we filed, and I would, if there's no objection, move to admit this document.
THE COURT: Mr. Slotchiver, any objection?
MR. DAN SLOTCHIVER: We're just looking at the numbers very quickly, Your Honor.
THE COURT: Sure.

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

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

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

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

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

Carolina, because we had to obtain conservatorship to remove Abbie from California.
THE COURT: Could you lift that microphone up a little bit?
THE WITNESS: I'm sorry. Should I say that again?
THE COURT: No. I heard you, but it was faint.
THE WITNESS: I can't seem to get it to stay. Does this work better where it is right now?
THE COURT: Yes, ma'am.
THE WITNESS: Let me move closer.
THE COURT: Thank you.
BY MR. BOYD:
Q. And Mrs. Cohen, explain for the court, if you would, who was Louis Michelson?
A. Louis Michelson was the attorney who did the conservatorship in California. He's a tax attorney.
Q. And obviously, the reference to Webster Rogers, was that legal fees?
A. No.
Q. The reference in the following line, Mrs. Cohen, to Moore Law Firm, can you tell me who

that was?
A. That's who Judge Carter appointed as the guardian ad litem.
Q. And who was that specifically?
A. It was Lee Moore.
Q. And I think you've identified Marina Korol. Who was Marina Korol, Mrs. Cohen?
A. She was the first attorney.
Q. First attorney retained for what purpose?
A. To handle the divorce.
Q. The divorce proceeding in California?
A. Yes.
Q. Take a look at the next page, Mrs. Cohen, if you would. Gary Zimmerman is listed on the second page, which is the annual report for 2009. Who was Gary Zimmerman, Mrs. Cohen?
A. Gary Zimmerman was the person I was advised I needed to retain to defend the trust.
MR. DAN SLOTCHIVER: Your Honor, I would object to any hearsay statement. I don't know who advised her, what was advised, but I think the statement itself should be stricken.
THE COURT: I'll strike that.

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

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

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

BY MR. BOYD:
Q. Let me ask you this, Mrs. Cohen: Did you retain an attorney in South Carolina to assist you with the transfer of the trust from California to South Carolina?
A. Yes.
Q. And who was that?
A. Robin Morris.
Q. Let's take a look at what has been offered into evidence as Plaintiff's Exhibit No. 87, Mrs. Cohen.
A. This is this?
Q. Yes. You've got that?
A. Yes.
Q. Mrs. Cohen, you were asked about this document earlier.
A. Yes.
Q. Was this order issued as a result of your transferring the jurisdiction -- excuse me, your transferring the trust to South Carolina?
A. Yes.
Q. Mrs. Cohen, let me ask you to turn to Page 3 of this document, if you would, and let's look at Paragraph 7 of this document.
A. Yes.

MR. BOYD: Your Honor, can I take a brief recess?

THE COURT: I'll be happy to. Five minutes, maybe, ten at the most, just very quickly.

(A recess transpired from 4:00 PM to 4:44 PM.)

THE COURT: So at this point we will adjourn. We will meet back in the morning at 9:00 o'clock.

(The proceedings were adjourned at 4:45 PM.)

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 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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THE COURT: We are back on the record today, March 4th, 2013, in the matter of the Abbie Dorn Special Needs Trust, 2008-GC-26-50, also in the matter of Abbie Dorn Conservatorship, 2008-GC-26-25. I believe we are ready to resume the trial.

Mr. Boyd, are you feeling better?

MR. BOYD: Yes, Your Honor, and I just appreciate the court's patient and support, but yes. Thank you.

THE COURT: I'm glad you're back with us. Thank you.

And I believe we were going to start back with you, Mr. Boyd.

MR. BOYD: Yes.

Your Honor, we're actually missing Mr. Davis. Let me, if I may, just real briefly, ascertain his whereabouts.

THE COURT: Sure. All right.

MR. DAVIS: Good morning, Judge.

THE COURT: Good morning, Mr. Davis. How are you?

MR. DAVIS: Good.

THE COURT: Mrs. Cohen is going to take the stand.

SUSAN COHEN

having first duly affirmed, testified as follows:

THE COURT: And Mr. Boyd, I know that you began your examination of Mrs. Cohen last Tuesday afternoon.

MR. BOYD: Yes, ma'am.

THE COURT: I know you were not feeling well, and I apologize, I didn't recognize that you were having any difficulties, but to the extent that you need to go back over any of that, then you're certainly free to do that this morning.

MR. BOYD: Thank you, Judge. Yes, Your Honor. I've never experienced anything quite like that, Your Honor, and I hope to not have to put you through that again at any point in the future. It was certainly not my intention, but I appreciate the court's patience, and I'll try to move right along.

THE COURT: All right. Thank you. We are hopeful that we might can finish this by Thursday. We had talked -- I know you weren't here on Wednesday. Mr. Davis was here. We talked off the record Wednesday morning about how we were going to go forward this week. And

Mr. Slotchiver's going to try to finish up his case as quickly as possible. I know he has a couple more witnesses, and if we can finish by Thursday, that's what we hope to do. If we can't, then we just can't. I plan on going a little bit long today and also tomorrow so that we might can get to the point that we might could finish on Thursday.

MR. BOYD: Okay, Your Honor.

THE COURT: But if you start having any difficulties, please let me know, Mr. Boyd.

MR. BOYD: I certainly will, Your Honor. Thank you.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MR. BOYD:

Q. Good morning, Mrs. Cohen.

A. Good morning.

Q. How are you this morning?

A. I'm doing well. Thank you.

Q. Good. Mrs. Cohen, just for the record, before we get started, have you and I discussed your testimony since we were last here on Tuesday?

A. No, no, we have not.

Q. Thank you. Let's go back to talk a little bit about your background, Mrs. Cohen. Where are you from?

A. I was born in Kingston, New York, and I grew up in Harrisburg, Pennsylvania, and I went to college in Philadelphia at Temple University. And we moved to Ohio, after we lived in California for a while, and I went to graduate school when I was pregnant with my third child.

Q. And I assume when you say we, you're referring to you and your husband?

A. Yes, that's correct.

Q. Is your husband with us here today?

A. Yes. He's right here.

Q. Mr. Cohen, okay, Dr. Paul Cohen.

Let's talk for a moment about the individual that this case is really about, Mrs. Cohen, Abbie. Tell me about Abbie.

A. Well, Abbie is my middle child. She has always been a wonderful person. She was always the peacemaker in the family. When there was a child at school that nobody liked, that nobody would sit with at lunch, Abbie always made the definite decision to go and sit with that child and to make sure that that child had

somebody that was her friend and tried to include that child.

In high school, Abbie was the child that everyone came to with her problems. She would sit on her bed with her dog, and we never had to worry about boys or anyone being in her room, because that dog guarded her, and they would talk to Abbie about their problems, and she was the one who would be the one to help them find a way, a solution in life.

And she's always been a hard worker. She worked very hard through college. She was premed, she wanted to be a surgeon, but she talked to us about it, and her biggest goal in life was to be a mom. That's what she wanted more than anything else was to marry and have children. And we told her a surgeon was a tough life for a mom, and we suggested that she might look at some alternative careers, and she looked at dentistry and chiropractic and decided to become a chiropractor, and that was a path to follow.

She and Dan married in 2002, and right from the beginning, they wanted children. That was the most important thing to them. And they had gone to a number of rabbis/religious leaders

to ask for blessing, because it didn't seem to be happening. And they finally did in vitro, and 48 hours later, she found that she was pregnant with triplets, and she was very, very, very happy and very excited.

And it was a hard pregnancy. She was praying all the time that she wouldn't lose her babies. That was her biggest fear. She just was very, very afraid that something would be wrong, and she just prayed constantly and read psalms, as I do, and she did everything the doctors told her.

She had a high-risk specialist. She had -- of course, the head of the obstetrical department was her doctor. She was put on bedrest after four-and-a-half months after a scare where she almost lost the babies, and they asked her to gain a great deal of weight. She was a tiny little thing, and she only weighed about 109, 110 pounds, and she was five-five.

She was told that she needed to gain weight, so she woke up every morning at 4:30 in the morning so she could start to eat, because they felt that if she gained enough weight, she would be able to hold her babies to term, so that's what she did. She got up every morning at

4:30. She'd start eating. She did everything that was recommended to her. She followed every order.

And it was hard because she told me when she would go out to the obstetrician, she would just look around, and it was so wonderful just to be outside. It was such a blessing to see the world again, instead of being in her bed.

But she did a lot of research. She propped up her computer. She did a lot of research during that time on the best way to care for triplets and also, if, God forbid, everything wasn't right, where she could get the most help for her children, and she contacted the triplet groups, and she was just very, very active.

She was also asked by his parents -- tell me when I'm -- when it's hearsay, because I'm always confused.

Q. Just answer to the extent you know, and if there's a problem, we'll let you know.

A. They had asked her to computerize their business, which she did, so she did that. I know that she was a little upset with some things at that time because I think she learned some things that upset her, but she wouldn't tell me

what it was. But she concentrated on trying to be positive, that was her goal, and praying to God, HaShem, that everything would go well.

And she called when she was on the way to the hospital. She was in labor. She was very excited. It was -- it was early, it was 33-and-a-half weeks, so we knew they were going to be pretty premature. I had been planning to come out five days later, and obviously, at that stage when she was in labor, she -- I was not able to come out, to get there in time.

Q. Before you get into that, let me ask you a question. Is it fair to say, based on your experience, that having children and children generally were very important to Abbie?

A. That was the most important thing. When her sister was a baby, Abbie was only three years old, and I was not even allowed to diaper her. She would take her, and she would diaper her. In fact, Abbie had started diapering herself when she was two, because I was not perfect enough. She would smooth out her diaper and get it absolutely perfect, and then she would pull it up and fasten it.

And when she had a little birthday

party to go to when she was three years old, she would take the present out of my hands, because that was before bags. She would take the present out of my hands, because she did it perfectly. She would fold the little sides down of the paper and put the ribbon on perfectly.

She was just so very meticulous and very into maternal. Her sister was just -- she was so mothering. She was always -- she would change her when she wasn't even wet. That was -- she was so fond of doing things for her. And she was always -- when there was a baby in the family, Abbie was always right there.

And she was there for her two nephews when they were born. She helped take care of the second one. My daughter had problems. She was a placenta -- the baby was placenta previa, and he was also a preemie. And she wrapped the baby up all the time before she presented him for her sister, because his little head was perfect, but his body was really skinny and kind of scary-looking, kind of looked like ET, like a little alien, so she didn't want her sister to see the baby like that, that much like that, so she would make sure he was all wrapped and present him

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

Q. Is this a declaration that you prepared in connection --
A. Yes, it is.
Q. And you've provided that to us previously, and you recognize the document?
A. Yes.
MR. BOYD: If there's no objection, I'd move that we enter this into evidence, Your Honor. I believe it'll be Respondent's 4.
THE COURT: Any objection?
MR. DAN SLOTCHIVER: No objection.
THE COURT: No objection?
MR. BOYD: Thank you, Your Honor.
THE COURT: I'm sorry. Ms. Hedgepath needs to see it, I believe.
Mr. Boyd, I'm sorry. This one that the witness has, has that been --
MR. BOYD: I have marked this one, Your Honor. I was going to give this one to the court reporter. We may be short a copy.
THE COURT: And I'm sorry. What number is that?
MR. BOYD: This will be R-4, Your Honor.
THE COURT: Thank you. Admitted

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

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

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

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

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

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

experts. That would be hearsay. And this opinion, this declaration she's given, has been entered only for the purpose of it's a document that she signed.

But the only thing I'm objecting to is her giving a medical opinion as to this matter. If she wants to give her personal opinion that this is what she believes, I'm not opposed to that, but I certainly want to make sure there's a foundation that it's not based on anything other than her own personal belief.

MR. BOYD: She's not giving a medical opinion, Your Honor. She's explaining to the court what her mindset was, her present sense, what her concerns were as a trustee when she was working her way through these issues.

MR. DAN SLOTCHIVER: As long as we limit it to her mindset and not her mindset based upon who she talked to or based on different doctors and so forth. That would be hearsay. I don't object to her mindset as long as she doesn't inappropriately reference conversations that we don't know about, that we had no opportunity to judge or look at or get into to see if they did occur or didn't occur or if it was perceived by

her in the same manner that they might have meant it to be perceived.

And that's the problem with the testifying about knowledge she obtained from professionals without us having an opportunity to question those professionals. But as far as her opinion, if it's just blanket, I was concerned about Medicare, then we have no objection to that.

THE COURT: Mr. Boyd?

MR. BOYD: Well, Your Honor, she's not referenced any specific conversation that she had with an attorney, an adviser, an accountant, so I don't think there's any issue of hearsay. Again, she's just giving her opinion that was formed at the time as a result of being the trustee working through these issues.

MR. DAN SLOTCHIVER: And actually, Mr. Boyd referenced her opinions formed based on conversations she's had with different professionals, so while she didn't do it, the question that led to it certainly gave her the opportunity to respond to it in that manner. And in order to have a clean record, I want to make sure that she can only respond to it from a personal opinion without speaking to where she

formed that opinion, because I think that would be improper.

THE COURT: Mr. Boyd, I think I have to sustain his objection and instruct the witness to only rely on what she knows, unless you can lay a foundation, unless you're going to have the professionals who advised her.

MR. BOYD: Your Honor, under questioning, there was a significant amount of questioning that Mr. Slotchiver gave the witness as to is it not prudent for a trustee to seek the advice of outside advisers, and I think it would be impractical for the court to expect the witness to be able to attribute every single thing that she's learned through this process to any one particular conversation.

In previous testimony, when I had Mrs. Cohen on the stand Tuesday, we did discuss the attorneys that she retained initially. We identified those attorneys. We can go back and look at the exhibit. But I don't think she said anything that would be directly attributable to a specific conversation such that the hearsay rule is implicated. And to the extent that it deals with a medical condition or Abbie's medical

condition, there's an exception to the hearsay rule anyway for medical-related diagnoses and prognoses.

So again, I'm not sure that -- I'm not sure she's really saying anything that's hearsay. She's talking about her general knowledge that she's acquired over this process.

THE COURT: To the extent that she talks about her general knowledge that you've stated that she's acquired, without relying on what other physicians may have told her, I will allow that testimony.

MR. BOYD: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. BOYD:

Q. Mrs. Cohen, let me just ask, if you would, then -- I'm going to just give you the exhibit. Turn to Page 3. Would you just take a look at the next-to-the-last paragraph? And as a matter of fact, just for the record, Mrs. Cohen, if you wouldn't mind, just read that paragraph, if you would.

A. Petitioner's continued Medicaid eligibility depends on how resources that were available to her are used during her lifetime.

Medicaid rules dictate that if any portion of the trust is distributed for any reason other than the special needs of the petitioner, petitioner would be disqualified from receiving Medicaid benefits.

Thus, if a California court issues an order stating that the special needs trust is accessible for additional child support for the minor children, the distribution of monies from the special needs trust for child support would illustrate to Medicaid that the trust is being utilized for reasons other than the special needs of the petitioner. This type of distribution would necessarily result in a penalty of disqualifying petitioner from such benefits.

And that is my opinion.

Q. Is that still your opinion today?

A. And it is still my opinion today.

Q. Let me ask you this question, Mrs. Cohen: It has been repeatedly alleged throughout these proceedings, and you heard it many times in court last week, that what, in effect, happened in California was an action for grandparent visitation. In your opinion, if it was, in fact, grandparent visitation, would that have been for your benefit, or would that have

been for Abbie's benefit? Assume with me for the moment that it was a case of grandparent visitation. Would that have been for your benefit?

A. It was always for Abbie's benefit.

Q. And if it had been, in fact, a case of grandparent visitation -- you're the grandparent -- it would have been for your benefit, correct?

A. Had it been, but it was not for my benefit. It was always 100 percent for Abbie. She's my primary concern and has been since this happened. I devoted my life to her.

Q. I understand. As you're aware, Mrs. Cohen -- and let me ask you this: Throughout this process, as you know, the Department of Health, South Carolina DHSS, has been a party to these proceedings?

A. Yes, right.

Q. And do you understand that we've made them aware of this proceeding from the outset?

A. Yes.

Q. From the beginning --

MR. DAN SLOTCHIVER: Your Honor, I would object to the reference that they're aware

of this proceeding, and the reason I say that is because I myself contacted the department two weeks ago before the trial to see if they were coming. The response was they weren't even aware the trial was going forward. I notified them that it was, and they said they were going to monitor it, but they weren't going to come to the trial. They were interested in knowing what the decision is.

I've got a copy of an email I can provide to the court, if so inclined, but I'd like for her to lay a foundation as to the basis of this opinion that they're aware of it, because it's not what I understand.

And as an officer of the court, I want to advise the court that I did notify them, to make sure they were aware, and I do have a receipt email from Shealy Reibold, who is the attorney who is monitoring this case.

MR. BOYD: Your Honor, I'm merely asking the witness if she is aware, as she's received correspondence throughout this proceeding. I'm merely asking the witness her knowledge, is she aware that the department has been a party to this proceeding and has been

served, cc'ed on correspondence that she's received, which she can speak to her direct knowledge.

THE COURT: I'll certainly allow that.

MR. DAN SLOTCHIVER: No objection to that, Your Honor.

THE COURT: Thank you.

BY MR. BOYD:

Q. Mrs. Cohen, again I would ask you, you're aware that the department is a party to the petition filed by Mr. Davis originally?

A. Yes, I am aware.

Q. And you are aware that they were the party receiving notice of these proceedings?

A. I am aware.

Q. Has anyone from the Department of Health and Human Services, either in South Carolina or California, ever contacted you and questioned your use of the funds in California or your attempting to secure a third-party benefit for yourself out of the trust?

A. No, no one's ever contacted me.

Q. The document on Page 2 that we just reviewed, Mrs. Cohen, references an annual -- excuse me, a monthly annuity payment of $31,000.

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

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

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

to something we talked about, I don't believe it's in the record.
MR. BOYD: Fair enough, Your Honor. I don't have the reference -- we can strike the reference to Mr. Slotchiver's question.
THE COURT: So we'll strike that. Thank you.
BY MR. BOYD:
Q. But Mrs. Cohen, the question remains. You did have advisers throughout this process. You didn't write the trust document?
A. No, I did not.
Q. I believe on Tuesday we mentioned Louis Michelson?
A. Louis Michelson worked with --
Q. Can you tell the court who Louis Michelson is?
A. Louis Michelson is a tax attorney in California, and he worked with Robin Morris.
Q. Was Mr. Michelson involved in the Medicaid eligibility issue?
A. Mr. Michelson?
Q. Yes.
A. Well, he discussed it with Robin Morris.

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

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

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

concerning the trust, your due diligence as a trustee, what was your impression of the requirement for prior approval of the court when an attorney was retained by the trustee to represent the ward, the ward being Abbie?
MR. DAN SLOTCHIVER: Your Honor, if I may place an objection on the record.
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: In the question, there was a comment made, your due diligence as a trustee, and I don't believe there's any foundation to show what the due diligence, if any, was that was taken, so while the question itself may -- the substance may be appropriate, I think the way the question was asked assumed or presented to the court that there was due diligence, and I don't believe there's any foundation to show that.
THE COURT: Mr. Boyd?
MR. BOYD: Your Honor, I can rephrase the question.
THE COURT: Rephrase it. Thank you.
BY MR. BOYD:
Q. Mrs. Cohen, again, based on your knowledge of the document and your knowledge as

the trustee, what was your understanding of the requirements of the trust specifically related to obtaining prior court approval, specifically related to when an attorney was retained to represent Abbie? Did you have an understanding about those circumstances?

A. I understood that I needed to have an attorney in South Carolina and that I needed to explain to her the circumstances of the transfer and --

Q. I'm not talking about the transfer of jurisdiction.

A. Right, but I needed to have her advise me because --

THE WITNESS: Am I allowed to say the word Dan Dorn or not -- had asked for divorce. Can I say Dan Dorn?

THE COURT: Yes, ma'am.

BY MR. BOYD:

Q. Yes, you can, certainly.

A. He said he wanted to -- he wanted to move on with his life, he wanted a divorce, that we needed to proceed with a divorce, and I wanted to do it, obviously, according to the documents, and she advised me on exactly what I need to do.

MR. DAN SLOTCHIVER: Objection, Your Honor. Objection, Your Honor, as to what she advised.

THE WITNESS: What should I say?

THE COURT: Sustained.

MR. BOYD: First of all, Dan --

BY MR. BOYD:

Q. I didn't even quite hear you, Mrs. Cohen. When you say she, I'm not --

A. I mean Robin Morris.

THE COURT: Yes, ma'am.

BY MR. BOYD:

Q. Just one second, Mrs. Cohen.

A. Talked to me, not advised.

Q. Don't make references to statements that were stated to you, if you could.

MR. DAN SLOTCHIVER: Can we strike that from the record, Your Honor?

THE COURT: We'll strike that, that part about she said.

MR. DAN SLOTCHIVER: Yes, Your Honor.

THE COURT: Thank you.

THE WITNESS: Okay. I obtained information.

BY MR. BOYD:

Q. Just tell us what your understanding was.

A. My understanding was that I needed to speak -- I needed to have counsel, and I needed to have the approval from South Carolina, and that's what I obtained. And I believe that I did everything that the trust document required that I do and that I was completely supported in what I needed to do to follow through with the actions for the divorce and everything involved with the divorce, which Abbie's children were paramount to Abbie. She -- I mean, she just would stare at their pictures all the time. It was the most important thing in her world. It was what kept her alive.

Q. Thank you, Mrs. Cohen. I think that's fine.

I'm going to show you two other documents, Mrs. Cohen, and let's go back to California. I'm going to show you a document that has already been entered into evidence. Those are the letters of conservatorship, Mrs. Cohen, that were issued by the California court.

A. Yes.

Q. Do you recognize that document?

A. Yes, letters of conservatorship.

Q. And you're familiar -- you recall the proceedings which caused the court in California to issue those letters of conservatorship?

A. Do you mean what led up to them?

Q. Yes.

A. We wanted to move Abbie back to our home in South Carolina, and we had, as I said, initially planned to stay in California, but we were not -- when we were discouraged from living where we could help with the children and have Abbie see her children on a daily -- frequent basis, we needed to move her, and to be able to do that, we needed to obtain conservatorship in California.

Q. And just for the record, I believe you testified to this fact on Tuesday, but when you say you were discouraged from staying in California to help, who discouraged you?

A. Dan Dorn.

Q. I'm going to ask you to turn to Page 4 of the exhibit, Mrs. Cohen, and would you just read the bottom two paragraphs, under Attachment 3(d)?

A. The conservators are part of the

independent power under Probate Code Section 2591(a) to settle the pending personal injury claim brought on behalf of the proposed conservatee and to compromise or to settle any dissolution action between the proposed conservatee and her husband, Daniel Bernard Dorn. The conservators are granted the independent power under Probate Code Section 2591(q) to employ attorneys to file an action for dissolution of the marriage between the proposed conservatee and her husband, Daniel Bernard Dorn, and to pay the attorneys fees thereby incurred.

Q. Thank you, Mrs. Cohen. So Mrs. Cohen, in your own words, as you understood it, what did the court in California empower you to do?

A. To settle everything relating to the divorce between Abbie and Dan, and that included visitation, which was what Abbie needed.

MR. DAN SLOTCHIVER: Objection, Your Honor, as to the comment that is what Abbie needed. There's no foundation to support that.

MR. BOYD: Your Honor, she's --

MR. DAN SLOTCHIVER: I'm trying to give her a lot of latitude, Your Honor, with reference to it, but in this case, there are

matters that the court is aware and we've discussed about -- there's a separation between what the trustee believes what other documents reference, and because of that, I would ask that without a foundation, which I don't believe they can support through the documents they provided to us, that that part be stricken.

She certainly can testify as to what her understanding was. I'm not opposed to that. I understand she's done that at this point. But to the same end, a few moments ago, she said that Abbie would stare at the pictures, and now she's saying that Abbie needed this. I have to place an objection on the record.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, the witness lives with Ms. Dorn 24 hours a day, seven days a week. I'm not sure that there's anyone alive -- I dare say there's no one alive more qualified to testify as to the needs/preferences/desires of Abbie Dorn. She's testifying from personal knowledge.

MR. DAN SLOTCHIVER: We've got a court order that states otherwise, we've got other documents that reference all this, and I would

object to it.

THE COURT: I'll allow her to state it as far as her opinion.

MR. DAN SLOTCHIVER: Yes, Your Honor.

THE COURT: Thank you.

BY MR. BOYD:

Q. Were you aware of any limitations in the California order that we just reviewed?

A. No. I was not aware of any limitations on the California order.

Q. Does it say you may not do this or you may not do that?

A. No, it does not say that.

Q. Mrs. Cohen, I'm going to show you one more document -- actually, I have several more. Let me just start with -- Mrs. Cohen, that's also a document which has already been entered into evidence, which is the South Carolina order for transfer of jurisdiction of the trust. Do you recognize that document?

A. Yes.

Q. And can you briefly again -- I believe we talked about this on Tuesday, but explain the circumstances of the transfer of the trust to South Carolina, if you would, Mrs. Cohen.

A. We flew Abbie here to South Carolina, and before we did this, I arranged --

THE WITNESS: Am I allowed to say Robin Morris?

THE COURT: You can say her name.

THE WITNESS: Okay. I just arranged for everything that would take place. Is that okay? I arranged for everything to take place.

BY MR. BOYD:

Q. And just let me qualify that. By everything that would take place, are you talking about to transfer the jurisdiction of the trust to South Carolina?

A. Yes, yes. I'm talking about those -- the matters relating to this trust. And we had to start work on things before we came out. We started working several months before. So when we came back, of course, she knew that we were here, and we started working on the matters, and then it finally was brought to court, and we were given written orders that we could pursue all of the matters to completion.

MR. DAN SLOTCHIVER: Your Honor, I object to the statement about written letters allowing them to pursue. I don't know what she is

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

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

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

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

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

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

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

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

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

Q. In the form of Robin Morris?
A. That's correct.
Q. You had other advisers in California who were assisting you?
A. That's correct.
MR. DAN SLOTCHIVER: Your Honor, I'd object to other advisers. I don't know -- other than there was reference to the adviser that drafted the trust, but I certainly want to have a clear record. If she's talking about somebody else, I don't know who that would be. I believe the only discussion we've had so far was the lawyer that drafted the trust and then Robin Morris here and then Lee Moore here. Those are the only names that I believe I've seen so far, and I think the lawyer that drafted it was Michelson.
MR. BOYD: The lawyer that drafted the trust was John Payne, in California.
THE COURT: Louis Michelson.
MR. BOYD: Louis Michelson was the tax attorney.
THE COURT: Who I think she's referred to several times.
MR. BOYD: Yes.

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

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

it. In fact, we've seen a copy of the court order authorizing the payment of fees to Robin Morris in association with it and the payment of fees to Lee Moore in association with it, but what he's doing now is he's attempting to elicit testimony from her that she relied on a series of counselors in making her decisions, and what's improper about that, in our opinion, is that he is attempting to allow her to testify of reliance on communications with counsel, although previously, throughout the discovery process, they have objected to us receiving the records or knowledge about the California counsel's communications because it was privileged, and it would not be fair to do it both ways.

And at this juncture, they've made their decision on which way they wanted to go. They've blocked us from getting it. We have previously come to court, if you recall, and asserted that since the California action was concluded, we thought it would be appropriate for us to be able to review everything in California in order to know what took place, so we can question her about that and about her decision-making, but they objected and said they

thought it was privileged, or they asserted it was privileged, and Your Honor ruled on it that it was privileged.

Now we're in court, and in court on the same matter, on the same action that they previously claimed privilege for, they're now attempting to allude to this attorney reliance defense when they won't provide that information to us historically, and I would object to it. I don't believe it would be proper to come in.

Now, her reference that she hired an attorney who filed the paperwork and assisted in the South Carolina action, certainly, we don't dispute that, because that's something that everybody knows, and the record speaks for itself, the document speaks for itself, but alluding to her reliance on counsel and advising her as to what to do, we certainly do object to it.

MR. BOYD: Your Honor, if I may, the issue is one of degree, and again, the fact that Mrs. Cohen retained counsel to assist her with the process is clearly not hearsay. As Mr. Slotchiver just said, the record speaks for itself. The record is replete with references to counsel. The mere fact that she relied on the advice of that

counsel is not hearsay. The record is sufficiently established that she, in fact, did rely on counsel.

The issue of attorney-client privilege, Mr. Slotchiver would like to suggest that we have attempted to shield all matters of discovery in this case by way of the attorney-client privilege, and that's simply not the case, Your Honor.

Your Honor will recall with regard to Robin Morris, what we objected to was a subpoena issued by Mr. Slotchiver to Mrs. Morris for the production of the entirety of her file. There's a distinction, Your Honor, to be drawn between the entirety of the file and the mere fact that Mrs. Cohen relied on evidence -- excuse me, advice of counsel from Robin Morris. Mrs. Cohen testified to that fact in her deposition.

The fact that we did not agree with Mr. Slotchiver's efforts to simply produce the entirety of Ms. Morris's file, Your Honor, at that time I'd never seen Ms. Morris's file. I had no idea what was in there. I assumed, as anybody would, that certainly the file would be replete with information that was subject to the

attorney-client privilege on any number of questions, any number of issues, many of which I wouldn't even be aware of, and so, Your Honor, to sit there and say, well, you can't --

And again, Your Honor, we objected to the subpoena for the wholesale discovery of the file, with no limitation, simply give me your file with respect to the Cohens and Abbie Dorn and the Abbie Dorn Special Needs Trust. We objected to that, properly, and --

But again, as we discussed last week, we contacted counsel and attempted to make arrangements for limited discovery of Robin Morris with respect to either written interrogatories or a deposition of Robin Morris that would provide for discovery into the manner in which Ms. Morris advised the trustees and the manner in which they relied on her counsel. The petitioner did not follow through, once Your Honor agreed with us.

And the reason we objected to that subpoena, Your Honor, is it would have just opened up a fishing expedition. I have no idea what was in the file. I still don't know what was in the entirety of the file to this day, but I naturally assumed that it was containing information that

was subject to the attorney-client privilege in various degrees on various issues, and so just to agree to give the entirety of the file was something that Ms. Morris objected to, and it was something that I objected to, but it doesn't mean that we didn't attempt to accommodate their reasonable discovery into the role that Ms. Morris played, which we read into the record on Tuesday. We certainly did.

MR. DAN SLOTCHIVER: Your Honor, if I may?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Mr. Boyd states now in court, on the record, that he was not aware of what was inside the file at the time he objected to it as being attorney-client privilege. He came into court, as the record reflects -- you recall I read from the transcript earlier last week -- that he made an objection, that everything with Robin Morris was privileged, that Robin Morris came in and made the same objection, and now I understand that he's come into court and stating: I never even looked at it before I made that objection, which I have a concern with, number one. We've already been here, Your Honor,

twice and had sanctions given for discovery abuse.

We had another issue a week-and-a-half -- last week with reference to documents that they attempted to assert, which we had not been given. Your Honor, based on their representation that there was a privilege, which is what Mr. Boyd argued and Ms. Morris argued, both of them, in the transcript, in front of Your Honor -- we read it into the record, I can get it again if you would like -- we had an opportunity to make a decision which way do we want to go, do I want to proceed with the limited basis that he afforded me, I'll let you do it only if you agree to written depositions and so forth, or do I decide you know what, she's not listed as a witness, she's not listed as an expert, there's no reason for me to do it, and I decided my strategy, my decision as counsel, that I wasn't going to pursue it at that point, based on their assertion that it was attorney-client privilege. Now what I'm hearing is we hadn't looked at it before we decided it was attorney-client privilege, number one.

Number two is that was limited. We should be able to talk about it. Well, in the

discovery, it contemplates giving us the information which is going to be used as a defense, which they did not do. If they had an opportunity after we had this conversation in the court, this argument in court, they certainly had the right to go back to the file to look at it, since they hadn't done it beforehand, and to provide us with information which was appropriately discoverable. They have not done that either.

So what is being attempted now is an opportunity to create this reliance defense by Mrs. Cohen, without ever having given us an opportunity to know what that was all about, and you can't have it both ways. You can't assert an attorney-client privilege on the one hand, but on the other hand, talk about those factors that assist you. That was a strategic decision that they made, and I'm asking that they be required to follow the rules with reference to that decision. And having made that, it would be improper to elicit testimony from their witness, from the party, as to information that we should have had that we could have had an opportunity to review, that we could have had an opportunity to do more

things with, assuming we thought it was necessary. We certainly made an effort, Your Honor. We came to court and filed a motion to get these documents, they vehemently defended it, and now I object to this line of testimony, based on what we just discussed.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, again -- and let me just correct the statement that was just made, and I will say this, Your Honor: I had not looked at every particular document in Ms. Morris's file because Ms. Morris didn't have it at the time, I didn't have it at the time.

What documents were available -- I was aware of certain documents in the file, I was aware of certain documents in the file, obviously, that I felt would be subject to the attorney-client privilege. And again, we objected to a subpoena that asked for the wholesale turning over of the attorney's file to Mr. Slotchiver, and there was clearly a good faith basis for doing that, Your Honor, because clearly, just based on the information that I did have -- no. Had I reviewed every single document in the file at that time, no, I had not, but clearly, based on what I

knew in the file, I had reason to know that there were documents in there that were protected by the attorney-client privilege, not all of which, by the way, were related to the particular issue that we're discussing, which is reliance -- Mrs. Cohen's reliance on Ms. Morris's advice with respect to the particular issue we're talking about.

I mean, the fact of the matter is, again, Your Honor, we attempted to engage limited discovery with respect to Ms. Morris, and Mr. Slotchiver did not avail himself of any of that. We received no further questioning with respect to Ms. Morris.

The only thing I objected to was a subpoena that said give me your entire file. I had good faith reasons to object to that. It would have been -- it would have been absolutely imprudent of me to do otherwise.

THE COURT: Mr. Slotchiver?

MR. DAN SLOTCHIVER: Your Honor, the discovery rules really trump the subpoena. At the time that we sent the subpoena, we weren't aware of the fact that these records were in the possession of counsel for the Cohens, and so at

the time we sent the subpoena, we sent it because we weren't aware of it. The testimony in court was, among other things, that it was commingled, and there's no way to determine what belonged to her versus us. Now I'm hearing they could determine it, and they had her separate file.

Once again, I'm raising these as concerns to the court because this is not what we were told before. I want to remind the court -- and this is -- I'm happy to submit a copy of this, Your Honor, if you'd like a copy of the transcript taken on July 25th, 2011, where particularly: Dear Dan, the documents you requested, either in the subpoena or in response, documents you are requesting via subpoena are privileged, pursuant to the attorney-client privilege.

And this is not a surprise. This was addressed directly with counsel to get the records. If they had them in their file, then they should have -- and if they wanted to use them and weren't going to assert the privilege, they should have sent them to us.

We had no duty to send a subpoena. We only sent the subpoena because we didn't know they had them. We thought Robin Morris had them. Had

we not -- and we thought that because of the testimony elicited regarding Robin Morris. Had we thought they had them directly, we would have assumed that they would have sent them to us in response to discovery, unless they were asserting the attorney-client privilege, which they have.

So once again, Your Honor, I'm happy to submit this document to the court for your review, if you'd like to take a moment to review it, but clearly, this matter has been hashed out in court, and based on the attorney-client defense that they raised, Your Honor ruled they were entitled to raise that defense. I had no duty to do anything further from that point.

MR. BOYD: Your Honor, it is the specific communications from Ms. Morris -- and I'm just going to say hypothetically, if Ms. Morris had said: Yes, Mrs. Cohen, you're empowered to buy a minivan with the proceeds of the trust, but it has to be four-wheel drive, or it has to be orange, those specific communications -- and for these reasons. The specific communications from attorney to client, clearly subject to the attorney-client privilege.

But set aside the privilege for the

moment, the mere fact that she had advisers and that she relied on advisers throughout this process, again, is not subject to the hearsay exclusion, nor is it even subject to the privilege. It's not a privileged piece of information. It's a mere statement of fact that throughout this process --

THE COURT: Mr. Boyd, I think if you're going to claim the privilege of those documents and claim that in not providing those to Mr. Slotchiver, I think you're hard-pressed to now come in and have your client rely on that advice in getting this testimony in. I think if you felt like that they were not subject to the privilege, then I think you did have an obligation under the discovery rules to provide that to Mr. Slotchiver.

I'm going to sustain his objection --

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: -- with respect to this testimony.

MR. BOYD: Thank you, Your Honor.

And Your Honor, I just want to clarify for the record. She is able to testify that she did retain counsel?

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

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

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

Paragraph No. 7?
A. Yes.
Q. Petitioner requests that the court -- could you read that line for us, please?
A. Petitioner requests that the court grant the above relief and make adjunctive, including restraining and other orders, as follows.
Q. And then what's the first line under Paragraph 7? It's labeled A.
A. Legal custody of children to, and then --
Q. And which box is checked on this form?
A. Respondent.
Q. And who was the respondent in this action?
A. Dan Dorn.
Q. And Line B is a -- could you read Line B for us, please?
A. Physical custody of children to respondent.
Q. And again, the respondent is?
A. Dan Dorn.
Q. And Line C, you've asked for?
A. Child visitation be granted to

petitioner. That's Abbie Dorn.
Q. Mrs. Cohen, do you recall the deposition of Dan Dorn in this matter?
A. Yes.
Q. Do you recall if Mr. Dorn testified during his deposition that you tried to take his children away from him?
A. Yes, he did testify.
Q. Did you ever attempt to take the children away from Dan Dorn?
A. Never.
Q. Has anyone in your family ever attempted to take the children away from Dan Dorn?
A. Never.
Q. Do you want or would you ever have wanted custody of the grandchildren, Mrs. Cohen?
A. No. I don't have the time.
Q. Is your time fully consumed by caring for Abbie?
A. My time is fully consumed.
Q. And there's no one else in your family who wants custody of those children?
A. No one in my family. Good forbid if it was needed, we would find a way, but nobody has wanted it.

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

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

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

which, to my knowledge, have any bearing or place any authority on Susan Cohen.

If she relied on these for authority to do something, that's a different matter, but if all we're doing is putting in documents to show what transpired in California, I will object to the relevancy of it.

MR. BOYD: Your Honor, one of the key claims that's being leveled against the trustees in this action, and you heard it many times, was that their actions were not reasonable. All we're doing with these documents is putting the actions of the trustees in the context of what was happening.

These are historical documents. They were documents that were transpiring in California that provide the context of the setting in which the trustees made these decisions. How can you attack the reasonableness of the trustees' actions and then exclude all evidence of what they were responding to?

THE COURT: I will allow the document if the only objection is based on relevance.

MR. DAN SLOTCHIVER: Well, Your Honor, this also was not submitted to us as a document

they were going to rely on in the defense of their case through discovery.

MR. BOYD: Your Honor, there were many documents that had been provided to Mr. Slotchiver from the outset in this matter. I'm not sure that there's any specific document request that specifies exactly what I'm going to rely upon. If we've provided the documents to counsel, we've provided the documents to counsel. That's the purpose of discovery.

MR. DAN SLOTCHIVER: If the request, Your Honor, were to provide documents that support the defense, if it doesn't support the defense, I don't know why it would be brought into this case.

I've heard repeatedly through this proceeding, since we started it last Monday, that: I've given a lot of documents to counsel, there really are a lot of documents, Your Honor, as if that is a justification as to why having not given a document would be defendable. I believe that the discovery rules require that if you're going to rely on a document, if you're going to rely on evidence to support your case, I've asked for it, give it to me.

THE COURT: And are you saying you did

not receive that document, Mr. Slotchiver?

MR. DAN SLOTCHIVER: No, I did not.

MR. BOYD: Your Honor, all these documents --

MR. DAN SLOTCHIVER: Every document I've received, Your Honor, from Mr. Boyd has been Bates labeled.

MR. BOYD: That's not correct, Your Honor.

THE COURT: Ms. Hedgepath, were you going to say something?

MS. HEDGEPATH: I have seen all of these documents, and I believe they were all possibly attached to the declaration of Lisa Meyer that was filed with the record, which all counsel should have gotten a copy of.

MR. BOYD: Your Honor, if I may, let me just briefly --

THE COURT: Thank you, Ms. Hedgepath.

MR. BOYD: I want to briefly turn to Exhibit 3, which was previously admitted into evidence by Mr. Slotchiver.

THE COURT: And what was Exhibit 3, Mr. Boyd?

MR. BOYD: Your Honor, Exhibit 3 is a

transcript of the hearing taken before Your Honor on December 15, 2010, Your Honor. And I just want to point out the hearing December 15, 2010, all of these documents which Mr. Slotchiver is now objecting to bear the seal -- excuse me, bear the stamp of this court December 14, 2010.

In the proceeding on the 15th of December 2010, this is Mr. Slotchiver speaking: I have had the opportunity -- this is Line 18 on Page 14, Your Honor, which I'll be glad to pass it up in just a second. I have had the opportunity, Your Honor, this morning -- Mr. Davis has handed me a copy of filings that he made in the court yesterday, primarily a declaration from Lisa Helfend Meyer, who is an attorney of Meyer, Olson, Lowy & Myers in California who represents the Cohens or, you know, as trustees for their daughter. It's the same firm referenced in his package that he submitted to the court in his pleadings, which showed yadda-yadda-yadda.

So Your Honor, not only did we hand the documents to counsel in court, if there's a requirement in the rules, we Bates number. We Bates number as a matter of convenience and to avoid confusion. There is no requirement in the

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

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

portion of the affidavit of Lisa Meyer, simply because there was a protective order in California which required confidentiality with respect to the minor children. We redacted that. Every counsel involved received copies, along with the attachments.
THE COURT: I'm going to allow it. Thank you.
MR. BOYD: Would Your Honor like to see the transcript?
THE COURT: No, sir. I'm fine. Thank you.
MR. BOYD: Thank you, Your Honor.
THE COURT: Could you identify what the document, No. 9, is?
MR. BOYD: Yes, Your Honor. Bear with me one second.
Your Honor, this is a response -- this is a pleading -- if you want my characterization of the document, Your Honor, this is a document filed by Mr. Dorn's counsel in California bifurcating the divorce proceeding.
THE COURT: Thank you.
BY MR. BOYD:
Q. Mrs. Cohen, did you have any -- are

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

the same objection on the record with regard to this document, Your Honor, the same as the last one.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: Based on relevancy and prior disclosure.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, if I can just incorporate my previous argument for the same reason, we think it's relevant, it places the actions of the trustees in their historical context in the California proceeding.

THE COURT: And was this a document that was previously --

MR. BOYD: It's also Bates stamped -- excuse me, Your Honor. It's also clock stamped by the probate court on 14 December 2010 and also a part of the document package.

THE COURT: And it was provided to Mr. Slotchiver at the hearing in the probate court?

MR. BOYD: Yes, Your Honor.

THE COURT: Thank you. The court will overrule the objection, but note the objection on the record.

BY MR. BOYD:

Q. Mrs. Cohen, do you understand what this document is? Can you explain that to the court?

A. Yes. This is also from Vicki Greene, and he was again not only asking for child support, but also additional needs, including the education of the children.

Do you want me to read nine?

Q. Go ahead.

A. Respondent asks the court to order the following: As additional child support, costs related to educational and other special needs of the children and contributions toward uninsured medical expenses of the children.

Q. And again, we've talked about it at length, Mrs. Cohen. I'm not going to go back through it, but what were the source of funds -- if there had been an order of child support, what were the sources of funds available to Abbie to pay such an order?

A. Abbie had no money except the Abbie Dorn Special Needs Trust, which would have been violated.

THE COURT: And I'm sorry. Mr. Boyd,

exactly what was that document, No. 10?

MR. BOYD: Your Honor, this was an order to show cause filed by Vicki Greene in California in support of the claim of child support in the California proceeding.

THE COURT: Thank you.

BY MR. BOYD:

Q. And again, Mrs. Cohen, if the court had awarded child support from the trust, in your understanding, based on your knowledge, that would have been a problem?

MR. DAN SLOTCHIVER: Asked and answered, Your Honor.

THE WITNESS: Yes.

THE COURT: Thank you.

(RES. EXH. 11, Notice of Motion for Attorneys Fees, was marked for identification.)

BY MR. BOYD:

Q. Mrs. Cohen, I'm going to show you another document from the California proceeding.

MR. DAN SLOTCHIVER: Same objection on this document, Your Honor. It's the same situation as the last two.

THE COURT: Thank you.

MR. BOYD: And same response, Your

Honor, previously filed in the record in the matter and provided to counsel at the hearing on December 15.

THE COURT: Court overrules the objection.

Is this No. 11?

MR. BOYD: This is Respondent's 11, Your Honor.

THE COURT: Thank you.

MR. BOYD: And Your Honor, just for the record, this also is a document filed by Mr. Dorn's counsel in California, Ms. Greene, related to the issue of -- it's a motion to stay. I'm just going to read the caption, Your Honor, so that I'm not accused of anything. It's Respondent's Motion to Stay Any Judicial Determination of Visitation Rights. And the caption, Your Honor, is on Page 4.

It is respondent's motion, that being Mr. Dorn, motion to stay any judicial determination of visitation rights asserted by the conservators until petitioner is adjudged competent to assert her own wishes and desires, as the conservators lack standing to assert such personal rights on behalf of the incompetent

conservatee.
BY MR. BOYD:
Q. Mrs. Cohen, do you recognize that document?
A. Yes, I do.
Q. And what was your understanding of what Mr. Dorn's counsel was attempting to accomplish with that?
MR. DAN SLOTCHIVER: Your Honor, I would object to her testifying as to her understanding of what Dan Dorn's counsel was trying to accomplish. I don't believe there's any foundation as to how she could opine as to what Ms. Greene was thinking in her head at the time she filed this motion.
MR. BOYD: I'll restate the question, Your Honor.
THE COURT: Thank you.
BY MR. BOYD:
Q. What was your understanding of the purpose of this document, Mrs. Cohen?
A. My understanding of the purpose of this document was to keep the court from granting any visitation to Abbie at the time.
Q. Did you understand the issue of

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

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

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

part of a transcript as if it was the law I believe would be inappropriate. It's not a finding of fact by anybody. It's just that she hired an attorney, and the attorney obviously made the assertion, but I don't believe it's proper to have her read it in as if it is the law of the land.

MR. BOYD: Your Honor, I'm not having her read that sentence for the truth of the statement. I'm asking her simply if she recognized the document, and that sentence helped her identify parts of the document.

MR. DAN SLOTCHIVER: Your Honor, if I may approach the bench also at this point?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: On a separate matter.

THE COURT: Do we need to step outside?

MR. DAN SLOTCHIVER: I would like to, yes.

THE COURT: Yes. Let's go off the record for a second, and we'll step out in the back hallway, and then I'll rule on that objection.

MR. DAN SLOTCHIVER: Thank you, Judge.

THE COURT: Thank you.

(A bench conference was held outside the hearing of the court reporter.)

THE COURT: We're going to go back on the record. And I believe we were discussing an objection to Respondent's No. 12.

MR. DAN SLOTCHIVER: Your Honor, if we could just place on the record that we made a motion in chambers for the sequestration of Lisa Meyer, who was here who walked into the courtroom --

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: -- as she's not an expert, and we don't know what her testimony is going to be, and it was consented to.

THE COURT: Without objection.

MR. BOYD: We had no objection.

MR. DAN SLOTCHIVER: And my objection to No. 12, Your Honor, is the same as the others.

THE COURT: And No. 12, if you could identify it.

MR. BOYD: Your Honor, the sequestration issue has raised an issue. If I can just ask counsel to identify who's in the

courtroom behind us.

MR. DAN SLOTCHIVER: Absolutely. IT for us in a few minutes, because the other one couldn't be here today, and then it's one of your employees.

MR. KACHMARSKY: Cody Decker. He's an employee of mine.

THE COURT: Thank you.

MR. BOYD: Thank you, Judge.

THE COURT: So No. 12, objection noted on the record.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Overruled.

MR. BOYD: Your Honor, and our response would be the same, just for the record, that these were records previously filed with the court and transferred via hand-to-hand delivery at the court on December 15, 2010, Your Honor.

And this is, Your Honor, just for the record, a responsive pleading filed by Lisa Meyer in California on the issues of bifurcation and standing.

MR. DAN SLOTCHIVER: And I believe the objection we were raising, Your Honor, dealt with the issue of her reading into the record the

transcript in here, as opposed to letting it in as part of the process that had been filed with the court. We're not opposed to it coming into the record, limited to that objection we made earlier, but for this new objection, we're not opposed to it coming in the record based on the fact that it is a pleading that was filed with the court in California and was submitted to this court. We're opposed to it coming into the record at this juncture as if it were -- because it's not a decision.

And she can testify as to what she did or why she did, I believe, but she can't testify as to this or read from it as if it's the record of the case, and I wanted to be clear with reference to the court. As Your Honor was taking notes, I wanted to make sure that there was no confusion as to what was a court order versus what was a memorandum submitted by her counsel.

MR. BOYD: As I'm sure Your Honor knows, the court understands that the California proceedings involved lots of documents going back and forth, Your Honor. I was trying to elicit testimony from the witness that she understood the nature of the document and the purpose of the

document, the context in which the document was filed.

The witness identified a sentence which helped her place the document in context. I simply asked her to read that sentence. I'm not asserting any argument, per se, just that she was able to identify the document and the purpose of the filing.

THE COURT: I'll allow the testimony to that extent.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

MR. BOYD: Thank you, Your Honor.

BY MR. BOYD:

Q. Mrs. Cohen, I believe you had indicated there was a sentence that helped you understand what the purpose of this document was for?

A. Yes. This was related to standing, and as I said when I read the sentence, that Dan lost on this issue April 10th, or whatever, April 20th, 2010, that this was the second time that Vicki Greene had challenged standing, and it was my understanding that it was as if -- as if we'd been invaded by an army, and we had to defend

ourselves. That was -- we had to defend. It was defensive.

Q. So Mrs. Cohen, we reviewed a few of the pleadings that were filed, a few of the documents that were filed in California, and you previously reviewed the bills that were submitted into evidence in this matter with Mr. Slotchiver?

A. Yes.

Q. There is no doubt that the California proceedings were expensive. Is that correct?

A. Yes.

Q. I believe you have previously testified, Mrs. Cohen, that your understanding was that the bills for both sides were approximately equivalent?

A. That's correct.

MR. DAN SLOTCHIVER: Objection, Your Honor. I don't believe it's relevant if they were equivalent or not. And the basis for this, Your Honor, is that whatever decisions the trustees made on behalf of the ward cannot fairly be balanced equally with any decisions that a private person makes. Whatever decision Dan Dorn made to spend money or not spend money, however much it was, it was his decision to spend his money.

As testified to in direct examination of Mrs. Cohen, she had a different duty. She was a fiduciary, and the fact that they were or were not similar, the amounts, it has no basis at all. Her decision to spend the money has got to be done with prudence, as I understand it, and it's got to be reasonable, and it has to be authorized, and any attempt to show that the amounts of monies expended were similar in nature I don't believe would have any relevance at all in this hearing.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, not true. Mr. Wingate, our expert, testified at deposition, and his opinion remains, that one of the factors -- and again, Your Honor, we're trying to contain where we go.

MR. DAN SLOTCHIVER: And I would object to any reference to Mr. Wingate at this point, Your Honor, until he comes to testify.

MR. BOYD: One of the factors, Your Honor, in evaluating reasonableness, and again, this case comes down to, at the end of the day, were the actions of Dr. and Mrs. Cohen reasonable as trustees of the trust. Many, many factors, as the court is well aware, go into the determination

of whether the actions were or were not reasonable.

One of the factors that helps the court, any finder of fact, to assess the reasonableness of the actions in this regard, and particularly as it relates to the retention of counsel, is was there effectively parity between one side of the litigation and the other.

If one side is pro se and spends $1,000, $500, $200, legalzoom.com, and the other side spends $1 million with a top-flight law firm in California, then obviously, that has relevance and bearing on the reasonableness of the trustees' actions under the circumstances.

Conversely, if the fees are effectively in parity, Your Honor, then that, too, has bearing on the reasonableness of the trustees' actions, and the court's entitled to consider that.

MR. DAN SLOTCHIVER: I would agree with this, Your Honor, were it a simple divorce case, but the distinction here is that we've already got a court ruling stating that there was no benefit at all to Abbie, so the reasonableness of the amount of money spent by my client should

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

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

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

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

by Mr. Dorn's counsel. And Your Honor, I believe that the document --

MR. DAN SLOTCHIVER: The amount of income that my client makes, I don't understand how that would be relevant to this particular issue, Your Honor.

MR. BOYD: Your Honor, I think that the entirety of the document is relevant, and the document stands. It speaks for itself. It is a document that Ms. Greene prepared on Mr. Dorn's behalf. It was filed in the record in California. And I did not edit the document; I simply presented the document as it was presented to us. It's a matter, again, of record in California, and if Mr. Dorn -- excuse me, Mr. Slotchiver wants to question anybody on the other portions of the document, that's certainly his privilege.

MR. DAN SLOTCHIVER: Income and expense declaration, I don't understand how this part is relevant to this, Your Honor, understanding your ruling earlier that you believe that it would be proper to put into evidence the amount of the disparity between the fees, but we can accomplish that, Your Honor, with this one page.

THE COURT: Mr. Boyd, I'm not sure how a declaration by Dan Dorn as to his income and expenses is relevant to the matter before the court.

MR. BOYD: Your Honor, it may well be that -- well, Your Honor, for the time being, if the court wants to just have us reduce the document to --

THE COURT: Maybe you could take that front page that has the respondent's exhibit number and attach it just to the last six pages, I believe you said.

MR. BOYD: Yes, Your Honor. That would be fine. I don't have an objection to removing the prior pages at this juncture.

THE COURT: Would you like to do that now? We can accommodate that. If you want to use that to take out the objectionable matters that I find not relevant to the proceeding.

MR. BOYD: Your Honor, I'm going to remove Page 2, Page 3, Page 4, Page 5, Page 6.

THE COURT: So it starts with the attachment to income and expense declaration?

MR. BOYD: Yes, Your Honor.

MR. DAN SLOTCHIVER: I'm sorry. Where

does it start, Your Honor, the attachment?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: And how far does it go from that point forward?

THE COURT: To the end of the document.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: Thank you.

MR. BOYD: And again, Your Honor, I think one reason why we captured the entirety of the document was in providing the context for when the document was filed.

THE COURT: I understand.

MR. BOYD: Bear with me one second, if you would, please.

BY MR. BOYD:

Q. Mrs. Cohen, let me ask you to turn in your copy of the document to -- let me show you which page. Yes. Do you see the summary of fees that are contained on this page which is captioned: Attachment to Income and Expense Declaration, Attorneys Fees and Costs?

A. Yes.

Q. And what amount is shown as having

been paid up until that point by Mr. Dorn?

A. He paid at that point $269,717, and he owed $657,936.77.

Q. Does this document which we've just admitted, Mrs. Cohen, does this support your belief that there was effectively parity between the parties in terms of legal fees in California?

A. Exactly.

Q. Thank you, Mrs. Cohen.

MS. MOORE: Reese, do you have another copy of that, by chance?

MR. BOYD: Yes.

BY MR. BOYD:

Q. And Mrs. Cohen, I don't want to go back through the entirety of the divorce proceeding in California -- we spent a fair amount of time talking about that on Tuesday -- but was it ever your anticipation in California that the marital action in California would be as involved and as expensive as it turned out to be?

A. No, it never was.

Q. Once you got into the litigation -- we've reviewed some of the significant strategic filings that were made -- did you ever feel like you could get out of the litigation?

A. I felt like I was in a box, and if I turned one way, there were wild dogs in the front, if I turned the other way, there were wild dogs in the back. There didn't seem to be any way out. I spent many, many days struggling with this, as I said, I sought advice of many sources, and I could not find a way out of this.

MR. DAN SLOTCHIVER: Objection, Your Honor, to the extent that the comment asserts that she sought advice and couldn't find a way out if it relies on the advice of other people.

THE COURT: Sustain that objection. Court will strike that.

THE WITNESS: Should I restate, or what?

THE COURT: You're fine, ma'am.

BY MR. BOYD:

Q. Did you attempt to settle the California litigation?

A. Many, many, many times. I sent many emails.

MR. DAN SLOTCHIVER: Your Honor, I object to the relevancy of any attempt to settle the case. The decision that she made was to continue to litigate the case. Settlement

discussions, generally by their nature, they're not allowed in court, number one.

Number two is it was her decision, and her decision or inability to decide to pursue this case, but I want to make sure that we certainly put on the record that we object to any attempt to discuss settlement negotiations between the parties because, as I believe the court can take judicial notice, a party, whenever they want to, has the right to dismiss an action.

MR. BOYD: Your Honor, the settlement privilege or the exclusion is owned by the party that submits the offer. She's -- again, she's on trial for acting unreasonably as a trustee, so the reasonableness of her actions are specifically what's at issue in this case. So if she made many, multiple, redundant, reiterated attempts to settle this litigation, to make it go away, she's entitled to testify to that. It's directly relevant.

MR. DAN SLOTCHIVER: Your Honor, any attempt -- all she had to do to end it is withdraw the action for visitation, so the settlement attempts, by their very nature, would be irrelevant, if not inadmissible, because she could

have stopped it any time she wanted to.

THE COURT: And I think, Mr. Slotchiver, you can argue that, that point of law as to that she could have done that at any time, but I think it's relevant in this matter, so I'm going to allow it.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. BOYD:

Q. And Mrs. Cohen, what was the general response to your efforts to settle the case?

A. It was always negative. No matter what I suggested, I was always consistently rebuffed. When I offered to pay him more than the amount for child support, to give him more than he was asking for, rebuffed. When I asked him to please meet with me, rebuffed. When I came to his house, I wanted to see him, he didn't even come back. He said: I'll be back in a few minutes, didn't even come back. I offered to take him and his father, if he was afraid to be with me, to dinner to talk, rebuffed.

We had an attorney who offered pro bono --

MR. DAN SLOTCHIVER: Your Honor, objection as to any offer from her attorney.

THE WITNESS: It wasn't my attorney.

MR. BOYD: She's not referring to her attorney.

THE WITNESS: I'm not referring to my attorney. It was a kind woman who had a child with cancer.

MR. DAN SLOTCHIVER: Your Honor, objection to any reference to somebody else who would be offering -- this is offering hearsay testimony. A kind woman, an attorney, or a stranger on the street, it's still hearsay testimony.

THE COURT: Sustained.

MR. BOYD: Thank you.

THE WITNESS: How about she sent a letter?

THE COURT: No, ma'am.

THE WITNESS: Okay. I'm sorry.

BY MR. BOYD:

Q. But you did, in fact, make repeated efforts to settle this litigation?

A. Over 60 attempts.

Q. And did you ever feel that you

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

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

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

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

Jeffrey Cohen is not listed as a witness at all. He is listed as a bookkeeper in a separate question. They're not the same. There's no way to create those identical questions. And I've addressed this before, it's no surprise, but he's not a witness to this case.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, the purpose of the rules of discovery are to avoid surprise, to avoid the revelation of new information at trial. I have -- we are splitting hairs here that are so fine, I'm really concerned about some sort of nuclear reaction.

We listed Mr. Cohen in our discovery responses as someone who is involved in the affairs of the trust. Mr. Slotchiver, in the process of his case and his questioning of Mrs. Cohen, has attacked directly the reasonableness of Mrs. Cohen paying Jeffrey Cohen the amount of money that they have alleged was paid. She has not disputed the fact that the funds were paid -- it's in the record, we've produced it -- but she is being attacked on the reasonableness of those actions.

We did name him as -- we named him as

an accounting provider for the trust to -- I don't need Jeffrey Cohen's testimony, per se. Mr. Cohen lives in New York. I don't need his testimony, per se, to testify as to the circumstances which led the trustee to seek Mr. Cohen's help. She needed help.

THE COURT: I will allow this to the extent that she's going to testify as to her personal knowledge as to why she retained Mr. Jeffrey Cohen.

MR. BOYD: She's not testifying on his behalf, Your Honor; she's testifying as to her personal knowledge.

THE COURT: I understand.

MR. DAN SLOTCHIVER: But, Your Honor, it is my understanding, then, that would not include any alleged representations from Jeffrey Cohen; it's just her understanding. Would it be limited to that basis? Otherwise --

THE COURT: It would be based on what she did and what she knew as to why he came here, based on what she knew.

MR. DAN SLOTCHIVER: She knew or observed?

THE COURT: Herself, as to why he came

here and what he did, which I thought was what she was about to say, but I'm not going to allow her to rely on what Jeffrey Cohen may have told her as to why he was coming.

MR. DAN SLOTCHIVER: Your Honor, my only concern is that without a foundation. I don't know how she could opine as to what she knew or observed without using that information that he allegedly provided to her.

And if we go back, Your Honor, to this document, under the argument that was made with reference to Jeffrey Cohen being listed as a bookkeeper, there are probably 7,000 pages of documents in which there are probably thousands of names involved. There are no more nameless witnesses than Jeffrey Cohen.

Now, we have the right to question her about Jeffrey Cohen, which we have, and we have a right to argue about the payments made to him, which we have and will continue, but that doesn't change the fact that he wasn't listed as a witness.

So I would just ask, Your Honor, that you would allow a -- or require a foundation to be made that her testimony is not based on what she

was told by him, but based on observations that she would have made.

MR. BOYD: Your Honor, if I ask what did Jeffrey say to you about X, Y, Z, then obviously, that would be hearsay. I'm not asking her to opine or testify as to what Jeffrey said or didn't say. I'm asking her about her direct knowledge based on her own experience.

THE COURT: And I will allow that.

MR. DAN SLOTCHIVER: If I could be heard, Your Honor.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: My concern is it's like saying did you meet with a lawyer? Yes, I did. After meeting with the lawyer, did he give you advice? I object. You can't put it in there. What did you understand after meeting with the lawyer? Well, I understood that these are the rules you have to follow. We're indirectly doing exactly what we're not supposed to do without a foundation, Your Honor.

THE COURT: Well, I will instruct the witness that she's not to rely on anything Jeffrey Cohen told her as to why was he coming.

MR. DAN SLOTCHIVER: Thank you, Your

Honor.
THE COURT: I think that was the question, why did he come, and rely just on what she knew from the situation with Abbie and the caregivers as to why he was coming.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
THE COURT: Without relying on what she was told.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
THE COURT: Do you understand that, ma'am?
THE WITNESS: Yeah. So I should say what I said to him?
THE COURT: That is fine, absolutely.
THE WITNESS: When I spoke to him --
BY MR. BOYD:
Q. Just go back to the beginning, Mrs. Cohen, and explain the circumstances when Jeffrey first began to assist you after the accident.
A. Well, after the accident, the children were going to be discharged from the hospital. Thank God they were doing well in the nursery, and

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

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

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

being able to handle things, and I didn't want to make mistakes, so I asked him to basically take over a lot more of the bookkeeping that I just couldn't -- I couldn't handle paperwork.

And then eventually, when things got very, very aggressive with Vicki and with all the standing arguments and just everything being fought about in California, I said that I just didn't understand how everything had to be answered, but apparently, that's the law. Anything that anybody throws at you, you can't ignore. You have to answer. And I just -- I was always going through papers. I was just -- my mind was -- I was out of my mind with paperwork, and I called --

Can I say I called him? Yes?

Q. Yes.

A. I called him, and I called his rabbi also, and I said I need him at home. I can't function. I just -- I'm falling apart, and I need help. And Abbie loves him very much. Throughout the entire hospitalization, he was there for her. He called her every single day.

MR. DAN SLOTCHIVER: Your Honor, I object.

THE WITNESS: I was there.

THE COURT: Ma'am --

MR. DAN SLOTCHIVER: And I know it's background, but I want to keep as clean a record as we can. I object to the reference as to him calling her every day. I don't believe there's a foundation laid that she can support that position. And if there is, then we certainly won't have an objection, but I want to make sure that there is.

MR. BOYD: Your Honor, she's just testifying to her personal knowledge. If she knows that he called her every day, that's just a fact that she knows by observation.

MR. DAN SLOTCHIVER: That's not what she testified to, Your Honor. And if she knows that by observation, certainly, she can testify to it, but I don't know if she was really there every day and witnessed him calling her every day, and I want to make sure we have a clean record.

THE COURT: Thank you. Mr. Boyd, if you can have your client clarify.

BY MR. BOYD:

Q. Mrs. Cohen, can you just clarify? When you say these things, are you saying these things because you heard them, or are you speaking to things that you directly know to be true?

A. I was there. Abbie does not answer the phone. I answered the phone.

Q. So these things that you're speaking of that Jeffrey did for you or for the family for the trust, those are things that you have direct knowledge of?

A. Absolutely. I was the one who answered the phone. I put the phone on speaker for Abbie, or I would put Skype on for Abbie so she could see him. And I was there when he would read to her. I was there when he talked to her. I was there when he encouraged her. So yes, that was direct knowledge.

Q. And you have direct knowledge of all those things?

A. I have direct knowledge of all those things.

Q. Is it fair to say, Mrs. Cohen, that Jeffrey did quite a few things that someone at Webster Rogers or any other accounting firm could not do for you?

A. Well, yes, because he was family, and I just didn't want to turn over everything. And

also, I needed to rest a little bit. I needed somebody -- I have wonderful caretakers, wonderful, but Abbie does not enjoy when they read to her. She just doesn't --

MR. DAN SLOTCHIVER: Your Honor, I object. There's no foundation to make that statement.

THE COURT: The court will strike that.

THE WITNESS: Abbie cries --

THE COURT: Ma'am --

BY MR. BOYD:

Q. Just one second, Mrs. Cohen. Just one second. Mrs. Cohen, from your observation, did you find Yaakov -- Jeffrey's -- interactions with Abbie to be helpful for Abbie, from your observations?

MR. DAN SLOTCHIVER: Your Honor, I object. I don't believe there's any foundation for her to give an opinion as to what Abbie was feeling or not feeling, and observations is just an indirect way of asking the same question. She can tell what she saw, she can say what she heard, if it's admissible, but I believe that question, in and of itself, is inappropriate.

MR. DAVIS: Your Honor, there's nothing inappropriate about asking someone what their observations are with respect to an individual with whom they share a residence. They know, based on absolute firsthand direct knowledge, from experience, whether Abbie's having a good day or a bad day. She can testify to that, and she can thus testify whether readings with Jeffrey or any other undertaking contributed to a good day or didn't contribute to a good day, if it helped her or if it didn't help.

MR. DAN SLOTCHIVER: There was a court order that specifically disagrees with that statement.

MR. BOYD: Your Honor, he's mischaracterizing the order. And even if the order did say that, it doesn't have any bearing on her ability to testify on what she observed in this case in her house.

MR. DAN SLOTCHIVER: It has to do what she knows, that he said they know because they're there. The court heard the same argument in California and disagreed with it, and I don't think it's proper, Your Honor. I think he can ask what she observed, but I don't believe she can

give -- put herself in the position to answer as to what Abbie was thinking.

THE COURT: Mr. Boyd, I think you need to limit her testimony to what she observed, how Abbie may have behaved, but not what she felt like Abbie felt or what she liked.

MR. BOYD: Your Honor, I would certainly not want to encourage my witness to speak on Abbie's behalf. That's not what I'm trying to do. But I did ask her about what her direct observations were.

And I just want to, Your Honor, renew my comment. I think counsel is mischaracterizing the California order, so I want to just state that for the record. I think he's mischaracterized the order. The order speaks for itself. I don't think the order stands for the proposition that there's absolutely no benefit to Abbie in the manner that counsel has characterized it.

BY MR. BOYD:

Q. But with that said for the record, Mrs. Cohen, can you call Webster Rogers at 3:00 in the morning?

A. No, I cannot.

Q. Did you have a lot of unexpected

issues that come up in the care of Abbie? Is it a stressful situation to respond to, from your perspective?

A. It has in the past been extremely stressful. It's getting better, thank God, but at that time I was extremely stressed. It was before Abbie's Baclofen pump, which relieves her pain, so she was in a great deal of pain.

MR. DAN SLOTCHIVER: Your Honor, I object. She's now testifying as to the fact that Abbie was in a great deal of pain, and there's certainly testimony in evidence that disagrees with her ability to even give that opinion, let alone the fact that it's similar to her commenting on how Abbie felt. It would be inappropriate.

THE WITNESS: All right. She cried out a number of times. I'm sorry.

THE COURT: Thank you. I will strike her previous comment that Abbie was in pain.

THE WITNESS: Is it okay to say cried out?

THE COURT: Yes, ma'am.

THE WITNESS: Okay. She cried out in an appearance of pain?

THE COURT: She just cried out.

THE WITNESS: She cried out, okay.

BY MR. BOYD:

Q. Mrs. Cohen, let me ask you this, let me ask you this question: In your opinion, based on your observations, does Abbie have good days, and does she have bad days?

MR. DAN SLOTCHIVER: Your Honor, I object.

MR. BOYD: Your Honor, I'm asking her how easy it is to be in her position dealing with the ward. There are good days. There are bad days. On what possible basis --

THE COURT: Well, I think she can testify whether she has good days and bad days. At this point, I'm not sure that she can testify about whether Abbie has good days.

MR. DAN SLOTCHIVER: I'm also not even sure why this is relevant.

MR. BOYD: Again, Your Honor, I was trying --

THE COURT: We were talking about Jeffrey Cohen --

MR. BOYD: We're talking about Jeffrey Cohen, Your Honor.

THE COURT: -- and his services to

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

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

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

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

evidence.)
BY MR. BOYD:
Q. Mrs. Cohen, would you look at Page 1 of what has been marked as Exhibit R-14?
A. Yes.
Q. Do you see Jeffrey Cohen -- it looks like it didn't all come through, but Jeffrey Cohen referenced on the left-hand column?
A. Yes, I do.
Q. And what is under the rate? What is the rate referenced?
A. $25 an hour.
Q. And flip to the second page, Mrs. Cohen, if you would. And what rate is reflected for Jeffrey on that page?
A. $25 an hour.
Q. And the third page?
A. $25 an hour.
Q. And the fourth page, Mrs. Cohen?
A. $25 an hour.
Q. And the fifth page, Mrs. Cohen?
A. $25 an hour.
Q. And the next page, the sixth page?
A. $25 an hour.
Q. And the last page?

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

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

testified that you believed you had authority to pursue the marital action in California?
A. That's correct.
Q. As far as you understood it -- and you've also testified that you're not a legal expert?
A. That's correct.
MR. DAN SLOTCHIVER: Your Honor, this has been asked and answered at least three other times.
MR. BOYD: Your Honor, I'm just trying to draw the comparison --
THE COURT: I'll allow it.
MR. BOYD: -- because much has been made of this document.
THE COURT: Thank you.
BY MR. BOYD:
Q. Mrs. Cohen, in your estimation, as you understood it at the time, was there anything inconsistent between that document, the petition that you filed, and the authority that you believed you had as the trustee in California?
A. No inconsistencies.
Q. Mrs. Cohen, you received a few questions from Mr. Slotchiver concerning the

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

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

Q. Are you familiar with that document?
A. Yes, I am.
Q. And perhaps you should flip to the back. Do you recognize who the author of this document is?
A. Yes, I do.
Q. Who is that?
A. It's Dr. Angela Hays, from the Medical University of South Carolina, the expert witness.
Q. And who is the letter addressed to?
A. It's addressed to Ms. Swensson, who was the associate in the case.
Q. At the Meyer Olson firm?
A. At the Meyer Olson firm.
Q. My understanding is there were other copies of this letter addressed to other individuals as well. Is that correct?
A. I believe there were, yes. I had a copy.
Q. I'd like to -- and do you understand this opinion to have been cited by the court in California?
A. Very briefly.
MR. DAN SLOTCHIVER: Your Honor, I would object to this opinion coming in, other than

to the extent that it has been cited by the court's order in California.
MR. BOYD: Your Honor, the opinion was cited in California, and it's medical -- it's a medical diagnosis, it's the result of a medical examination, so it -- and it's previously been provided to counsel as well.
MR. DAN SLOTCHIVER: Actually, to be clear, Your Honor, in the court's final decision, their order, they cited portions of that document. They didn't cite the whole opinion. They didn't attach the whole opinion to the order.
If they want to address it as a document that she's seen, then certainly we don't have any opposition to the fact that it was, in fact -- it was a document that she's seen before, that her lawyer's seen, but to put it into evidence as a document that speaks for the truth of the matter, I would object to that. That's not what it stands for at this particular juncture, Your Honor.
MR. BOYD: Your Honor, I think the court's entitled -- the document is cited in the opinion of the California court. It's previously been provided to counsel, as the other documents

that we've introduced, and it speaks for itself. It is what it is. The witness is familiar with the document, she's familiar with the provenance of the document, and I don't understand on what other basis there would be to object to the document.

MR. DAN SLOTCHIVER: Your Honor, my understanding is that the deposition was cited by the court, not this document. Now, this document purports to be a letter from a doctor, which counsel is attempting to introduce to be evidence of an expert testifying in this case, an expert who has not been listed by counsel as an expert in this case, so I don't believe that accurately that the reflection is accurate that it was -- that this document was included in the court's order. I don't believe it was. I believe it was excerpts from the deposition that were included in the court's order to begin with.

Secondly, this document, in and of itself, would be an attempt to put in evidence an expert's testimony which has not been provided to us. We don't know him to be an expert in this case being called by them.

MR. BOYD: Your Honor, we

incorporated -- first of all, the document is what it is. The witness is familiar with the provenance of the document. The witness can testify as to her understanding of the document, why the document was written, when it was written, why it was written. And if the court can take the document for whatever it's worth, the court is free to assess the importance of the document in the context of everything else that's been presented, Your Honor.

MR. DAN SLOTCHIVER: And once we get to the point of the witness testifying as to her understanding of a document, then we're at the point that the witness is going to testify as to her understanding of each and every conversation she had with each and every lawyer, who we're hearing about for the first time.

Your Honor, this is -- it's not -- the protocol is if you're going to rely on the document -- if you're going to rely on the document as an expert testimony, then list the person as an expert, but this is not even a document the court relied on, Your Honor.

MR. BOYD: Your Honor, I've not asked her to do anything other than comment on a

document which speaks for itself which has been submitted into evidence and is in the record and has been provided to counsel.

THE COURT: Let me hear from Ms. Hedgepath real quick.

MS. HEDGEPATH: Your Honor, this letter, as I understand it, the letter from Dr. Hays, would go to Susan Cohen's state of mind, and the whole center of this case, as I understand it, is the reasonableness in the Cohens, as trustees, paying the fees to fund the litigation in California.

Now, in relying on documents such as this, did that go to their reasonableness in continuing the litigation to establish the visitation? Did letters such as this, in their mind, go to their state of mind that, yes, it will benefit Abbie? It's not whether this letter is true or not, Your Honor. This goes to her state of mind after reading this letter.

THE COURT: Mr. Slotchiver?

MR. DAN SLOTCHIVER: I disagree completely, Your Honor. They're attempting to provide a document as evidence into this court for your consideration, which they allege speaks for

itself as to her state of mind. They can do that. If we allow them to do that, then within the parameters of discovery, she can say everything she wants to say with reference to her state of mind. She can testify, clearly, as to her state of mind, but to submit this document for the court's review as to support her state of mind would be inappropriate.

We're not opposed to her saying: I believe -- and she's done that already. She's clearly done that. She's told us what her state of mind was. She thinks she has authority. She shows the documents as to why. She thinks it's reasonable. She's told us why. She thinks it benefits Abbie. In her opinion, she says it benefits Abbie. She's done that already.

This is an inappropriate document to come in, and without -- I don't want to read it to the court, Your Honor, because I disagree that it's appropriate, and I think that once the court looks at the document, the court would agree, but the problem is the court's looked at the document. It's a self -- or a letter from a doctor to a lawyer is what they're trying to submit.

MR. BOYD: Your Honor?

MR. DAN SLOTCHIVER: If I could finish. This is a letter written from Dr. Hays to the Meyer Law Firm, and they're saying let's admit this as being some evidence of what she's done, and I think that within the rules of more prejudicial than probative, the question is is it more prejudicial to allow a document to come in from a doctor, written to a lawyer, that wasn't entertained by the court or utilized by the court in making its decision, is that more probative than it is prejudicial when Mrs. Cohen clearly can and has testified to her state of mind. And if that's the only basis for it to come in is the state of mind, I don't believe there's any basis for it to be allowed.

MR. BOYD: Your Honor, the entirety of the trial, in essence, again, is going directly to the reasonableness of the trustees' actions, and the court is entitled to see the historical context of exactly what led the trustee to form the opinions that she formed.

MR. DAN SLOTCHIVER: Her opinions, Your Honor, were formed long before this letter was written.

MR. BOYD: Your Honor, he's got no

basis to make that statement.

THE COURT: I'm going to overrule the objection. I'm going to allow them to admit this into evidence to show the trustees' reliance on this or what her belief was based on this, not for the truth of the matter of what the doctor said in the letter, but as the basis of their actions.

MR. DAN SLOTCHIVER: If I could proffer to the court, Your Honor --

MR. BOYD: Let me say one thing --

THE COURT: Wait. Not twice, please.

MR. DAN SLOTCHIVER: This letter is dated July 13th, 2010. She's already testified, Your Honor, that her belief was made at the time of the transfer. She had had the belief, based on the transfer of jurisdiction from California to South Carolina, that she could do anything at all related to it, so I'm not sure, Your Honor, how it is that this could be submitted to be her belief when at the time --

THE COURT: I don't know what the basis of that is, so I don't know what she's going to testify to as to based on that she believed what, whatever. I don't know what she's going to testify to. I think she's entitled to admit that

into evidence to show, based on that, whatever she believed.

MR. DAN SLOTCHIVER: If my objection could be so noted, though, Your Honor.

THE COURT: Yes, sir.

MR. BOYD: And I just wanted to clarify for the record, Your Honor --

THE COURT: Yes, sir.

MR. BOYD: -- Mr. Dorn, Mr. Slotchiver had maintained throughout these proceedings that the actions of the trustee were not authorized and that there was an unreasonable course of action undertaken that continued. It was a continuing course of action.

And so this goes to show the ongoing state of mind and the reliance of the trustee on various information, including this letter. It speaks for itself. It's been produced to everyone.

And quite frankly, it's not just a letter to Ms. Swensson, Your Honor. We didn't mark it because it's duplicative, but we can certainly locate them and introduce them into evidence, if it will make Mr. Slotchiver feel better, but there were multiple versions of this

letter. The same letter, a copy of this letter, if I'm not mistaken, went to -- and I don't remember the exact individual. It either went to Vicki Greene or her associate. So this was a widely-disseminated opinion letter from Dr. Hays, Your Honor.

So again, there's no -- there was no surprise initially, and it's been produced previously in this record, in this matter, so there's nothing, again, I think, that should prevent the witness from testifying to her opinions with regard to the letter.

THE COURT: Thank you. The court will allow that.

That's Respondent's No. 6?

MR. BOYD: Yes, Your Honor. Thank you.

(RES. EXH. 6 was admitted into evidence.)

THE COURT: Based upon that qualification that it's not admitted for the truth of the matter set forth in the letter, but based upon the trustees' reliance on it.

MR. BOYD: Excuse me, Your Honor.

BY MR. BOYD:

Q. Mrs. Cohen, let me ask you this question: Do you understand who retained Dr. Hays?

A. Yes. It was the -- Vicki Greene asked her to be appointed by the courts, and she was.

Q. Let me just -- I don't want to go through the letter point by point, but let me ask you to turn to the last page of the letter, if you would, Mrs. Cohen.

MR. DAN SLOTCHIVER: Your Honor, my understanding is that the letter is being introduced for the purposes of what she relied on that. Based on that, I would ask that rather than counsel show her certain portions, that she could testify as to what she relied on in the letter, without instructions from counsel.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: If that is purely the basis.

THE COURT: Sustained.

BY MR. BOYD:

Q. Mrs. Cohen, were there any provisions of this letter that you found particularly insightful?

A. Well, yes. She confirmed what we

already knew. She does talk about without more specialized testing -- I believe further before that, she talked about evoked potentials. I'll hold that thought for a minute and go forward with this. Without more specialized testing, it's impossible to determine whether Ms. Dorn retains the ability to comprehend speech or --

Q. I'm sorry. Could you speak a little more clearly and perhaps not read quite so fast?

A. I was unable to assess her visual --

MR. DAN SLOTCHIVER: Your Honor, now she's testifying -- now she's reading the letter, as opposed to giving her opinion.

THE WITNESS: Well, this is what I relied on. That's what I was asked.

MR. BOYD: She's answering the question, Your Honor, that I asked at the instruction of Mr. Slotchiver.

MR. DAN SLOTCHIVER: I believe she can testify, Your Honor, as to what she relied on without reading the letter to the court. There is a huge distinction. Reading the letter goes towards it speaking for the truth of the matter asserted. Reliance on it is as a result of reading this letter, what was your opinion.

THE COURT: Thank you.

MR. BOYD: Your Honor, I simply asked her to identify the provisions of the letter that she relied upon, and she's identifying those provisions.

THE COURT: Okay. Without reading it to the court. I don't think it's necessary.

THE WITNESS: I'll just talk about these two concepts.

THE COURT: Ma'am --

THE WITNESS: Oh, I'm sorry.

THE COURT: Just one second, please.

So I don't think she can read the letter to the court. I think she can identify those portions of the letter, the opinion from Dr. Hays that she relied on in taking whatever actions she took.

MR. BOYD: Your Honor, if this -- I'm not asserting -- I'm not asserting the provision for the truth of the matter asserted. It was Dr. Hays's opinion, rendered to multiple parties at the time, and I'm asking her to identify those provisions of the letter that she found, for her, important.

THE COURT: I will allow her to

identify those portions of the letter without necessarily having to read it to the court.

MR. BOYD: Okay.

THE WITNESS: So I'm just going to rely on some terms. One of the things that she talks about, there's a presence of optokinetic nystagmus, which means she can see.

MR. DAN SLOTCHIVER: Your Honor, I object. She's not testifying as to what the medical -- what the doctor has testified to.

THE WITNESS: We're talking about vision.

MR. BOYD: We're talking about being in a box that you can't get out of.

MR. DAN SLOTCHIVER: It's not a box, Your Honor. She cannot testify as to the fact that her daughter could see. That's a medical opinion that is highly disputed.

MR. BOYD: Your Honor, she's giving her opinion of the letter.

THE COURT: Okay. She can testify as to what she relied on this letter in making whatever decisions she made.

I don't think, Mrs. Cohen, you can interject your understanding of what those medical

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

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

the Hays letter.
THE COURT: Yes, she did.
MR. BOYD: Well, your Honor, I'd just like to ask her again to clarify if there was anything else in the letter that she found relevant or compelling or that influenced her decision-making as a trustee.
THE COURT: If there's anything else?
MR. BOYD: Yes.
THE COURT: Yes. Thank you.
THE WITNESS: She is talking in this letter about various procedures that have also been --
MR. DAN SLOTCHIVER: Your Honor, I would object to what she's talking about. I understand the question was is there anything else in the letter that she relied on, but not to have an opportunity to read part of the letter to the court.
THE COURT: Okay.
THE WITNESS: She's talking about -- okay. There is no --
MR. BOYD: Your Honor, can the witness just be instructed to describe those passages of the letter that she's referring to?

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

to the reading of the letter, per se. I'm simply asking her to explain her reaction to the letter.
THE COURT: But then she went on to say that there were some things that they -- I believe some tests that they had performed on Abbie, I guess based on --
THE WITNESS: They did not perform, but she said the --
MR. DAN SLOTCHIVER: Your Honor, I would object to what she said.
THE COURT: She's trying to clarify. Let me just hear her clarification, Mr. Slotchiver.
THE WITNESS: They did not perform, but she's saying that would show evidence, and I had those tests done, and they showed that there was clear evidence there's no damage.
MR. DAN SLOTCHIVER: Your Honor, once again, same objection.
THE COURT: Mr. Boyd?
MR. BOYD: Your Honor, again, counsel has objected to the reading of the letter. I'm simply asking her to give me her impressions of the letter, how she relied upon it, how that influenced her thinking and her actions as

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

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

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

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

result of this order?
MR. DAN SLOTCHIVER: Objection, Your Honor. That's mischaracterizing the statement. It ordered visitation of the children to Abbie, not visitation of Abbie with the children, and there's a fine distinction made in the court's order.
THE COURT: Mr. Boyd?
MR. BOYD: Your Honor, the order speaks for itself and --
MR. DAN SLOTCHIVER: It does, Your Honor.
THE COURT: So I'll review it.
MR. BOYD: Excuse me?
THE COURT: So I'll review it.
MR. BOYD: Okay.
THE COURT: Thank you.
BY MR. BOYD:
Q. The court also mentions in the order life expectancy of Abbie?
A. Yes.
Q. Let me ask you, on Page 4, the second full paragraph, second sentence, let me ask you, would you read that provision from the court order?

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

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

understanding, Mrs. Cohen, as to the life expectancy of Abbie Dorn at any point following the accident?

A. Yes.

Q. And what was that?

A. Can I mention doctors or not? What am I supposed to --

Q. Yes, whatever was the basis for your information.

A. Yes. The doctors did tell me --

MR. DAN SLOTCHIVER: Your Honor, I would object, and partly, Your Honor, because on direct examination, she testified that, God willing, she'll live for decades.

THE WITNESS: And God willing, she will.

MR. DAN SLOTCHIVER: And now she's giving a basis, but she has no -- she's telling us what a doctor said, and it's not proper testimony.

MR. BOYD: Your Honor, the initial life expectancy of Abbie Dorn following this accident was far surpassed by the six to seven years that Dan Dorn wanted the conservators, the trustees, to wait for an appropriate time for visitation.

MR. DAN SLOTCHIVER: Your Honor, now he's testifying. I believe Your Honor stated earlier that you would look at the order, and it speaks for itself is what we talked about. The order does give a life expectancy. She's testified also. But other than that, I don't think it would be proper.

MR. BOYD: Your Honor, she's giving us -- he asked for a foundation. She's giving us the basis for her information, which, by the way, you can't have a specific objection to until she identifies the specific source.

MR. DAN SLOTCHIVER: Number one, Your Honor, I asked for a proper foundation, as opposed to saying what the doctor told me, X, Y, Z, and she started to testify a moment ago that based on the doctor's conversations and talking to the doctors. Unless she has some -- I don't believe she has any knowledge of her own will that she can testify to or any basis of her own -- any determination that she's made based on her own training, and without that, I believe that the document speaks for itself. She can guess, but to give an opinion would be improper.

MR. BOYD: She's not giving an

opinion, Your Honor. She's giving a recapitulation based on her personal knowledge, which was formed by consulting with whoever the treating physicians, the other parties involved were at the time, what was generally represented to the trustees as the life expectancy of Abbie Dorn.

MR. DAN SLOTCHIVER: And once again, Your Honor, we're back to the same place we've been over and over again in this case. A recapitulation based on all my conversations I had with all these people is hearsay.

MR. BOYD: No, Your Honor, actually, it's not. In Rule 803, Subpart 4, statements for purposes of medical diagnosis or treatment: Statements made for purposes of medical diagnosis or treatment in describing medical history, past or present symptoms, pain sensations, or the inception of general character/cause of the external source effectively related to diagnosis or treatment are a specific exception to the hearsay rule.

MR. DAN SLOTCHIVER: None of those applied to life expectancy.

MR. BOYD: Your Honor, we're talking

about statements made in the context of medical treatment and prognosis. Part of prognosis is life expectancy.

THE COURT: I will allow it. Thank you.

BY MR. BOYD:

Q. Mrs. Cohen, again, I would ask you do you recall any conversations at the time which gave you a basis to form an opinion as to what Abbie Dorn's life expectancy was?

A. Yes, I do, and as I said, God willing, she'll live, and we will. But I did have many conversations with her pulmonologist and her infectious disease doctor about the risk, that she was at high risk, and I certainly was very aware and very concerned, and it was very important to me that she have what was most important to her in her world, and that was to see her children.

MR. DAN SLOTCHIVER: Your Honor, I would like to object. This has gone well beyond the issue. And once again, this is just another example over and over again of interjecting facts that are not before the court.

THE COURT: I will strike that statement.

MR. DAN SLOTCHIVER: Could you please admonish the witness to please answer the question presented and not use it as a podium to talk about what she wants to talk about?

THE COURT: Yes, ma'am. You can't tell me what you believe Abbie wanted or that this is what she wanted, this is most important to her, when you talk about pursuing visitation with her.

THE WITNESS: Can I talk about what was important to me?

THE COURT: Yes, ma'am, you can talk about what was important to you, all right.

THE WITNESS: It was important to me that Abbie have what she --

MR. DAN SLOTCHIVER: Your Honor --

THE COURT: Not what she needed, not what she wanted.

THE WITNESS: That it be for Abbie. Is that okay?

THE COURT: That's fine.

THE WITNESS: Okay.

BY MR. BOYD:

Q. Let me ask you this, Mrs. Cohen, and we'll wrap up: Let's turn to Page 8 of the order, and I just ask you to read the first sentence of

this paragraph near the bottom of the page. If you'd just read that first --

A. Yes. The court does not agree with Dan's desire to delay the visitation until the children are six or seven, because Abbie has already outlived her life expectancy.

Q. And, Mrs. Cohen, if you would also read just the first sentence of Paragraph B of that same section.

A. Abbie, by and through her conservators, is granted visitation one time each year for a period of five consecutive days, commencing in the summer 2011.

Q. Mrs. Cohen, does it say the children are granted visitation, or does it say Abbie is granted visitation?

A. It says Abbie is granted visitation.

Q. So ultimately, at the end of all this, the court found that Abbie had a right to visitation with her children?

A. Yes.

Q. Mrs. Cohen, let me ask you this --

MR. DAN SLOTCHIVER: Your Honor, I object to that statement. I believe it's taken out of context, and the order speaks for itself.

THE COURT: Thank you. So noted.

BY MR. BOYD:

Q. Mrs. Cohen, let me ask you this: Do you believe, based on your experience, the totality of your experience serving as Abbie's caretaker, her guardian, her trustee, and her conservator, do you believe, based on your years of experience caring and providing for Abbie, do you believe that she receives a benefit from visitation with the children?

MR. DAN SLOTCHIVER: Objection, Your Honor.

THE WITNESS: Absolutely.

MR. DAN SLOTCHIVER: Objection, Your Honor. This goes back to the same issue. She cannot testify as to a benefit that Abbie receives. She can testify as to what she wants and what she knows and what she observes, but not as to what Abbie perceives. It would be no different than testifying as to what's inside Dan Dorn's mind or a lawyer's mind or anybody else's mind. It's improper, Your Honor.

MR. BOYD: I'm asking for her observations and her opinion formed on the basis of her observations over the years caring for her

daughter, Your Honor.

THE COURT: I will allow it to that extent only, her opinion.

BY MR. BOYD:

Q. And I would again repeat my question without restating it.

A. In my opinion, absolutely Abbie receives great benefit from seeing her children.

MR. DAN SLOTCHIVER: And your Honor, if I may add one more thing. Mrs. Cohen's not even present during the visits, so I'm not really sure how this testimony could even come into evidence to begin with. The visits do not allow her to be present when the children are there.

MR. BOYD: Your Honor, she's --

MR. DAN SLOTCHIVER: Once again, I would just reiterate my objection to it, Your Honor. I believe it would be improper for her to testify as to a benefit in her opinion when she's not even present to see the children when they go to visit.

MR. BOYD: Your Honor, she is around Abbie constantly. She may be not physically present in the room during the visit itself, but she's around Abbie before the visit, she's in the

vicinity during the visit, and she's obviously again around Abbie after the visit. She's perfectly capable of testifying as to her opinions formed on the basis of her own observations.

THE COURT: I will certainly take note of your objection --

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: -- due to the fact that she's not present during the visit.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Thank you.

BY MR. BOYD:

Q. And again, Mrs. Cohen, is there anything else that you'd like to say in response to that question? I believe you started your answer.

A. I am always present before and after, and I see Abbie every day, and I know what I observe.

Q. Thank you, Mrs. Cohen.

MR. BOYD: No further questions for this witness.

THE WITNESS: Thank you. Should I get down?

THE COURT: No, ma'am. Just a moment, please.

I'm not sure who wants to examine, maybe Ms. Hedgepath.

MS. HEDGEPATH: Your Honor, I would, but if it pleases the court, now would be a good time to break for lunch. I need to gather all of the exhibits, since we didn't get copies, that the petitioner submitted -- we saw them only on the screen -- and to also organize those of Mr. Boyd. That would be of benefit to me. I don't know if Mr. Kachmarsky needs to do the same or Ms. Moore.

THE COURT: I assume that you will have some questions for Mrs. Cohen, Ms. Hedgepath?

MS. HEDGEPATH: I will.

THE COURT: Mr. Kachmarsky, are you going to examine?

MR. KACHMARSKY: I will, yes.

THE COURT: So why don't we break now for lunch, then, if that would be of benefit, to give you a little bit of time. It's 12:15. Come back at 1:30. Is an hour and 15 minutes enough time?

MR. DAN SLOTCHIVER: Yes, Your Honor.

MR. BOYD: Yes, Your Honor.

THE COURT: Then we'll adjourn until after lunch. Thank you. I'll make sure we lock the courtroom, so everybody can leave their things in here.

(A luncheon recess transpired from 12:16 PM to 1:44 PM.)

THE COURT: We are back on the record in the matter of Abbie Dorn, and Mrs. Cohen is back on the stand, and I believe Ms. Hedgepath was going to begin her examination.

MS. HEDGEPATH: I don't know how this is going to work, so bear with me.

MR. DAN SLOTCHIVER: I couldn't hear. I'm sorry. Could you repeat that?

MS. HEDGEPATH: I'm just mumbling. I was telling the judge I didn't know how this was going to work, but hopefully, over here, at least Mrs. Cohen will be looking at me and at the judge and you gentlemen as well.

CROSS-EXAMINATION

BY MS. HEDGEPATH:

Q. Mrs. Cohen, how are you?

A. I'm fine. Thank you.

Q. You do understand that I represent Abbie Dorn?

A. Yes.

Q. And Abbie Dorn alone?

A. Yes, I do.

Q. And I'm going to ask the court for whatever is in Abbie's best interest, regardless of whether it might be in you and Dr. Cohen's best interest. You do understand that?

A. I understand that, yes. Thank you.

Q. And you do realize that the petitioners in this action and the guardian ad litem for the children, they are all asking not only for you to possibly replace some of the money that's been removed from the trust, you and Dr. Cohen to replace that, but not only that, but for the two of you to be removed as trustees?

A. Correct.

Q. You are aware of that?

A. Yes, I am.

Q. I want to ask you if you and Dr. Cohen have in any way personally benefited from any of the monies that went into the trust for Abbie?

A. Absolutely not.

Q. Have you used any of that money, any whatsoever, for things for yourself personally?

A. Absolutely not.

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

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

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

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

We paid for everything. I did not have a caretaker at night, because that was another $230, and I --

Q. Now, you're going to have to slow down. As my husband would say, you're talking faster than I can listen.

A. Okay. We did not engage a caretaker at night, which was an option that we had at the facility, because it was an additional $230 a night. We wanted our funds to last as long as it was needed for Abbie to receive the care that we believed that she had qualified to be admitted. She did have to pass tests to be admitted. She had to track. She had to do certain things that would show that her mind was alert enough to benefit by rehab. They don't just take you because you can pay. You have to be accepted.

So she had been evaluated and accepted into the facility, so we -- and her insurance did not cover anything on it, didn't even cover the doctor care, because we were taking her out of county. It only covered her medications. That was the only thing that her Blue Cross covered.

So we paid for everything, and every additional -- we also brought in additional --

arranged for an additional physician to take care of her independently, besides the one that they had there, because we wanted her to have a continuous basis of having a doctor take care of her. So we spent money on a great many things of our own.

When we came back, we paid -- we were reimbursed for all this, but we did pay for the private plane to bring her back. We arranged for everything.

And I was so overwhelmed by the whole thing that until recently, which you can see from my accounting, I didn't even know that I had not reimbursed myself for $85,000 when we were allowed to reimburse ourselves, because it just didn't matter. All the care --

Q. And when you say for the $85,000, what was that for, Mrs. Cohen?

A. They were monies that were still owed to the Centre for Neuro Skills because they had not -- I had asked for a particular kind of accounting, so that we could submit the bills, and they had their bills, but they had made a mess of the bills.

Q. So do I understand that you had paid

that, but did not ask the trust to reimburse you?

A. Right, had paid it and did not -- I didn't even know that -- I had it so mixed up, the whole thing, that until the accounting was completed -- I didn't even know until I guess it was 2011 that I had not paid myself back that $85,000.

So it was never our intention to do anything but care for our daughter, and we would have cared for our daughter whether or not there had been an award, so that has been -- all of our intention has been in doing what's in Abbie's best interest. It's all been about Abbie, in the beginning, in doing what we felt was the very best for Abbie.

Q. And just briefly let the judge know how you have turned your house -- I want to say upside down, but that's certainly not appropriate, how you have changed your house to benefit Abbie.

A. Okay. Well, the entire first floor is all for Abbie. There is not a room in the first floor that's not completely dedicated to Abbie. Beginning with the downstairs, the master bedroom, that is completely Abbie's suite, so there's an attached bathroom that's handicapped accessible.

There's a ramp that goes to the porch. On the porch, we have a hammock. We did use her funds to enclose the porch, so that she could use it all year. She likes to be in her hammock. That's one of her favorite things.

MR. DAN SLOTCHIVER: Your Honor, I object to the relevance as to what she likes. Without the relevance, I object to the testimony, and I ask that it be stricken.

THE COURT: I'll strike what she likes.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE WITNESS: Okay. It's pleasant for her to be on the porch.

MR. DAN SLOTCHIVER: Your Honor, once again, this has been a perpetual objection throughout Mrs. Cohen's testimony. I would ask that it be stricken.

THE COURT: I'll strike that it's what she likes, I believe you said?

THE WITNESS: Pleasant for her.

THE COURT: Pleasant for her. No, ma'am. I'll strike that too.

THE WITNESS: How about it expands the

life of the porch to enclose it. We have made that an additional room for -- just for Abbie's needs.

And then you move on into the hallway, and you will find that the library that we have designed is all filled with supplies for Abbie, and we put in a water table into that room, which is something that massages her and helps -- just helps, I guess.

BY MS. HEDGEPATH:

Q. Now, Mrs. Cohen, the changes that were made to the house to accommodate Abbie, did you and Dr. Cohen pay for those, or were they paid for by the trust?

A. The only thing that Abbie paid for was the part to enclose her porch and to make that --

Q. And when you say Abbie, you mean those funds came from the trust?

A. I'm sorry, from the trust.

And also, we had already put on hurricane shields, but we made the decision that unless it was a Category 4 or 5, we would not take Abbie if there was a hurricane, so we actually put on hurricane glass out of her trust money on her windows and put the hurricane shutters on her two

doors.

Q. And other than those things that you've told me about, you and Dr. Cohen paid them personally, and the trust did not?

A. Yes, that's correct.

Q. Now, I want to -- let's move on to the California action.

A. Okay.

Q. There's been a lot of discussion, a lot of pleadings, a lot of accusations about the amount of money that was spent in California, okay. I want you to take a look at what has been introduced as R-7. Now, there have been accusations that this California action was basically an action for grandparent rights. You've discussed that briefly about how you could not care for the grandchildren?

A. That's correct.

Q. You love them, you just don't have the ability to do it?

A. That's correct.

Q. But you did bring this action in California as conservators and trustees for Abbie. Is that correct?

A. That's correct.

Q. In fact, you got appointed in order to do that. Is that correct?

A. That's correct.

Q. Now, I want you to look at R-7, the document that -- the exhibit that is in front of you.

A. Okay.

Q. And if you'll look in the third box down, that has the petitioner as Abbie Ilene Dorn. Is that correct?

A. The third block, declaration regarding minor children?

Q. Have I given the wrong thing? The third block down, one, two, three.

A. Oh, I'm sorry. I thought you meant No. 3. Okay. Yes, it's Abbie Ilene Dorn is the petitioner.

Q. Were you aware, when you filed these documents, that grandparents could not be awarded visitation or custody in the state of California?

A. As far as I knew, that was correct.

Q. Did you ever inquire into whether or not you could be granted custody or visitation?

A. No. I was not capable of custody.

Q. Fair to say you were just concerned

about getting visitation for Abbie?

A. Absolutely.

Q. Now, the fourth block down, they have three types of action on this form. And this is a California form, apparently. It has dissolution of marriage, legal separation, nullity of marriage, and then a block for amended?

A. Correct.

Q. And you checked dissolution of marriage?

A. Yes.

Q. Did they have a block for child visitation?

A. Not on this form. Well, I don't know. Let me look. Let me look.

Q. But you checked the block for dissolution of marriage?

A. Are you talking about on the next page?

Q. No, ma'am. I'm talking about in that fourth block where we just discussed.

A. No. There was nothing in the fourth block, if that's what you mean.

Q. But in that form, though it was entitled: Dissolution of Marriage, you also

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

Q. And I believe your testimony was that you were doing that at the request of Dan Dorn?
A. Yes.
Q. Explain to me again why Dan Dorn did not want to pursue the dissolution or the divorce himself.
MR. DAN SLOTCHIVER: Objection.
THE WITNESS: He told me he'd be embarrassed.
MR. DAN SLOTCHIVER: I'll withdraw the objection.
THE COURT: Thank you.
BY MS. HEDGEPATH:
Q. He was embarrassed?
A. That's what he told me, that he'd be embarrassed.
Q. He wanted to divorce his wife, but he was embarrassed?
A. Yes.
Q. Now I want you to go down to Item No. 7 for me on that same page.
A. Yes.
Q. And on 7A, you asked that legal custody of the children be granted to respondent. That was Dan Dorn. Is that correct?

A. That's correct.
Q. And you asked that physical custody of the children be granted to Dan Dorn. Is that correct?
A. That is correct.
Q. But you asked that visitation be granted to the petitioner, Abbie, correct?
A. That's correct, yes.
Q. So all this, all these issues that we have discussed, was filed and was to be heard in one action?
A. That's correct.
Q. That action being filed on January 8th of 2008 in Los Angeles Superior Court?
A. Yes.
Q. Under one case number?
A. That's correct.
Q. Now, let's look at how Mr. Dorn answered and responded to that. I want to show you what has been marked as R-8.
If you'll give that one back to me so the court reporter won't spank me.
Now, R-8, you're familiar with that document. Am I correct?
A. Yes.

Q. And you received a copy of this document when it was filed. Is that correct?
A. That's correct.
Q. And is this the response of Daniel Dorn to the petition to which you've just been testifying?
A. Yes, it is.
Q. Now, if you'll look in the fourth block down, he sets forth that, too, it's a response to the dissolution of marriage?
A. Yes.
Q. Though he addresses other issues than just the dissolution. Is that correct?
A. That's correct.
Q. He, too, sets forth the names and dates of birth of the children, correct?
A. Yes.
Q. And he, too, mentions the division of the property of the parties in Item 4?
A. Yes.
Q. Just as you did?
A. Yes.
Q. And in Item 8, he, too, responded by saying that he requested the dissolution of the 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.

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

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

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

California action?
A. Was it filed by me, did you say?
Q. Yes, ma'am. Was it filed at your direction?
A. At my direction, yes.
Q. And I want you to look over to the third page, No. 9.
A. Yes.
Q. And you indicated that you were opposed to proceeding with the divorce. You wanted to wind everything up, get it over with?
A. Exactly.
Q. No reason not to tie up all the loose ends and put an end to it. Is that correct?
A. Exactly. That's what I wanted.
Q. And did you so indicate that in this pleading?
A. That's exactly what I indicated.
Q. In fact, in Item 9, did you say that you were opposing respondent's motion to bifurcate marital status on the basis that it is premature to terminate the status?
A. That's correct.
Q. When there are other more pressing issues that need to be resolved?

A. That's correct.
Q. Did you state in this document that there are no temporary orders which provide for the children to visit?
A. That's correct.
Q. That discovery's not yet been conducted to delve into the property and financial issues?
A. That's correct.
Q. And did you further say that it would serve both parties to resolve all the issues in a full and final judgment, rather than parse each issue separately?
A. Yes, that's correct.
Q. Did you think it would be less expensive or expedient and so forth?
A. Much less expensive, exactly.
Q. And did you further set forth in the pleading that it's your belief that all the issues would take a back seat, and final resolution of the matter would be further delayed if respondent's motion is granted?
A. That's correct.
Q. By that, did you mean visitation?
A. I meant visitation, child support, all

the issues involved.
Q. But subsequently, this rule to show cause was granted, and Mr. Dorn was able to proceed with the divorce. Is that correct?
A. That's correct.
Q. And he was granted the divorce. Is that correct?
A. That's correct.
MR. DAN SLOTCHIVER: Your Honor, I only put an objection as to the mischaracterization of the language. I believe what he was able to proceed with was the dissolution of the marriage.
THE COURT: Thank you. So noted.
BY MS. HEDGEPATH:
Q. I want to show you another document, and you tell me if you recognize it.
MR. DAN SLOTCHIVER: Understanding the court's ruling, it's the same objection as the last document, Your Honor.
THE COURT: Thank you.
BY MS. HEDGEPATH:
Q. Mrs. Cohen, let me show you another document that is entitled: Notice of Entry of Judgment. Have you seen and are you familiar with

that document?
A. Yes.
Q. Is that the document whereby the dissolution of marriage was granted in California?
A. Yes.
MS. HEDGEPATH: We'd mark this as R2-2, if it please the court.
(RES. EXH. 2-2, Notice of Entry of Judgment, was marked for identification.)
THE COURT: I will enter it with objection by Mr. Slotchiver.
(RES. EXH. 2-2 was admitted into evidence.)
THE COURT: And I'm assuming that was also a document of record in this court that was filed back in December of --
MR. DAN SLOTCHIVER: I believe this may be a document we already put into evidence, Your Honor.
THE COURT: So you're objecting to it?
MR. DAN SLOTCHIVER: Well, I mean, under the manner that it was put in, but I believe this is one that we already put into evidence, if I'm not --
MS. HEDGEPATH: Please don't make me

go back and find it. Let me just duplicate it.
MR. DAN SLOTCHIVER: I think it's No. 102.
THE COURT: Thank you.
MR. BOYD: Your Honor, if I can ask for clarification. Are you reserving judgment, or have you ruled?
THE COURT: No, sir. I noted his objection on the record.
MR. BOYD: Overruled. Okay. I just wanted to clarify that.
THE COURT: Yes. I'm sorry. Overruled his objection. The document was entered, notwithstanding his objection.
MR. DAN SLOTCHIVER: Same document.
MS. HEDGEPATH: Do you want me to withdraw mine and refer to his, Your Honor?
MR. DAN SLOTCHIVER: Well, I want to withdraw my objection insomuch as it appears to be the same document, Your Honor, that was already submitted as 102. I know we're all submitting our own documents, but I believe it's the same thing that's already been submitted.
THE COURT: All right. The record notes that Mr. Slotchiver withdrew his objection

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

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

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

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

given with reference to dissolution of marriage back in the document she just referenced a moment ago in September, in September of 2008.

So I understand that an argument is being asserted that she wanted to do these things, but that doesn't go to the context of what this case is about, did she have authority to do these things. And the fact that these issues were all filed at one time and then bifurcated, that ended the dissolution of marriage, so to assert that because they were all raised and because they still kept the same caption, that extended authority for me to keep on doing all these things, we certainly disagree with, Your Honor.

THE COURT: And I understand you disagree with that, but your objection to the introduction of this exhibit, I think it's already been introduced, right?

MR. DAN SLOTCHIVER: It has been. It has been introduced.

THE COURT: So we need to focus -- I understand what your argument is, Mr. Slotchiver, but you're objecting to the introduction of this for purposes of what the document actually states.

MR. DAN SLOTCHIVER: Right. I believe

that the order speaks for itself that's come in the document, but this is different. This is a -- the document she's now putting in is a memorandum attached by counsel, which is different than the court's order. This is a different document than the one we talked about a few moments ago.

THE COURT: So isn't this Respondent's No. 10 that was previously introduced?

MS. HEDGEPATH: Yes, sir.

MR. DAN SLOTCHIVER: Respondent's No. 10, Your Honor, they're referencing in the back to it, a memorandum, I believe. Let's see real quickly.

MR. BOYD: I believe the court, Your Honor, if I may, because these are my exhibits, when we started talking about the reliance of the trustee on certain aspects of the documents in question, we were referring -- that discussion came up in the context of the Hays letter and the opinions set forth within that letter. These California documents from the marital proceeding, the marital dissolution proceeding, are all -- they speak for themselves, Your Honor. Whether it's a court filing or whether it's a filing by counsel, the court can look at that and take the

context of that filing for what it is. The document speaks for itself. And these documents all go to establish the reasonableness of the actions of the trustee under the circumstances. They are what they are.

THE COURT: And your objection is?

MR. DAN SLOTCHIVER: Your Honor, my concern is that this is all an attempt, I believe, to create and assert an affirmative defense, and affirmative defenses in South Carolina have got to be pled. There's been no pleading of an affirmative defense in this case. So if what they're saying is we relied on the affirmative defense of relying on this document or relying on what a lawyer told me, the law in South Carolina is very clear that you cannot do it unless you plead it, which they have not done in this case.

THE COURT: I'll allow a response.

MR. DAN SLOTCHIVER: The most recent case, Your Honor, is 2010, Earthscapes Unlimited, Inc. versus Ulrich, 703 SE 2nd 221, where they asserted that the homeowners waived through a failure to plead their affirmative defense. And there's more cases, Strickland versus Strickland. There's a lot of cases all about you have to

assert an affirmative defense. So without asserting an affirmative defense, they're now trying to indirectly chat about this matter that is not properly before the court.

MS. HEDGEPATH: Your Honor, Mr. Slotchiver brought up something that we might be able to resolve this.

THE COURT: Pardon me?

MS. HEDGEPATH: Mr. Slotchiver brought up something that might allow us to resolve this. He indicated that the question was whether or not the Cohens had the authority to pay the cost of the litigation in California. Are they not questioning the amount of the cost? If they're now questioning the authority, that is something Your Honor can determine as a matter of law by reviewing the documents.

MR. DAN SLOTCHIVER: The authority, we've already -- we've already discussed the authority, Your Honor. We put in evidence to show the amounts that they've spent, but the questions now, as I understand them, are going towards the reason they did it and relying on other testimonies without having raised an affirmative defense.

Whitehead versus State, 2002 case. The failure to plead an affirmative defense is deemed a waiver of the right to assert it. And what we're seeing now is just exactly that defense. It even goes so far, Your Honor, the advice of counsel is an affirmative defense, as has been stated in the Gause versus The First Bank of Mariana case.

So all of these matters that are going before the court now are going towards the issue of asserting an affirmative defense. If they're not going towards an affirmative defense, I don't know the relevancy of them, and if they are going towards an affirmative defense, it was not pled before the court.

MS. HEDGEPATH: Your Honor, we have been arguing most of the last day, probably the last day we were here before you, and he's just now bringing it up. I think he's waived his right to bring it up, if it has any merit at all.

MR. DAVIS: Your Honor, I would like to say something also.

THE COURT: Mr. Davis?

MR. DAVIS: Mr. Slotchiver keeps saying that the letters of conservatorship from

California say dissolution of marriage. He fails to read the paragraph above that where it says: Compromise or settle any dissolution action. He keeps going back to this document from California that says you have the authority to handle a dissolution of marriage, and a dissolution of marriage is granted, therefore, your authority ceases, but he fails to point out a critical part here in this previous paragraph, where it says compromise or settle any, A-N-Y, any dissolution action, and Lynette is simply going into the different matters related to the dissolution action, so what she's doing is entirely appropriate.

MR. BOYD: Your Honor, if I may just briefly respond.

MR. DAN SLOTCHIVER: Now they're both arguing, Your Honor.

MR. BOYD: Your Honor, Mr. Slotchiver has raised -- you know, he's attacked my ability to draft a pleading, and I think I should be able to respond.

THE COURT: I'm going to let Mr. Boyd, since he signed the answer, respond.

MR. BOYD: I mean, Your Honor --

MR. DAN SLOTCHIVER: I'm not attacking his ability --

THE COURT: Pardon me?

MR. DAN SLOTCHIVER: I'm not attacking his ability to draft a pleading. I'm just trying to hold him to what the pleading says.

THE COURT: I understand. He's the defense, so I'm going to allow him to respond.

MR. BOYD: And I can understand -- I can understand counsel's desire to win this thing on a technicality, but let's just look at the pleading, Your Honor. We alleged -- in addition to our general denial and our specific fact answers, we alleged a third defense of the good faith exercise of the trustee's authority, which is the trustees never sought to engage in any activity that was improper or unjustified or unreasonable. They attempted to exercise their authority as trustees in a good faith manner. We alleged for a fourth defense, estoppel and unclean hands.

Your Honor, all of this goes to show -- all of this evidence relates -- again, it relates to the reasonableness of the trustee, but it also relates to the behavior of Mr. Dorn in

this case, behaving unreasonably in California and then coming to South Carolina and saying: Hey, you spent all this money. Well, my point is you can't act unreasonably to create these issues and then come into court and say: Hey, I'm not the fiduciary. I mean, it's an absurd box that this litigation has put the trustee into, Your Honor, as she's testified to again and again.

And so yes, we raised estoppel, unclean hands, we raised judicial estoppel as a defense, and so I think there are numerous grounds upon which we can go into this to establish, quite frankly, that Mr. Dorn himself acted unreasonably in various respects, going back to the very beginning, which created many of these issues, and the trustees, in response, Your Honor, have attempted to exercise their authority as trustees in good faith, they've responded to a very difficult situation as best they can, and throughout it all, Your Honor, they have sought, and I would argue, achieved the aim of acting reasonably.

MR. DAN SLOTCHIVER: Your Honor, I'm not -- I haven't had the liberty to see what communications the Cohens had with different

counsel about different issues, for a variety of reasons that have been discussed before the court, and I disagree with the fact that it's such a difficult box. I don't see it as such a difficult box.

I think that the evidence clearly shows and will continue to show that all they had to do is petition the court and get clarity. They could have filed for the dec action that was referenced in the email that was sent to the court. They could have gone through with an action to find out from the court what can we do or at least come to court to find out the answer to that.

None of that -- and that's all part of the case, and it'll continue to proceed, but the law on the affirmative defense is clear, and they haven't raised it, and they have raised different defenses, and with those defenses, they have the right to assert whatever they want.

We have raised this issue repeatedly about the fact that they're going to come in and try to bring a lawyer to testify, but the law is the law. I can't change it, nor do I wish to. The law -- they cannot come in and say we're

relying on the doctor, we're relying on the lawyer, we're relying on these people. They had no right to do it, unless they made an affirmative defense, which they did not do in this case.

Now, the standard to which my client acts and the Cohens, in their trustee capacity, act is completely different. We all, as individuals, have the right to do things that are wise or not wise, we all make decisions back and forth, but as a trustee, there's a higher standard.

THE COURT: I understand that.

MR. DAN SLOTCHIVER: And it's not about the guardianship; it's about the spending of the money.

THE COURT: I'm looking over their answer, good faith exercise of trustees' and conservators' authority, and it would seem to me that this line of questioning goes along with that defense.

MR. DAN SLOTCHIVER: Even if it's a good faith exercise of their authority, by no means is that an affirmative defense that I relied on advice of counsel or I relied on advice of a doctor. It's a good faith. We did what we

thought was right. But there's a far distinction, Your Honor, that I would argue between we did what we thought was right, which is what they put up testimony about so far, I truly believe that she would benefit from this, I truly believe it's the right thing to do for her, I truly believe that's what we should do. There's a distinction from that and asserting: I relied on what counsel told me. I relied on what doctors told me. That would be an affirmative defense from which we would have the opportunity to conduct discovery and to find out what they had said and what they were told. They did not assert that.

We clearly understand, from the testimony that she's presented, that she has and will continue to articulate that she, in her opinion, acted reasonably and acted as she thought that she should act, but the standard, we believe, is different than what the person thinks they should do. I believe the standard is what a prudent person would do. So those are arguments that we'll discuss and we'll have further testimony on and we'll argue with the court over, but I don't believe that, in any manner, reaches the level of asserting an affirmative defense.

And the law is clear. You have to assert it, and if you don't, it's waived. You cannot come into court and assert it. And all of this, Your Honor, really goes back to the underlying basis of knowing -- having the ability to file a complaint, answer the complaint, see the discovery, but I object to it based on that information.

And I understand that Your Honor is inclined to allow her to testify to some extent about what she thought and what she believed, but I do think that's different than what she was told and what she relied on.

MR. BOYD: Your Honor?

THE COURT: Mr. Boyd.

MR. BOYD: If I may just briefly respond. Throughout our complaint, we maintained the consistent position that the trustees had acted -- again, looking at Paragraph 18 -- consistent with their fiduciary obligations. Mr. Slotchiver is free and, in fact, did inquire as to all manner of actions by the trustees to ascertain where, in their opinion, there may have been a breach. We continue to hear about that. We've heard about that.

The fact is, our position is consistent, and I think Ms. Hedgepath is in that same -- she's squarely in that same spot. She's inquiring into matters that establish, under the totality of the circumstances, the reasonableness of the actions of the trustees.

MR. DAN SLOTCHIVER: I was shut out, Your Honor. I was given an objection based on attorney-client privilege, you're not entitled to this information. I was clearly shut out, and to say I was free to ask anything I wanted, I was not free to ask anything I wanted without the objection coming right at me. But to come into court now and to say that we're entitled to rely on information, it's no different than the same argument we've raised over and over throughout this case about discovery.

THE COURT: Well, I understand that this document is not a document from her attorney, it's from Mr. Dorn's attorney.

MR. DAN SLOTCHIVER: But the question she asked is what elicited my objection. It wasn't the document itself; it was the question that she asked.

MR. BOYD: These are records of --

these are matters of public record in California, Your Honor.

MR. DAN SLOTCHIVER: If you want the record to go in without questioning about it, that's a different scenario.

THE COURT: I'm going to allow her to initially question the witness on that. I understand what your objection is. I didn't hear the nature of her question. It's been a while ago. I thought you were objecting to the document and the affidavit, I think, of --

MR. DAN SLOTCHIVER: More the context that was coming in, but I'll let her ask, and I'll raise it again if I need to.

THE COURT: Go ahead, Ms. Hedgepath.

MS. HEDGEPATH: And I've forgotten where we were, but for the record, reliance on counsel, I don't see that listed under 8C as an affirmative defense, and I'll tell you that now for the record.

THE COURT: Thank you.

BY MS. HEDGEPATH:

Q. We were looking at R-10, I believe.

A. Thank you.

Q. This was after the petition for the

dissolution had been filed, and in that petition, you had asked for visitation, you had asked for custody to the father, you had asked for legal and physical custody to the father and visitation, and now, on January 13th, 2009, by pleading filed, R-10, he comes in and seeks child support. Is that correct?

A. That's correct.

Q. And you have discussed previously the ramifications that child support would have on the trust, so I'm certainly not going into that with you again.

A. Yes.

Q. Now, thereafter, in Exhibit R-7, I think Ms. Greene, Mr. Dorn's attorney, on March 24th, petitioned the court questioning your standing to pursue the visitation?

A. That's correct.

Q. Now, that was not until 2010. Is that correct?

A. That's correct.

Q. And you had filed your petition -- when did you file your petition, Susan? You filed your petition back in January of 2008?

A. Yes, that's correct.

Q. And it is my understanding that Mr. Dorn wanted to proceed with all issues except the issue of visitation. Is that correct?

MR. DAN SLOTCHIVER: Your Honor, I object to her understanding of what Mr. Dorn wanted. I think the document speaks for itself.

THE COURT: Ms. Hedgepath, do you want to rephrase that?

BY MS. HEDGEPATH:

Q. Let me introduce a document filed April the 8th of 2010.

(RES. EXH. 2-3, Responsive Declaration to Order to Show Cause, was marked for identification.)

BY MS. HEDGEPATH:

Q. Mrs. Cohen, I've handed you a document that's entitled: Responsive Declaration to Order to Show Cause, and it doesn't have a filing date on these, but do you recognize that document as one having been filed in the California case?

A. Yes.

Q. It has a hearing date of April 20th of 2010?

A. Right, that's correct.

Q. And is this a document whereby

Mr. Dorn sought to pursue all of the issues except child support? I'm sorry, except visitation.
A. Yes. He says he does not consent to visitation.
MS. HEDGEPATH: We would offer that, Your Honor, as R2-3.
THE COURT: Any objection?
MR. DAN SLOTCHIVER: Only the same objection we had earlier with reference to Mr. Boyd's line of questioning, but other than that, no objection.
THE COURT: Objection is noted, and admitted over objection.
(RES. EXH. 2-3, was admitted into evidence.)
BY MS. HEDGEPATH:
Q. So now you're in April of 2010 and still haven't been able to deal with visitation?
A. That's correct.
Q. Now, during this time, had Abbie been able to have any visitation with the children?
A. She had the first visitation in I believe it's December 2010, so up until that time, she did not have any visitation.
Q. So you filed in January of 2008 the

action for dissolution?
A. That's correct.
Q. And now we're already in spring of 2010?
A. That's correct.
Q. And we have discussed pleadings filed to dissolve the marriage?
A. That's correct.
Q. For bifurcation?
A. Right.
Q. Motion to allege that you had not had standing?
A. Two motions, yes.
Q. And various other hearings that's in the record?
A. Other issues.
Q. Now, Mr. Slotchiver made a comment, if I understood him correctly, that you had -- that you could stop the bleeding, and by that I mean you could stop spending the money from the trust, that you had the right to dismiss the action, and yes, ma'am, you could have walked away if they would have dismissed the child support, but they didn't dismiss the child support, did they?
A. No. They never dismissed it.

Q. And if they had and you had walked away, what would that have meant?
A. If they had dismissed it?
Q. If you had walked away from the issue you had pending for visitation.
A. And child support? I'm sorry.
Q. No, Mrs. Cohen, I'm sorry. And I'm not making myself clear.
A. Okay.
Q. Was it important, in your opinion, to establish visitation and/or a relationship between Abbie and her three children?
A. Yes, it was very important.
Q. Did you believe at the time of this litigation and do you believe today that it is in the best interest of Abbie, regardless of what any court order may say, and in the best interest of the children --
A. Absolutely.
Q. Let me finish. That it is in the best interest of the children and in the best interest of Abbie that there be visitation?
A. Yes.
MR. DAN SLOTCHIVER: Your Honor, I would object. There's no foundation that she has

the ability to testify as to what's in the best interest of Abbie or the children. Understanding your rulings earlier with regard to her observations of Abbie, I understand there may be some leniency on that issue, but with reference to her commentary on the children, her interaction with the children has been extremely minimal throughout the entire time period, and certainly, that, at the very least, should be stricken. I don't believe that would be an appropriate question. I also object with reference to Abbie because she's testifying now as to the best interests of Abbie.
MS. HEDGEPATH: Your Honor, who better to know what is in the best interest of Abbie than her own mother, who is there on a day-to-day basis? She may not be in the room when visitation is there, but she knows and sees the reaction and the effect that being around the children has on Abbie.
THE COURT: I think she can testify, and I think as a fiduciary, she has to take into consideration what she believes is in the best interest of Abbie.
MR. DAN SLOTCHIVER: How about the

children?
THE COURT: The children, I think that's more problematic. I think with respect to that, because she has a limited, I understand, contact with the children, I don't know that she can testify, so I will sustain the objection as to the testimony regarding what's in the best interest of the children.
MS. HEDGEPATH: Which we have the order. That's fine, Your Honor. I'll withdraw that.
THE COURT: I'll overrule the objection with regards to what's in the best interest of Abbie and allow the testimony.
BY MS. HEDGEPATH:
Q. Now, in the opening, Mr. Kachmarsky made a comment about some of the treatments that were being paid -- for which were being paid from the trust.
A. Yes.
Q. In fact, he defined some of them -- I think he used the term quackery, and I'm not sure -- I don't recall which ones, to which -- to which ones he was referring. But we don't have the time to go into detail, and I know Judge

Edmonds is wanting me to hurry up, we've got other people that need to examine you, but just tell the court some of the treatments that Abbie is receiving and what improvement, if any, you have observed or that have been reflected in the doctors' reports?
A. Abbie receives a number of treatments. One of the main ones, or several of the main ones, are neurofeedback. We have seen dramatic changes in the waves, her brain waves. In terms of alpha, beta -- I don't know how much you want me to say to that -- in terms of changes, actual changes that are reflected on EEG and her brain waves, they're often good.
MR. KACHMARSKY: Your Honor, I would object to this. I mean, there's not a single document that's been admitted into evidence so far that demonstrates that there's been any change, so she's going to rely on -- if she's going to make those sort of statements, then I would like to see what documents they're relying on.
MS. HEDGEPATH: Your Honor, I don't have to have a document to have her testify. I mean, she can present oral testimony without a document as to the type treatments.

MR. KACHMARSKY: She's testifying that there's been improvement in her condition. There's not been a single document, no evidence that's been admitted in this entire trial, that demonstrates that. There's no foundation for what she's saying.
MS. HEDGEPATH: Her observation of Abbie.
MR. DAN SLOTCHIVER: That's different, Your Honor, than her commenting about the EEGs and the reports that she's read. I think her observation's different.
MS. HEDGEPATH: Well, can she not testify about the treatments for which the trust is paying or they're paying individually for Abbie and the results that she has observed from those things?
THE COURT: I think she can testify about the course of the treatments that the trust has paid for and whatever changes in Abbie that she may have seen or witnessed, but I do think she's getting into reports that are not in evidence, doctors' reports, and I don't know if she can testify as to changes in the brain waves, and things of that nature, so I'm going to sustain

the objection with respect to that.
BY MS. HEDGEPATH:
Q. So Mrs. Cohen, on terms that are not technical, that even I can understand, okay, explain to us the type treatments that Abbie is getting and any improvements, if any, that those treatments -- any improvements, if any, you have been able to observe personally as a result of those treatments.
A. As a result, on a nontechnical level, I have certainly seen a lot more responsiveness due to her treatments, including the neurofeedback, and in terms of her being able to answer questions, she does occasionally say yeah and no.
MR. DAN SLOTCHIVER: Your Honor, I would object to her response as to the fact that Abbie is answering questions or not answering questions. It is inappropriate. There is no document to support this. This is purely her testimony stating what Abbie can and cannot do.
THE COURT: And I'm going to allow her to testify as to what Abbie can and cannot do. I'm going to strike that Abbie is responding yes, but I will allow her to testify as to what Abbie

has been able to do, what she's physically seen her do.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: And I'll give her this leeway. I can -- as to her impression, I'll allow her to testify as to her impression of Abbie's behavior.

MR. BOYD: Your Honor, if I may, I just want to state one thing. We, in our discovery responses, incorporated all medical providers that the Cohens have used in the care of Abbie. There was no objection to that. And I'm not aware of any requirement that a witness cannot testify to knowledge that's not directly supported by a paper document in evidence. So, I mean, again, I just want to point that out for the record so the court's aware of that.

We did incorporate in our responses to Mr. Slotchiver's discovery all medical providers utilized by the Cohens, as referenced in the documentation that we did produce. And so I just think that Ms. Hedgepath is on solid ground here, just wanted to make that comment in the record.

THE COURT: Thank you, Mr. Boyd.

BY MS. HEDGEPATH:

Q. I want you to talk a little slower for us, okay.

A. I'm sorry. I'm a little confused. So now am I allowed to mention about the reports?

Q. Yes, ma'am. If you say something you shouldn't --

THE COURT: Not specifically about the reports and what the reports may have said or maybe what the testing may have identified as changes, but what you have seen, what you've noticed, how you've seen Abbie behave.

THE WITNESS: Okay. I personally have seen many changes. Abbie and I read for many, many hours a day. We go over various --

MR. DAN SLOTCHIVER: Your Honor, they read. They go over things together, her and Abbie. Are we allowing this?

THE COURT: I'll allow her to testify as to what she and Abbie do together.

MR. DAN SLOTCHIVER: As to what she observes or what Abbie -- now she's testifying as to what Abbie does.

THE COURT: What Mrs. Cohen does with Abbie and what Abbie does with her. Now, if she

says: Abbie and I read, then I'd like to know whether Abbie is actually reading or whether Mrs. Cohen is reading. I'm assuming Mrs. Cohen is doing the reading, and Abbie -- in Abbie's presence, with Abbie.

THE WITNESS: That is generally correct, although Abbie can read one page at a time on an iPod with it enlarged.

MR. DAN SLOTCHIVER: Your Honor, I have to object again. There's no basis to give this testimony that Abbie can read. There has not been -- there is no evidence that's been submitted whatsoever to show that she can read or that she can interpret. It's just not there. We don't have it. And for her to be able to testify to it, I would object, Your Honor.

THE COURT: I'm going to allow Ms. Hedgepath to explore that testimony just a little bit, see if she can establish through the testimony how Mrs. Cohen is testifying that Abbie is reading, and then I'll determine whether I should strike that.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE WITNESS: So I see Abbie's eyes

move back and forth, like this, and when she comes to the end of the page, I will ask her questions about what was on that page, and she answers --

BY MS. HEDGEPATH:

Q. And how does she respond, if at all?

A. She will respond with a long yes blink to yes or --

Q. Now, she blinks, and you take that to mean a yes?

A. Yes, or she blinks for a no. We also have yes/no cards, and we have on the iPod yes and no screens so that she can blink for the screens, and we also have something called Eagle Eyes.

Q. Eagle Eyes?

A. Eagle Eyes. And that's -- I brought someone in from Utah from the technology developed by Boston College, and they worked with Abbie to determine --

MR. DAN SLOTCHIVER: Your Honor, I object to what another company did in working with Abbie. That goes beyond the observation. And even the testimony she's giving right now, Your Honor, this has been -- this has already been judged and ruled on and heard upon, the reference to being able to acknowledge and to respond yes or

no. By blinking their eyes and looking back and forth between a yes or no, that's been ruled upon by the California court, and they did not find it to be prevalent.

MR. BOYD: Your Honor, that order in California, the pendente lite order that was adopted by -- you know, this whole thing is why can't you just put the -- why can't you put the anvil down. Why can't you put the guns down. The parties in California agreed to adopt the order by consent. That order -- that order has limited precedential value, if any.

MR. DAN SLOTCHIVER: That order becomes res judicata, Your Honor.

THE COURT: Let me ask you: When was that order entered?

MR. BOYD: 2011, Your Honor.

MR. DAN SLOTCHIVER: And it specifically talked about the vision and about the yes and the no and the blinking of the eyes, what the court did to review it and the court's determination.

MR. BOYD: Your Honor, in lieu --

MS. HEDGEPATH: Well, Mr. Slotchiver said there can be no improvement, that once the

court orders it, you're stuck in time. This is a living, breathing individual.

MR. DAN SLOTCHIVER: If there was improvement since that time, number one, we don't have evidence of it. Number two, it does not -- the fact that you might improve since the time of the court order does not mean that everything you did from the beginning forward still counts. Your actions have got to be at the time you do them. You've got to exercise prudence for each and every action you do.

So even if today, miraculously, Abbie were to wake up and be able to talk, it would not justify the expenditures that were taken at a time when we assert that they were not allowed to be taken, and I think that's what -- this is an attempt to show if she could do something today, then it means everything we've done up until now is okay.

The court has ruled on it the same exact hearings, and it's res judicata. We consented to it. Your Honor, we have consent orders all the time in cases throughout the courts. It's an order. When you consent to it, it's an order. It's res judicata.

This exact same issue that she's now talking about was heard and evaluated and consented to her as a fiduciary in a different court dealing with the same issues, but instead of the reasonableness, it was dealing with the competency, and now to come into court and assert it again is exactly what they've been accusing us of doing throughout this whole proceeding. They said we want to retry the issue. Actually, we don't. We think that issue's already been heard. And I'll be happy to show you the order. It's been submitted into evidence, Your Honor, by the court.

MR. BOYD: Your Honor, may I make one comment, Your Honor, briefly?

THE COURT: Yes, sir.

MR. BOYD: These are equitable issues. It's the same circumstance in any child visitation circumstance. If the circumstances change, the court is always free to revisit those issues and revamp the child visitation schedule to meet the needs of the parties at that time. It doesn't really matter what the Cohens agreed to in the context of that settlement.

And again, they're being attacked on

the left for pursuing litigation unreasonably. When they reach a compromise, they settle with the parties, then suddenly, oh, it's all res judicata. It's decided. The fact of the matter remains, Your Honor, if Abbie, her circumstances change, the court is free to revisit those issues at any time. It doesn't matter what the order says.

MR. DAN SLOTCHIVER: We don't believe they reached a compromise, Your Honor. We think they got to the end and decided to stop spending money. There's a distinction.

MR. BOYD: The fact of the matter is, Your Honor, the order was entered by a consent agreement of the parties.

THE COURT: Ms. Hedgepath?

MS. HEDGEPATH: Your Honor, Mr. Slotchiver wants, out of one side of his mouth, to say that all of this money was spent in California to establish visitation. Number one, they didn't have authority. Number two, if they did have authority, it was unreasonable to do so, because you've got an individual there that's just breathing. That's all she's doing. He wants you to believe she's brain dead. She's totally incompetent. That is not the case.

I'm here to show you and for Mrs. Cohen to testify and to show to you that all that fight in California, all that money that was spent was worth every dime of it if it got Abbie what little bit of time she got to spend with those children, and the only way I know to do that is to convince Your Honor that Abbie, yes, she does more than lay there and breathe and is waited on hand and foot. There is a person in that body. And it was worth it for Susan Cohen, as much as was spent, yes, it was worth it, rather than for the mother to never know the children or the children never to know their mother.

MR. DAN SLOTCHIVER: The evidence not only doesn't support it, it absolutely contradicts what was said. Secondly, Your Honor, her desire to let her child be with her children does not disavow the court or anybody, or her as a trustee, from her responsibilities as a fiduciary.

You know, our argument is that the records clearly do not give the authority, number one. Number two is even if it did give the authority, it would be unreasonable to do what they did. There's no authority to do it. And that's what this case is about. It's not about a

mother's desire not to accept what people have said and that continue to believe it. It's not what the case is about.

If they want to concede that as of the date of the final order, that there was no benefit and argue with us that since that date, she's become better, and therefore, they're asking that the court go back and change the ruling of California and change everything to fix it based on some equitable argument, this is the first we've heard about that. That's not contained within the pleadings. It has not been asserted to us in any manner whatsoever, and this is truly the first time I've heard that we think she's better now, and therefore, you should exonerate them from all the expenditures because she's better.

And even if she were to get better today, there's no evidence that we've been provided that shows that it's because of the expenditures of the money in California or that it's because of the care that she's gotten that's made her better, as opposed to some other reason. We just don't have it, it's just not before us, and I think this whole line of questioning is improper as it alludes to this issue.

THE COURT: Anything else, Ms. Hedgepath?

MS. HEDGEPATH: I think it ludicrous that Mr. Slotchiver will come in here and Dan Dorn will come in here and argue with the Cohens about money that they spent to get the children and Abbie visitation with each other when the order specifically said -- and I forget the one word that it said, but it didn't say it would be no benefit to Abbie, it was some limited benefit, but it said that it was a definite benefit to the children. And now they're saying that should not have been established, the money shouldn't have been established, even though it's benefiting the children of Dan Dorn.

But be that as it may, I will proceed. We will present evidence later, professional evidence, as to the improvement of the children.

THE COURT: I will sustain the objection to the extent that Mrs. Cohen is testifying as to things that Abbie can do, without there being some other direct testimony or evidence presented, that she can read herself, that she can acknowledge yes and no, end of page, things of that nature. I will allow her to

continue to say what changes she's seen in Abbie, but not those things that she is inferring that maybe Abbie is doing, without there being some direct testimony that she's -- from medical professionals that she's actually able to comprehend those things.

BY MS. HEDGEPATH:

Q. Can you do that for us, Mrs. Cohen?

MR. DAN SLOTCHIVER: Your Honor?

THE COURT: You know, I can't have you say: Abbie is reading. Abbie is -- she acknowledges when she needs me to turn the page by her blinks and so forth. But you can tell me her physical changes, what she's able to do now that she wasn't able to do before. And if she couldn't blink before and she can blink now, then I'm happy to hear that, but not put in your testimony of what you think that means.

THE WITNESS: Okay. Well, no. She could blink before. She has always had understanding, so I'm not -- this is not a new assertion.

MR. DAN SLOTCHIVER: Your Honor, I object to the reference that she had understanding, and I would advise the court, based

on the exhibit that we have presented, which is the order from California, there is a particular paragraph that reads: There is no compelling evidence that the visitations by the children will have any benefit to Abbie.

And this is exactly -- we're going back into a child custody case now, Your Honor. This is the order of the court that was consented to, and I would ask, Your Honor, that you consider this in limiting the testimony that's being presented by the Cohens because it talks about all of the issues that they're now changing. It talks about the blinking. It talks about the yes and no. It talks about reviewing the video deposition of Abbie.

THE COURT: And I've certainly just instructed her as to that, that I'm not going to consider that testimony. Have I not? I just instructed her that I was not going to consider that testimony.

MR. DAN SLOTCHIVER: But she did it again anyhow.

THE COURT: I understand, and I'll strike that.

MS. MOORE: Your Honor, can I just be

heard on one issue?

THE COURT: Yes, ma'am.

MS. MOORE: The fact that they got to the very end result, whether it was by a determination by a judge or by a consent, simply that fact doesn't mean that whatever steps they took up to and leading into that order were not good fiduciary responsibility.

I mean, if the judge had issued an order that was against them, that doesn't mean that whatever steps they took or decisions that they made were automatically a breach of fiduciary duty. So I think that there has to be some ability on the part of the trustee to show, well, here's what we did, here's why we did it, here's who we consulted, and here's how we proceeded accordingly. Just because they got a ruling against them or just because they ultimately made a decision to enter into a settlement, that should not suddenly just automatically make everything they did up to that point a breach of that fiduciary duty.

THE COURT: And I agree with that, and I think the court has allowed her to testify as to some of the things she relied on in taking the

actions that she did as trustee.

MS. MOORE: I think I might have -- oh, I'm sorry. Should I let Reese go first?

THE COURT: I'm going to go back to Ms. Hedgepath to allow her --

I'm sorry. Mr. Boyd?

MR. BOYD: I'm sorry, Judge, but I just wanted to respond to Mr. Slotchiver's comment briefly about this order, very briefly.

The language from the order, Your Honor, again, is subject -- the language -- the specific sentence is: There is no compelling evidence that the visitation by the children will have any benefit to Abbie. The court doesn't say there's absolutely no evidence. It just said there's no compelling evidence. And again, in the ultimate result, as we pointed out previously, the court ordered that Abbie, not the children, Abbie, in her own name, was entitled to visitation. I think that's very important.

THE COURT: Thank you.

THE WITNESS: I'm trying to give you an example of something that doesn't -- isn't related to anything outside of my observation. You asked me about therapies. One of the

therapies she goes to is vision therapy, and without --

BY MS. HEDGEPATH:

Q. And who is that?

A. That's Dr. Mark Dean, and the therapist, his direct therapist, is Robin Vreeland. And I won't tell you anything about what he said.

Q. If you know.

A. I think I can give you an example that I've observed. Previously, Abbie could -- we didn't try to take Abbie to the movies early on, because it was not a possibility. It was not a realistic possibility. Now Abbie loves to go to the movies, especially 3-D.

MR. DAN SLOTCHIVER: Your Honor, I object to the reference that --

THE WITNESS: Okay. We enjoy it. She's quiet.

MR. DAN SLOTCHIVER: I don't believe that she can tell us what Abbie loves or how Abbie feels. She can tell what she observes, but there is a distinction.

THE COURT: Yes, ma'am. Just tell me what you observe.

BY MS. HEDGEPATH:
Q. Let me ask you this: When Abbie is at the movies now, is she kicking and screaming and crying?
A. No, she's not.
Q. Is she whining?
A. No, she's not.
Q. Is she paying -- from your looking at her physically, is she looking at the screen?
A. Totally, yes.
Q. Is she paying attention to things? From looking at her eyes, is she wandering around the room, or is she looking at that screen?
A. She's looking at the screen.
MR. DAN SLOTCHIVER: Your Honor, she is not in a position to tell us what Abbie is sensing or feeling, and that's the question she's been asked.
MS. HEDGEPATH: I didn't ask her that.
THE COURT: I'll allow that. She didn't ask that.
BY MS. HEDGEPATH:
Q. Does Abbie have any serious physical conditions?
A. In terms of anything --

Q. Other than the brain.
A. She appears to be in excellent physical health.
Q. Now, I want to talk about Medicaid --
A. Yes.
Q. -- and the trust.
A. Yes.
Q. How Medicaid and the trust interacts.
A. And what? I'm sorry.
Q. How Medicaid and the trust interacts. It is my understanding, and please correct me if I'm wrong, that the special needs trust was established so that Abbie could get Medicaid to assist with the medical treatments and hospitalizations and things like that. Am I correct?
A. That's correct.
Q. Without Medicaid, would her award of damages be enough to cover all of her costs? I know you mentioned earlier your fear of not having insurance and not being able to pay for anything, so in a nutshell, I'm asking you does Abbie need Medicaid?
A. Well, she needs it if there was ever a medical issue. Her general additional -- their

contribution is about $5,000 a month in terms of services.
Q. And is my understanding that Abbie gets Medicaid?
A. That's correct.
Q. Those medical items that Medicaid approves and will pay for, Medicaid steps in first and pays those?
A. Yes, at a much reduced fee, yes.
Q. And then you are limited by the code as to what the special needs trust will pay for?
A. Right.
Q. You're restricted, shall I say, in what that money can be used for?
A. Yes.
Q. And it has to be used for Abbie's benefit?
A. Yes.
Q. And then, of course, you and Dr. Cohen have taken care of some things you mentioned earlier?
A. That's correct.
Q. Am I also correct that at Abbie's death, the annuity stops?
A. That's correct.

Q. And am I also correct that at Abbie's death, any amounts that have been paid by Medicaid, they come in, and they take the amount that they have advanced out of the trust?
A. That's correct.
Q. In other words, they get repaid before anybody else gets any funds?
A. That's correct.
Q. And if, after Medicaid comes in, there are any funds in the trust, that goes to Abbie's children. Is that correct?
A. That's correct.
Q. So is it possible, if Abbie were to have a series of serious illnesses, that at Abbie's death, all the funds could go to Medicaid, even though they have children?
MR. DAN SLOTCHIVER: I object. This is just pure speculation at this point.
THE WITNESS: That's correct.
THE COURT: Excuse me.
MR. DAN SLOTCHIVER: This is pure speculation, is it possible that she could need to use all her funds. It's pure speculation. There's no basis to give this opinion. Anything's possible, but I don't think it's a proper

question.
MS. HEDGEPATH: I'll withdraw it, Your Honor.
THE COURT: Thank you.
BY MS. HEDGEPATH:
Q. And I will leave you with this: Medicaid is going to be paid first, even if it depletes the trust, if Medicaid is owed that amount?
A. That's correct.
Q. Thank you.
MS. HEDGEPATH: That's all I have, Your Honor.
THE COURT: Thank you.
Ms. Moore?
MS. MOORE: Yes, Your Honor.
THE COURT: Can we take five?
MS. MOORE: Sure.
THE COURT: Do y'all mind, real quick?
MR. DAN SLOTCHIVER: Are we having questions also by Ms. Moore on this?
THE COURT: Yes, sir. We're going off the record. We'll come right back if you have an objection. I'm not sure. We'll take about five minutes real quick. Thank you.

(A recess transpired from 3:12 PM to 3:21 PM.)
THE COURT: We're back on the record in the Abbie Dorn matter, and Ms. Moore, I believe were you going to examine Mrs. Cohen?
MS. MOORE: Yes, ma'am.
MR. DAN SLOTCHIVER: Your Honor, may I be heard for clarity?
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: And I know we took this up briefly in chambers the other day, but I just wanted to make sure I understood.
My understanding was that from the inception, this court appointed Mr. Kachmarsky as guardian and attorney for the guardian ad litem, and I had understood, up until the trial, that Lee Moore was appointed as the guardian and that Lynette Hedgepath was the attorney, and my understanding was that everybody's responsible to somebody, and that the guardian for Abbie was connected to the attorney --
THE COURT: Guardian ad litem.
MR. DAN SLOTCHIVER: The guardian ad litem was connected to the attorney. Otherwise, we've got two people that each get to do an

opening statement, a closing statement, examination, cross-examination, when in reality, Lee Moore's role is not that as an attorney, but as a court-appointed guardian ad litem, as opposed to an attorney and -- in that position.
THE COURT: That's right.
MR. DAN SLOTCHIVER: But your ruling, however, as I understand it, though, is they both get the opportunity to examine, cross-examine, open, close.
THE COURT: Because I think they're two different roles, and that's why I appointed -- initially, when this action was filed, I was concerned that there could be a conflict of interest. I was trying to head off us getting six months, a year, or two -- I didn't know how long -- down the road in this case, and me having appointed just one person to serve as both attorney and guardian ad litem for Abbie. I was concerned that if I appointed one person for both of those roles, that that person may come up and say: I have a conflict in doing both, because they're two distinct roles. And so from the very beginning, I felt like it was important to appoint separate attorneys, one as attorney, legal counsel

for Abbie, and one as a guardian ad litem for Abbie.
And Ms. Hedgepath does not represent Ms. Moore as guardian ad litem. She represents, as attorney, Abbie Dorn. Ms. Moore is a court-appointed guardian ad litem, serves a totally distinct role in this case, and I think she has an opportunity to call witnesses and examine witnesses.
MR. DAN SLOTCHIVER: Well, the opening statements that we did, Ms. Moore did not do an opening statement, so I had not understood that, and when --
THE COURT: Because she chose not to.
MR. DAN SLOTCHIVER: Right. I understand that.
And when Ms. Hedgepath did her examination, she spoke on behalf of Abbie. She said: I represent Abbie and speaking on behalf of Abbie. I would argue that I think the guardian ad litem, likewise, serves in a position of speaking on behalf of Abbie, so we really have two different people, two different lawyers, serving the exact same role.
THE COURT: Well, one is legal

counsel, one is guardian ad litem. And again, their roles may not be very different, but my concern was that they could be, that there could be a difference between legal representation of Abbie and her legal rights versus what is in Abbie's best interest.

MR. DAN SLOTCHIVER: I never understood the distinction between it, but I'm understanding it now. Thank you, Your Honor.

THE COURT: Thank you.

Ms. Moore?

MS. MOORE: Thank you.

THE COURT: So at this point, you have no objection to Ms. Moore?

MR. DAN SLOTCHIVER: Not based on the court's ruling.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MS. MOORE:

Q. Mrs. Cohen, bear with me today. I brought my distance glasses, which makes it quite challenging to see paper and to see the computer. What I do want to do, though, is -- I've got distances. I've just got to take them off to be able to read.

I do want to go over with you some of the treatment that Abbie is being provided, and what I would ask you to do is simply start with a list. Rather than me give you names, could you just give us a list of individuals, medical professionals or otherwise, who are providing services for Abbie at this point?

A. Would you like me to start with physicians?

Q. Sure.

A. Her neurologist is Dr. Frank Benz. And do you want me to explain what the neurologist does?

Q. No, ma'am, just need to know who --

A. Who they are?

Q. Uh-huh. And let me ask you this: How often does she see Dr. Benz?

A. She sees Dr. Benz between every three and every four months.

Q. How long has he been treating her? And I'm not looking for an exact amount. Are we talking about --

A. 2009, maybe, 2010, when he -- I believe that's when he came to town or when he -- something around then.

Q. And so other than going for intermittent checkups, there's no other thing that Abbie is seeking treatment with Dr. Benz?

A. He will recommend certain things to me that I try, and both in terms of medications and in terms of treatment.

Q. Well, what I'm getting at is your visits with Dr. Benz, that's just simply on a routine, intermittent basis?

A. Yes.

Q. You're not having a crisis or anything of that nature that has caused you to go back to Dr. Benz?

A. No.

Q. What would be her other medical doctors?

A. Well, my husband, of course, provides care, and then within Little River Medical Center, Dr. -- I'm blanking on his name. Bill -- I know him by his first name, Bill --

Q. Would that be who you consider to be her primary care physician?

A. Well, he's one of her physicians which she does see on occasion. She sees him at most once a year, and I think now it's been a little

longer than that.

But she sees very frequently, probably once a month, and every day I write to her, she has an MD who is also a homeopath, and that's Dr. Corrine Merrill. And Dr. Merrill, we are in constant contact. We write -- I write to her once or twice a day by email. It's just a brief communication. And when there's any change, she and Paul will discuss it, and she usually controls -- the two of them control all of her medical care.

Q. And what about as far as writing prescriptions, who controls that aspect of her care?

A. Well, Dr. Bill O'Conner will write some of them, and then the neurologist will. There are very few changes, but the last two changes have been written by Dr. Benz.

Q. Now, how about as far as other support-type medical care, such as a chiropractor or an acupuncture or things of that nature?

A. Right. She also has a chiropractor, Elisa McCann. Elisa Falcone is her married name.

Q. How long has she been seeing Dr. Falcone?

A. She has been seeing her I believe since 2009 also. As I said, she used to come to our house. Now we go there.

We also see, of course, Dr. McCarthy. We see him five hours a week. That's Robert McCarthy, and he has a PhD in neuropsychology.

Q. And what type of treatment does Dr. McCarthy provide?

A. He provides her neural feedback, and also, he used to come to our house every day. Now we're capable of -- or Abbie's capable of being taken to his office and being treated there every day.

Q. How long have you been treating with Dr. McCarthy?

A. I believe we started in mid-2008, so -- it may have been 2009. I'm not exactly sure, but quite some time.

And then we also go to Dr. Mark Dean, and Dr. Mark Dean is an optometrist.

Q. Let me stop you there. Who referred you to Dr. Dean?

A. Dr. Dean was actually referred to me by the doctor who she was seeing in California, who was her teacher, the teacher that the doctor

at the Centre for Neuro Skills took her to, and she said that he was her instructor, so he was the person who had really been one of the first people to develop the behavioral modification for vision that she used and that they use at the Centre for Neuro Skills.

Q. And what type of treatment does Dr. Dean provide for Abbie at this point?

A. Dr. Dean did the evoked potentials on her. He also did a reexamination on her most recently with evoked potentials, so he was able to determine when she has --

MR. DAN SLOTCHIVER: Your Honor --

BY MS. MOORE:

Q. Without going into what the doctor told you, I just want to know the type of treatment that he's provided.

A. And he sets up her behavioral visual therapy program, and then that's carried out under his supervision by Robin Vreeland.

Q. By Robin who?

A. Vreeland.

Q. And how often does Robin come and provide treatment to Abbie?

A. We also are able to take Abbie there,

so we take Abbie there every other week.

And on the opposite weeks, we go to Murrells Inlet, and we go down there for therapy. She's Sarah Gerace, but now she's Sarah Gaddy, and she is her speech therapist.

Q. What was that name again?

A. It was Sarah Gerace, G-E-R-A-C-E, and now it's Sarah Gaddy.

Q. Gotti, G-O-T-T-I?

A. G-O-T-T-I (sic). She is her speech therapist, and also, we take Abbie there.

And then she also goes for massages, which help relax her muscles, and we do that probably three or four times a week.

Q. Likewise, is that now also done outside of the house, as opposed --

A. Generally, it is, although she is in the neighborhood, so if she -- if her spa is closed, then she comes to us. If it's her day off, she'll come to our house, but she doesn't charge me any more to do that.

Q. And let me back up for a second. Who referred you to Dr. McCarthy?

A. Dr. McCarthy, I believe we first heard about him through Medicaid. My Medicaid worker

came and told me about --

Q. Without getting into what the Medicaid worker told you.

A. Yes.

Q. So as a result of conversation with her, you decided to have Abbie seen by Dr. McCarthy?

A. That's correct.

Q. And then, I'm sorry, as far as the chiropractor was concerned, how did you get a referral to the chiropractor?

A. She was from -- that was from the massage therapist.

Q. Now, what other medical providers as far as any type of treatment that is provided?

A. She also does craniosacral, and she does that every other week.

Q. Now, who is she?

A. And it's a he.

Q. Oh, excuse me. Who is he?

A. And his name is Dave Paxson. He is somebody who worked in the -- for many years he was in the Army, and he now is president of the -- in the United States for the Craniosacral Organization, and they have established the

treatment that they do on Abbie for wounded soldiers, and that's the protocol.

Q. Now, how long have you been receiving care through Mr. Paxson?

A. He sees her also about every three to four weeks, because he travels around the country, and we've probably been receiving care from him for two-and-a-half or three years.

Q. Now, how did you come by a referral for Mr. Paxson?

A. That came from Heidi McGovern, who's our Felderchrist therapist. And Felderchrist -- Heidi is a physical therapist. Felderchrist is a type of physical therapy that is much slower in motion, to allow the brain to absorb the memory, so that one can learn to absorb in the brain how a movement is made from a very early source. In other words, we learn to first creep, and then we learn to crawl, so it connects the various sources of the brain, starting at a primal level, with much smaller movements.

Q. Now, Mrs. Cohen, let's back up a little bit. When you first brought Abbie home, what were you able to see as far as her condition was concerned?

A. What I could observe was that Abbie was in a great, great deal of pain.

Q. Without describing what she may feel, what did you see or hear?

A. What did I see. I saw that her body would contract into terrible spasms and that she was not able to sleep through the night. She was unable to be in a position comfortably for more than a very, very short period of time, but required a lot of movement on everyone's part who cared for her in terms of picking up her legs and moving her body and just changing her position constantly.

Q. Was she able to sit at that time?

MR. DAN SLOTCHIVER: I'm sorry. May I be heard one moment, Your Honor?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Judge, I'm trying to give latitude. I know this is background to some extent, but I'm not really sure of the relevancy of this line of questioning as its goes to her medical condition and her medical treatments.

You know what, I'm going to withdraw. I'll withdraw.

THE COURT: Thank you.

BY MS. MOORE:

Q. So I'm sorry. Did you answer my question about whether she was able to sit up?

A. No, she was not able to sit up.

Q. And at that point, was she receiving any type of medication to address any potential pain?

A. Yes. She was on -- she was taking pain killers, six full pain killers a day, and now she hasn't had one in months.

THE COURT: Ma'am, could you -- I'm sorry.

THE WITNESS: I'm sorry. She was at a point where she was taking six full pain killers a day, which was the maximum allowed. Now she doesn't -- she hasn't had a pain killer in months, none at all.

BY MS. MOORE:

Q. And does she receive any type of pain medication in any other fashion, through a pump or IV?

A. The pump is not a pain medication, it's a spasm medication. So no, she receives no pain medication at all right now.

Q. When did you have the pump installed? When was that installed?

A. 2009. It was installed in 2009.

Q. And at which doctor's recommendation?

A. I was sent to Dr. Tavel in Charleston, and I believe the first person -- there was a couple recommendations. I think the first person was Dr. Benz.

Q. And has she had the pump continuously since it was first installed?

A. Yes.

Q. And has that appeared to have addressed issues with regard to muscle spasms?

A. Yes, it has.

Q. And is that something she will have to continuously have from this point forward?

A. Most probably.

Q. Going back to when she first came to your house once again, any other problems that you saw that existed at that point that perhaps have resolved themselves and no longer exist today?

A. Appearance-wise, you could see huge bulges in her arms because of going like this because of the severe contractions that she would have and the shaking, so her arms were very, very

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large, while her legs were very, very thin and wasted-looking.

All that now, the appearance is totally different. Her arms are normal. Her legs are well developed and muscular, but in a healthy, muscular way, from the Felderchrist therapy, because it is movement from the massage, so she is looking healthy and well-nourished and with a normal body weight and normal body appearance.

Q. And Mrs. Cohen, early on, I believe you mentioned the fact that the porch was enclosed, but I don't think you mentioned the fact that there's a pool inside the porch?

A. No. I didn't even get to that. The porch -- in fact, it's the second porch. The first porch is the one outside of her room, and then you travel into the -- our main living room, in our kitchen, also, but kitchen and the living room, and then you go out to the pool room. There is an enclosed pool in there. Now, I had put that in initially for myself, but we have to heat it now to between 94 and 98 degrees. I can no longer use it, because it makes me dizzy, but Abbie loves that pool.

MR. DAN SLOTCHIVER: Your Honor, I

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object.

THE WITNESS: I'm sorry. Abbie goes into the pool. Abbie goes into the pool five days -- at least five days a week, and my observation is that her entire body relaxes, and she can float on her own.

BY MS. MOORE:

Q. And is that one of the therapies that she participates in on a daily basis?

A. About five times a week. Initially, we did have a therapist come in to do something called Wadsu therapy, and Wadsu is a type of therapy that moves the body in the water, so it's physical therapy in the water. After I would say six months, the Wadsu therapist was able to thoroughly train my -- or Abbie's current caretaker so that they now administer Wadsu therapy in the pool.

Q. Now, Mrs. Cohen, you and I have discussed, essentially, the types of therapies that she's received over the years, have we not?

A. Right. I think I did mention the Felderchrist.

Q. Has there ever been a therapy that you've had Abbie participate in that you did not

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feel was beneficial for her?

A. Yes, definitely, and that was one of the ones that was recommended by her neurologist. He had told me about something that was --

Q. Without getting into what he told you, what type of therapy?

A. He recommended a type of therapy that he was hoping would -- I'm not allowed to use the word pain?

Q. Just tell me what type of therapy was it? Was it physical therapy?

A. It was a type of laser, a very huge -- it was almost like an MRI machine that he had recommended that had helped a number of his patients, and he was hoping it would help Abbie.

Q. Did you attempt that type of therapy?

A. Yes. She attended the full course of treatment as recommended by their physicians.

Q. And what did you observe of Abbie to make you believe that you should not continue that therapy further?

A. I observed no change.

Q. Now, as far as these other therapies that she's currently participating in, do you believe that they are of a benefit for Abbie?

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A. Absolutely. That's why I continued. And there was one other therapy she did.

Q. I'm sorry. I missed that one. What was the other therapy?

A. She also did reflexology, and I did not see a benefit to that. In fact, I saw a negative reaction to that.

Q. And so you discontinued that therapy?

A. I discontinued that.

Q. Now, as far as these various types of therapies are concerned, what type of research would you have conducted to determine the benefit/detriment of any of these therapies?

A. I belong to a number of organizations for brain-injured people, and I do a lot of research on the Internet. Also, that's one of the things that -- Jeffrey Cohen does a lot of the research for me on the various therapies.

MR. DAN SLOTCHIVER: Your Honor, I object to the reference as to what Jeffrey Cohen does without any foundation to support it.

THE WITNESS: I'm sorry.

THE COURT: Thank you. So we'll withdraw that.

THE WITNESS: Okay. I'll withdraw it.

THE COURT: We'll strike that. I'm sorry.
BY MS. MOORE:
Q. So as far as investigation that you have conducted.
A. That I have conducted. So I do a great deal of reading. I will call experts in the field and discuss it with them. I'll also call other parents who have used those -- that research, or in the case of adults, the people who are caring for them. And sometimes it's the actual patient is able to tell me: I improved from here to here by -- and I feel that this type of therapy was something that was very, very beneficial in my moving forward.
Q. Now, Mrs. Cohen, do you believe it would be less expensive if Abbie were to go into some type of nursing home facility?
A. Absolutely.
Q. Have you actually investigated into the availability and the cost of such a facility?
A. I haven't investigated the availability, but I am aware of the cost.
Q. Why did you decide not to take that option?

A. Well, I've also been very well aware of the fact that most people like Abbie who go into nursing homes will die.
MR. DAN SLOTCHIVER: Your Honor, I object to that statement without any foundation to support it. I don't believe that she can just tell us that most people like Abbie would die.
THE COURT: I'll strike that.
THE WITNESS: I'm sorry. I don't have to withdraw once you strike, right?
THE COURT: Yes, ma'am.
BY MS. MOORE:
Q. Mrs. Cohen, where did you believe that Abbie would get better care?
A. In my home, with us, with Paul and I, with the people who love her.
Q. And as far as the types of care that you have chosen in terms of therapies, have you discussed that with Mr. Cohen?
A. Yes, I have.
Q. And so as far as the decision-making was concerned, was that a joint decision?
A. Most of the time, it has been a joint decision.
Q. And I know that in your direct

testimony, you had indicated that oftentimes, he would just follow your lead. Is that correct?
A. That is correct.
Q. Have you and Dr. Cohen ever disagreed as to the type of therapy that Abbie should receive?
A. We have, and I think I would say probably 90 to 95 percent, when he makes a decision medically, I will agree with him, because he is more knowledgeable, so I will just continue whatever it is he recommends.
Q. Now, going back to the litigation in California, the court appointed Dr. Hays. Is that correct?
A. That's correct.
Q. And did Dr. Hays make a recommendation to have Abbie complete some tests, further testing?
A. She told me that there was some other things we could do.
Q. And did you ever take her advice and secure other testing?
A. Yes.
Q. And which doctor or other medical provider would have conducted the testing?

A. Mark Dean did the testing on the visual. What he had talked about was evoked potentials, to show that she did not have --
MR. DAN SLOTCHIVER: Your Honor, I object. I'm not familiar with the fact that we've been provided the results of this new testing that's been taking place. If we haven't, I would object to the hearsay statement of what a doctor did and what a doctor concluded without the evidence having been provided to us. And if it should have been provided to us, which I believe it should have been, then I believe it should have been provided to us by the Cohens' counsel as part of their defense. Certainly, it would not have been attorney-client privileged.
THE COURT: Ms. Moore?
MS. MOORE: Likewise, Judge Edmonds, I was not served with any interrogatories or requests to produce, so I have no obligation to provide.
MR. DAN SLOTCHIVER: I agree, but the Cohens have been, and any -- unless she received the documents separate and distinct, the Cohens have an absolute duty to provide any discoverable documents, any defensive documents, to their

counsel, and to rely on testimony elicited from the Cohens, who did not provide these documents to their counsel pursuant to discovery, would be inappropriate.

And I understand Ms. Moore is concerned with her comments, but I believe the duty ultimately lies in the Cohens and their counsel to provide to us discoverable information.

So while I concur that we have not provided discovery requests to Ms. Hedgepath or Ms. Moore, the ultimate duty falls on the Cohens to provide discoverable information, and we should not be subject to their testifying to information which they should have otherwise provided to us.

THE COURT: Ms. Moore?

MS. MOORE: Your Honor, I'm here just looking out for the best interest of Abbie. I don't think I should be restricted by whatever discovery problems may have existed between Mr. Slotchiver and Mr. Boyd and Mr. Davis.

Quite frankly, I don't have the test results. I don't think that prevents her from testifying as to the fact that she followed the recommendation of Dr. Hays. That document has been admitted into evidence as R-6, and that based

on the recommendations, she followed through. I think that goes to her reasonableness, her responsibility as a fiduciary to seek advice, to follow advice. That's my purpose of my questioning of this witness. I don't have the results.

MR. DAN SLOTCHIVER: And I believe that while I, to a large extent, agree with Ms. Moore's argument about her position, the case I'm -- what I'm arguing about is Mrs. Cohen's. She shouldn't be allowed to testify under examination from another person to information that she should have provided through discovery, if it exists.

And to some extent it may seem to be an unfair position to Ms. Moore, and I understand what her concerns are, but ultimately, it all falls in the lap of Mrs. Cohen to decide is she going to give this information to counsel so they can provide it to us, if it's part of their defense, and if she is, then we should have the opportunity to look at it. If she's not, then it would be prejudicial to us to have her testify now, because it's out of her mouth, to testify now as to something that we never had the opportunity

to see in advance or to be aware of.

THE COURT: Mr. Boyd?

MR. DAVIS: Your Honor, it is impossible to overstate the burden that we were placed under with respect to the discovery requests imposed upon us in this case. Again, I hate to keep going back to it, but we produced thousands of pages of documentation.

When I had conversations and conferences with Mr. Slotchiver in an effort to resolve the discovery issues that arose in this case, and there were several, the consistent position that Mr. Slotchiver had maintained from his perspective, and I understand they're competing positions, but from his perspective, he said: For me this case is not --

MR. DAN SLOTCHIVER: And I object to being quoted. And Your Honor, this is not before the court. And I don't know what he's going to say, but this matter before the court is the documents that have been presented, the filings that have been made, the discovery requests that have been done, and now new testimony being elicited.

THE COURT: Mr. Boyd, if you could

address the objection before the court specifically.

MR. BOYD: Your Honor, again, I'm not aware of any requirement that would prevent the witness from testifying to information that she's aware of based on her firsthand knowledge, her firsthand experience dealing with the medical providers that Abbie is being treated by. We've disclosed all of these medical providers that are, as she's -- as the witness has mentioned and as providers providing medical care to Abbie.

Mr. Slotchiver was able to subpoena anybody that we've listed in our discovery requests -- excuse me, in our discovery responses -- so I'm not sure exactly where -- I mean, the universe of information that we're talking about here is phenomenally large. Again, we've already produced thousands of pages of documentation in this case. I think Mr. Slotchiver is imposing an unrealistic interpretation of the rules on all the parties involved in these proceedings.

MR. DAN SLOTCHIVER: Your Honor, before I -- when I was in law school, I worked for a class action law firm, and the class action law

firm would deal with millions of documents. The number of documents doesn't excuse you from having to comply with the discovery.

Now, there are several things that could have been asked of me, perhaps, that would have further delineated what we were looking at or what our issues were, but they weren't, and now there's testimony coming in through the witness, in an effort to support her position, about communications with doctors who weren't listed as experts, for which documentation wasn't supplied to us, in an effort to assist her case.

And I understand, once again, the frustration with Ms. Moore, because she wasn't served with discovery, but this is a self-serving position by Mrs. Cohen to be able to respond to an answer for documents which she failed to supply, which she now is alleging would be in some way related to her defense. If it's related to her defense, she should have provided that to us in advance. If it's not related to her defense, and she hasn't given it to us, then it would be irrelevant, but either way, we haven't had it.

And once again, it's a unique situation that we have a witness testifying who's

got the examination of counsel and examination of the guardian and a lawyer for the guardian, who are asking questions about documents which she's relied on, but haven't been provided to counsel. It all goes back to the basic discovery rule. If these were -- if this was part of her defense, then disclose it to us. It's an easy answer.

THE COURT: And was this document not disclosed?

MR. DAN SLOTCHIVER: I have no knowledge about these testings. I have no knowledge about the testings or the results of the testings or anything along those lines.

THE COURT: Is there a letter there? Isn't there something?

MS. MOORE: Your Honor, at this point, I don't even know if she's seen the document. I just know that Abbie was sent for testing, so I don't know right at this point whether she's testifying from what the doctor told her or if she actually has seen the document itself. So I don't know if there actually is a document in existence that's in the possession of anybody, including the Cohens.

MR. DAN SLOTCHIVER: There was a

letter I believe she testified to from Dr. Hays giving an opinion, and we spoke about it earlier, and the follow-up question to her was: Based on that letter, did you do any testing? And she goes -- and then she went on to respond to what she did and what the results were, and I would argue that whatever she did or whatever the results were would be inadmissible if we haven't been provided that information in advance, and we haven't.

THE COURT: Do we know, Mr. Boyd, if you and your client have the test results?

MR. DAVIS: Your Honor, these test results that are being referred to is not a document that I have seen.

But I would point out, Your Honor, in our discovery responses: In further answering the interrogatory, respondents would also incorporate any and all medical professionals who may be referenced in the various medical and other records which have previously been produced to the petitioner in this case or which are herewith produced or may hereafter be produced.

Again, the witness is merely testifying to her personal knowledge related to a

medical provider for her daughter, Your Honor. Again, all of this goes to merely establish the decision-making that the trustee has undertaken for the benefit of her daughter.

THE COURT: Ms. Moore, do you have the medical reports?

MS. MOORE: No. That's just it.

THE COURT: You just have a letter?

MS. MOORE: The only thing I have is the letter from Dr. Hays that was admitted. I know, from having met with Mrs. Cohen, that Abbie was, in fact, sent for that testing, and that I knew, from having spoken to Mrs. Cohen, as to the conversation she had with the individual who did the testing, which I've not seen.

MR. DAN SLOTCHIVER: Which I would argue Mrs. Cohen certainly had the ability to tell her counsel this is an issue, let's make sure we put this in evidence, if it was something that they were going to rely on, and they haven't done it.

THE COURT: But I don't think Mrs. Cohen is relying on this; I think the guardian ad litem of Abbie is relying on it.

MR. DAN SLOTCHIVER: Actually, the

guardian ad litem has asked her did she do the follow-up tests elicited in the letter from Dr. Hays, which is already in evidence.

And the concern, Your Honor, is now Mrs. Cohen wants to talk about what she did, but she hasn't provided that to her counsel, and she's circumventing the discovery which requires them to give us documents. And she is the witness -- she is absolutely the witness that should have provided this document to her counsel, and she's hiding behind a different person asking her that question.

It's inappropriate to let it come in through somebody else if -- we believe it -- in other words, let me say it differently. If we believe -- she believes that it's relevant, and it helps to assert her position, then we were entitled to that document, which we haven't been given. It's a very --

THE COURT: Neither Mrs. Cohen, through her counsel, or her counsel has sought to introduce whatever these exams/reports are from the therapy.

MR. DAN SLOTCHIVER: She was starting to testify about: This is what I did and --

THE COURT: Based on the questioning by the guardian ad litem.

MR. DAN SLOTCHIVER: Correct.

THE COURT: So she didn't necessarily try to admit this herself through her attorney. The guardian ad litem is seeking to introduce this testimony.

MR. DAN SLOTCHIVER: I understand that. My understanding of the discovery rules, it doesn't apply to what your lawyer says you have to give. You have a personal duty to comply with the discovery. She has a personal duty, when she gets served with it -- she may have a lawyer that's her mouthpiece, but she has a duty to comply with the discovery rules to present information which you plan to utilize as your defense.

If she plans to utilize this in some capacity as her defense, she should have given it to us, whether or not her lawyer knew about it, whether or not he had a copy of it, but to cloak her with the protection, oh, I can talk about it now because somebody else asked me, even though I didn't give it to you before, would be inappropriate.

And if Your Honor believes that -- or

if the assertion is that this in some way does relate to a defense, then I believe that her failure to have provided this to us through the discovery process would be sanctionable.

MR. BOYD: Your Honor, let me just briefly respond. And I really admire counsel's tenacity.

In the same way that he wants to limit us to the four corners of our discovery, I believe Mr. Slotchiver, in the same fashion, is limited to the four corners of his pleadings. If Your Honor -- and we can sit -- and we can sit down and read the document word for word. There is no reference, Your Honor, in any provision of Mr. Slotchiver's pleadings to any allegation that there's an abuse of discretion by the trustee with regards to the medical care or the specific therapies being selected, and so to say when Mr. Slotchiver sends me discovery, and I'm supposed to send him any possible document within the universe of documents that might be relevant at some point in these proceedings, when there's no claim in his -- on the four corners of his petition that even remotely inferences medical care.

It's a very straightforward petition, Your Honor, and I encourage the court to go back and read it. In fact, we should probably take a break if we need to. But the fact of the matter is there is nothing about medical treatments, medical providers, anything in these documents, Mr. Slotchiver's documents. It's Mr. Slotchiver who sent me the discovery.

MR. DAN SLOTCHIVER: I would agree to a large extent with what he's saying. The distinction, however, Your Honor, is if they're relying on this as a document to show that they provided medical care, that's different, but they're relying on this document, as I see it, to show a -- to argue why it is they're justifying them doing what they did, and that falls under the category of what we alleged in our complaint.

And if you want -- and that's clearly what we alleged, the breach of fiduciary duty, the authority, the reasonableness of the care, and if their position is the medicals -- I've argued to some extent the relevancy of medical care throughout the proceeding, but if their position is the medical care seems to relate back to the reasonableness of what we did with reference to

expenditures, I haven't quite gotten a handle on how that all puts together, but if they want to argue that, then I should have been given a copy of that in advance.

THE COURT: Ms. Moore?

MS. MOORE: What they're arguing has nothing to do with what I'm asking. The reason I'm asking is in response to Mr. Kachmarsky's answer and counterclaim, specifically Paragraph 31: In addition, the petitioners, on a monthly basis, have and continue to spend more than the monthly annuity received. In response, we demand further proof as to the need and appropriateness of these expenditures before they are approved by the court.

I read that to give the impression that Mr. Kachmarsky, and also take into consideration his opening statement, was questioning the reasonableness and the benefit and the necessity of the various medical treatments that have been provided to Abbie.

So it had nothing really to do with Mr. Slotchiver's petition. My purpose of going through these questions actually had to do with Mr. Kachmarsky's answer and counterclaim.

THE COURT: I'm going to overrule the objection and allow Ms. Moore to question her based on her statement that she's addressing a counterclaim filed by Mr. Kachmarsky.

MS. MOORE: And if I have misconstrued it, then I certainly would be happy to move on. I've construed his counterclaim as questioning the medical care. If I'm incorrect, and it sounds like Mr. Slotchiver seems to believe that that's not the position that they're taking, then --

MR. DAN SLOTCHIVER: Well, if the purpose of the question is to address medical care that's been provided and the appropriateness of the expenditures, and it's not for the purpose of asserting that this is why you should be defended from the -- or exonerated from the claim for breach of fiduciary duty, if that's the purpose of it, then I have no objection to it for that limited purpose. My understanding so far is all the medical care that we've talked about in the examination of Mrs. Cohen so far has been put up for the purpose of showing why what I've done was reasonable, but if it's limited to that particular purpose, I have no objection whatsoever.

MS. MOORE: I'm utilizing it for both

purposes. One is to show the appropriateness of the expenditures and as to the fact that the care that she provided to Abbie was reasonable and supported her position as trustee to have taken certain steps, part of those steps being to contest and defend herself in the action in California. So I'm not going to say that it's only for the purpose of the appropriateness of the expenditures.

THE COURT: I understand. I'm going to overrule the objection and allow her to go forward with this questioning.

BY MS. MOORE:

Q. So, Mrs. Cohen, getting back to the testing that was performed as a result of the recommendation that was made by Dr. Hays in the letter that's marked as R-6, that testing was performed by which doctor?

A. The testing -- well, the vision evoked potentials -- I'm sorry. The vision evoked potentials was performed by Dr. Mark Dean, and the other evoked potentials were performed by Dr. Benjamin's office. There's a technician who actually performs it. Dr. Dean actually performed the evoked potential on the vision himself.

Q. Do you know approximately when that testing would have been performed?

A. It was after Dr. Hays.

Q. And I'll tell you that Dr. Hays's report is dated July 13, 2010.

A. So it would have been sometime after that we had the evoked potentials done by Dr. Benjamin's office, and then we also asked -- we mentioned it to Dr. Dean, and he said that he would like to do the evoked potentials for her vision, and then he did a follow-up of Abbie later for the second one.

Q. Now, as far as those test results are concerned, have you actually seen the test results? Do you have those in your possession?

A. Well, my husband has read them thoroughly.

Q. What I'm asking is do you have the actual physical report in your possession?

A. Yes, I do.

Q. And did you discuss these reports, the results, with the various doctors?

A. Yes.

Q. As a result of the discussion with the various doctors, did you make any change with

regard to her therapies?
A. Well, certainly, we made some changes in regards to her vision and also her speech.
Q. What I'm specifically asking you is what change would you have made to the type of therapy she was receiving as a result of the test that was performed by Dr. Dean and -- I'm sorry. I forgot the other doctor's name.
A. The other doctor was Dr. Benjamin's office. He just read the results. The technician performed it. Well, we were already on that page of doing cardiotherapy to confirm we were on the right track.
MR. DAN SLOTCHIVER: Your Honor, I would object to the conversation that the documents confirmed anything whatsoever. Those documents have not been presented. I understand the purpose of the documents was to be able to show that she did, in fact, follow advice in getting therapy and seeking certain medical treatments, but not to testify as to the results of them. We have not seen a copy of these documents to understand that whatsoever. I would object to that portion of it.
THE COURT: Ms. Moore?

MS. MOORE: Your Honor, my purpose was simply to determine whether or not she made a change as to any type of therapy as a result of obtaining the information.
MR. DAN SLOTCHIVER: And I don't object to that question.
THE COURT: Then we'll allow it to that extent. Thank you.
BY MS. MOORE:
Q. So Abbie was undergoing what type of therapy before these tests were performed?
A. She was undergoing all these therapies before the tests were performed. I believe it confirmed that we were on the right track.
MR. DAN SLOTCHIVER: And if we can strike that question, Your Honor.
THE COURT: Yes. Thank you.
BY MS. MOORE:
Q. Did you make any changes to the therapy as a result of receiving the test results?
A. There were additional tracks followed in neurofeedback.
Q. Were there any other changes made to the therapies as a result of receiving the results of the testing?

A. There were additional interventions in both speech and vision therapy.
Q. Now, as far as Abbie is concerned, you've made mention that you could now take her out to therapies. How long has that been a fact?
A. I believe about the past year, year-and-a-half we've been able to take her out to various therapies and have her be comfortable, oh, including acupuncture. We now go out for that.
Q. Are there any therapies that continue to take place in the house?
A. Well, the Felderchrist, because she doesn't actually have a work area, and she also lives in the neighborhood.
Q. Has that resulted in a decrease of cost to the trust?
A. Yes.
Q. Are there any therapies at this point that you would like to engage in or have Abbie engage in that you're unable to do so because of a lack of funds?
A. No.
Q. Now, I just want to make sure I'm clear on this. At various points during the time that you have been serving as trustee, you have

had to seek advice from attorneys. Is that correct?
A. Yes.
Q. Now, before the special needs trust was approved, you had two attorneys out in California. Is that correct?
A. Before it was approved?
Q. Yes, ma'am.
A. Russ Kussman wasn't my attorney. Is that who you're referring to, or are you referring to Michelson?
Q. Correct.
A. Okay. Yes.
Q. And then was there not another attorney who dealt with the question of the Medicaid questions?
A. Well, that was -- that was Michelson.
Q. And then --
A. With Robin Morris.
Q. Robin Morris was the only attorney here?
A. She was the only attorney once we moved here.
Q. Once the special needs trust was approved and it was funded, did you still continue

to retain Robin Morris as your attorney?
A. I did speak with her, and yes, I retained her, but she had written me a letter that she was retiring and suggested that I contact Bret Davis, which I did.
Q. So once Robin Morris retired from the practice of law, that's how you were referred to Bret Davis?
A. Exactly.
Q. Now, as far as the family court action that was in California, you had sought the advice of an attorney in California for that proceeding. Is that correct?
A. Yes.
Q. Now, after the special needs trust was approved and those final orders were issued, after that point, you changed attorneys in California. Is that correct?
A. After the point when --
Q. After the special needs trust was approved and the final order was issued here in probate court.
A. Yes, yes. It was about two years later.
Q. Now, have there been any other

attorneys that you would have sought advice from relative to the care of Abbie, the maintenance of the trust, the maintenance of the California action?
A. Well, Gary Zimmerman was the person who was referred to as the specialist in -- how would you call it? The trust -- keeping trusts from being broken, and, of course, I consulted Bob Rosenfeld as well about Marina Korol and asking for second --
MR. DAN SLOTCHIVER: Your Honor, I object to the testimony as far as -- I understand she employed lawyers, and I believe she can testify as to who she employed, but when she talks about what they were employed for and what purpose they had, I believe that does go back to the issue of not only the attorney-client privilege, but also the affirmative defense issue that we discussed earlier, and I believe from that perspective, it would be irrelevant.
MR. BOYD: Your Honor, she's being asked some very baseline, almost generic questions. There's nothing that she's conveying that would be subject to the attorney-client privilege anyway.

MR. DAN SLOTCHIVER: Well, what she's asking and her responses are oftentimes very different, and that's what I'm noticing here, that the question comes out as -- I don't have an objection to the question for the most part, but the responses that I'm getting, that I'm hearing, those, in particular, are what I'm objecting to.
MR. BOYD: She's merely asked who was retained and why they were retained, Your Honor.
THE COURT: Ms. Moore?
MS. MOORE: That's as far as I've gotten so far. I mean, I won't say that I'm stopping there.
THE COURT: I'm going to overrule the objection. I think she's just answering the question about who she's retained and what for.
MR. DAN SLOTCHIVER: Well, for example, she talked about Mr. Michelson being the expert to go to in order to protect you from having trusts broken. That goes beyond the issue of --
THE COURT: I think that was Mr. Zimmerman.
MR. DAN SLOTCHIVER: Mr. Zimmerman, excuse me. That goes beyond the issue of who she

retained.
THE COURT: Did Ms. Moore not ask her why she went to these?
MR. DAN SLOTCHIVER: Well, obviously, she can ask her anything she wants to ask. My concern with it, though, is the relevancy of it, because if the relevancy of it is that it's to create an affirmative defense, that wasn't pled, and that's why I believe that without it having been pled, it would not be relevant for the court to hear that.
I understand she spent money, and the amount of attorneys fees that she spent, she's going to testify to she did it as part of her action as a trustee, but I think that her talking about what they did goes beyond the defense of the attorney-client privilege and --
THE COURT: Were there expenditures on the trust accounting for these attorneys?
MR. DAN SLOTCHIVER: There's no objection to the trust expenditures that were approved by the court, and the court clearly would have transferred the jurisdiction from California to South Carolina. It set forth a list of those expenses which were approved from that point

backwards, so the issue is more what happened after, not what happened before.

THE COURT: Ms. Moore?

MR. BOYD: Your Honor, just briefly.

THE COURT: Mr. Boyd?

MR. BOYD: I'm sorry. I mean, my point is that Mr. Slotchiver is imposing a requirement, a pleading standard, that I don't see in the rules, first of all, reliance on counsel. As a term of art, the fact is we pled the reasonableness of the trustees' actions under the circumstances, and they acted in accordance with the authority granted them under the trust documents. The reliance on counsel would merely be one of many possible factors that would go into the consideration of the court in determining whether, in fact, the trustees did that. I mean, it's as if that Mr. Slotchiver wanted every possible reason that we could come up with to establish the reasonableness of the trustees' conduct in advance in our answer.

MR. DAN SLOTCHIVER: There are a tremendous amount of cases throughout the state of South Carolina over and over again, going back to the 40s, I believe, specifically stating that

affirmative defenses have got to be raised in the pleadings. They haven't been. And to incorporate that by saying: We said you acted in good faith, and therefore it's there, that goes against every case that's out there.

MR. DAVIS: Okay. Where's it showing that what we've pled and what we're arguing is an affirmative defense? Where is that?

MR. DAN SLOTCHIVER: Would you like me to respond?

THE COURT: I would like you to, please.

MR. DAN SLOTCHIVER: The defense is what's being asserted and testified to by Mrs. Cohen: I relied on counsel. The only basis which I understand that to be set forth would be based on an affirmative defense of: I relied on counsel, and therefore, whatever I did would be appropriate because counsel told me to do it. That is the essence of an affirmative defense.

Or what should have been pled as an affirmative defense, if it, in fact, happened, she should have said: I relied on my lawyer Robin Morris. I relied on my lawyer Zimmerman. I relied on my lawyer Lisa Meyer. Whoever it would

be that she's relying on should have been set forth as an affirmative defense.

And in the pleadings, at the end of all the stuff, at the end of all their arguments, you set forth affirmative defenses, and you specifically state: These are my affirmative defenses. She hasn't done that.

And if she's -- if there are no affirmative defenses, you can't get it in by saying, well, I think it fits into the global area of I acted within the best interests or I acted in good faith, because it is specifically not an affirmative defense, and case after case after case has addressed this issue particularly.

I'll be happy to present Your Honor with a listing of the cases at whatever point you wish, or if you want me to write a memorandum, I'm happy to do it, but these are specifically -- these arguments are affirmative defenses. That's what they're raising.

MR. BOYD: Your Honor, again, we did specifically raise good faith and conservator's authority under the documents. We raised estoppel and unclean hands. We raised judicial estoppel. We also raised reservation and nonwaiver, which,

if the court would entertain it, I'd love to make a motion to amend pursuant to that clause.

But the point is I believe what we've already pled more than adequately supports our -- the adequacy of our responsive pleading, particularly when it's looked at in light of the four corners of Mr. Slotchiver's document.

THE COURT: Anything from you, Ms. Moore?

MS. MOORE: Not as to the issue they kind of got off on a tangent on, Judge.

THE COURT: Ms. Hedgepath?

MS. HEDGEPATH: I think it might be proper, since Mr. Slotchiver has waited so late in the day to raise that, when we started early this morning questioning the reasonableness and why the various matters were done in the way they were done, to make a motion to amend the pleadings to conform to the evidence already presented, because he has waited too late in the day to now argue it. His time to have raised it, to have prevented it, if it even exists, as he claims it does, and I certainly don't concede that it does, then he should have raised it when the issue first arose.

MR. BOYD:. And let me also state --

MR. DAN SLOTCHIVER: Your Honor, it's a little frustrating. If money is received by Abbie, the money is benefited by Abbie, so it's far for me to understand how it is that the guardian attorney for Abbie would not recognize there's a value to the claim to come back in.

Now, the affirmative -- it's not waiting late in the day. I had no duty to do it earlier. I mean, I've been faced by this entire case with coming up here for motions and on discovery repeatedly, and the court listening to the motions, and on two times entertaining and granting sanctions on the motions for discovery.

And we have attempted to present the evidence in accordance with what we've been given, and what I hear is there's a lot of documents, and therefore, we shouldn't have to do it, or we didn't answer. It's a lot of issues to answer to. It's clear that there is no affirmative defense that's been raised, and I'm raising it now in light -- it's the law. I'm not creating an argument. This is what the law is. The cases support this. You actually have to raise the affirmative defense.

And I don't know what I could say that

makes it any clearer than that. And it's never been raised. Until I argued that they didn't raise the affirmative defense, nobody ever claimed that they had the right to.

MS. HEDGEPATH: I'd be happy to respond to his argument as to why the attorney for Abbie does not think it's in Abbie's best interest to bring the money back into the trust, if he wants to hear it or if Your Honor wants to hear it.

THE COURT: I'm going to allow this questioning at this point.

Mr. Slotchiver, if you would like to present your brief or cases as to why you believe the responses by the Cohens in their answer are not affirmative defenses that they can rely on this testimony, based on the defenses they set forth in their petition, I'll be happy to consider those cases and, if necessary, strike this testimony and not give it any weight in my consideration of the matter.

MR. DAN SLOTCHIVER: If I want to present the cases as to why these are affirmative defenses that they're raising. I believe you said are not affirmative defenses.

THE COURT: Yes, sir. Well, in light of what they pled in their pleading to the court.

MR. DAN SLOTCHIVER: I'll be happy to proffer the cases to the court.

THE COURT: So these are not affirmative defenses in their answer, in support of the evidence they're trying to submit today.

MR. DAN SLOTCHIVER: I'll be happy to present -- I'll be happy to proffer several of the cases to the court at this moment or whenever the court is so inclined.

THE COURT: I'll be happy to take those now, and I'll give them consideration, but I'm going to go ahead and allow this testimony to be introduced at this time, and if I see that the court should strike these, that they did not properly plead affirmative defenses, then I'll strike this testimony.

MR. DAN SLOTCHIVER: And I take it that would be a decision that would be made after the case concludes.

THE COURT: Probably. I mean, I may have an opportunity -- well, I don't know if I'll have a chance to look at these before we conclude. I'm not going to take the time now. I'm going to

go forward.

MR. DAN SLOTCHIVER: Okay. If I can present this to the court in the morning.

THE COURT: That would be fine.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: All right.

MS. HEDGEPATH: And Your Honor, you will also consider my motion to amend to conform to the evidence presented?

THE COURT: Do you want to be heard on that now, Ms. Hedgepath? You're making that motion now?

MS. HEDGEPATH: Yes, ma'am.

THE COURT: All right.

MS. HEDGEPATH: And, I mean, if you're going to -- I'll be happy to submit a memo, cases, whatever, but if you're going to consider his motion as to the affirmative defenses, I'd like for you to also consider our motion to amend the pleadings to conform to the evidence presented.

THE COURT: Would you like to be heard on that, Mr. Slotchiver?

MR. BOYD: Your Honor -- go ahead.

MR. DAN SLOTCHIVER: If they want to make a motion, I'll be happy to respond.

THE COURT: I think she's made it. She indicated that was her motion.

MR. DAN SLOTCHIVER: I object. I disagree with that completely.

THE COURT: I'm happy to hear from you.

MR. DAN SLOTCHIVER: I don't know what else I can say. This is not -- this is new testimony. They're coming into court today, and they're repeatedly stating now in court they're relying on these defenses. The only time we'd ever heard of this issue before, Your Honor, is when we referenced Robin Morris, when the whole Robin Morris issue came up before this court. And when the Robin Morris issue came up before the court, at that time they claimed attorney-client privilege. So there was no motion to conform. There was no issue to conform. It was an attorney-client privilege.

We've petitioned the court to receive the bills and the statements and the information from the California case, and if you recall, we petitioned the court to do that at the time that the California case was concluded, the argument being that since it's concluded, we should have a

right to look at everything they've done in their trustee capacity, to see if they did it appropriately. They objected to that, and they said this is also barred. This is attorney-client privilege. You can't have a copy of this. It's inappropriate. And everybody objected to that one.

So now we come into court some many months later, and they want to stand behind the argument that we are asserting conform the pleadings to the facts so that we can assert we relied on counsel, despite the fact that they never allowed us to have the information from counsel. They never -- they absolutely refused to allow us and blocked us from doing it and came to court and argued that we should not be able to have that information.

There's a difference. Arguing for a motion to conform the pleadings to the evidence takes place when everybody knows that it's there, it just hasn't been appropriately pled, but it doesn't take place, to my knowledge, Your Honor, in a scenario where they deny that we're entitled to this information.

They come to court. They argue we're

not entitled to it. They state in the records we're not entitled to it. They write us and say: You're not entitled to it. And then they come to court and say: We should to be able to rely on it.

And coupled with that, Your Honor, is if you look at the law, there are several cases on this. One of them is the Samples case, which states: The entire thrust of the discovery rules involves full and fair disclosure to prevent a trial from becoming a guessing game or one of surprise for either party. This is a 1997 South Carolina case. This is Samples versus Mitchell.

Well, if Your Honor were inclined to allow them to amend the pleadings to assert this defense, then we, despite our -- what I would consider to be our diligent efforts to get discovery, to know who the witnesses are, to see what the experts are, so we can understand the case before we come to court, and we've been doing this for two-and-a-half years or so, we would have been deprived of the right to investigate that issue, which is exactly what the Samples case and other cases protects us from.

So while the argument does apply in

many scenarios, I don't believe it would apply here, because until now, until this case started, we've never understood that they were even going to rely on counsel. That's my argument.

MR. BOYD: Your Honor, if I may, the issue of the attorney-client privilege is one -- again, it's one thing to say -- I mean, clearly we have provided significant amounts of information with respect to the materials from the California representation while still attempting to maintain that degree of privilege which was appropriate. And again, those documents were produced according to an order of this court.

There was -- again, much in the same way we talked about with regard to Robin Morris, there was a request for documentation to be produced from the California proceeding on the novel theory that because the case -- because the client had settled, that the attorney-client privilege had gone away.

Well, we briefed that issue, that question, and the court decided again, ruled in our favor, that that was not consistent with South Carolina law, that's not what the law is, but notwithstanding the fact, Your Honor, we did, in

fact, produce -- and I hate to keep using the word thousands -- thousands of pages of documentation from the California law firm specifically related to those activities undertaken by the lawyers.

You've heard Mr. Slotchiver question the witness very specifically at length on exactly what was done by the lawyers and when. They've attributed explicitly various -- what they considered to be the various portions of the fees that are attributable to the different things that were done by the attorneys in California. To say that we've not given them anything is so far from the truth, it's pathetic, Your Honor.

It's a situation where we objected to the wholesale turnover of information. We argued it. The court ordered it. We complied with the court order. We provided those documentations. But the bottom line is Mrs. Cohen has testified at length with regard to those records, and so what we attempted to do in that instance where information was sought was find a middle ground, and we produced documents according to the court's order.

And again, I hate to keep beating this

horse, but I believe our pleadings are sufficient to justify everything that the witness is being questioned on, and I'll be glad also to submit a memorandum in support of that position. I don't really -- I'm not fully prepared to argue it at this moment, but I'd be pleased to submit a memorandum in support of that question in due course, whenever the court would like to see it.

But I would also remind the court when the issue with Robin Morris came up -- and again, the same scenario, Your Honor -- they sent a subpoena, we want the entirety of the file, we objected on that basis, but we attempted to provide an option for discovery, and petitioners did not follow up on that. But that's not to say that we asserted a blanket privilege. We objected to the wholesale fishing expedition through Ms. Morris's file.

MR. DAN SLOTCHIVER: That's just not what the transcript says. There was a blanket objection, Your Honor.

You know, throughout the process, I've heard the references to ludicrous, pathetic, and trickery accused of us, on our side of the case, particularly probably aimed more towards me than

anybody else.

Your Honor, they've asserted a privilege. They came to court. They argued they don't have to give these documents to us. They never gave the documents to us. If the privilege did not exist, they should have given it to us willfully on their own.

THE COURT: Okay. I'm having a little bit of difficulty with determining how the argument that you're making, Mr. Slotchiver, and Mr. Boyd in response to that, relates to the motion to amend the pleadings based on the evidence that's already been submitted.

MR. DAN SLOTCHIVER: Because the motion to amend the pleadings deals with the issue of allowing them to assert an affirmative defense. That's the purpose of the motion. If they assert an affirmative defense, then the affirmative defense is we relied on counsel. And if they say we relied on counsel, if they had told us that in advance, if they had represented to us that's going to be our defense, then we would have had the right to have taken the deposition. For example, if they say we relied on what Robin Morris told us, we certainly would be able to take

the deposition.

MR. BOYD: Your Honor, I offered --

THE COURT: Based on the evidence that has been submitted already, the testimony that has been submitted, which, as I understand, is the motion Ms. Hedgepath has made -- am I correct, Ms. Hedgepath? -- that based on the testimony that has been submitted thus far, she's requesting that the pleadings be amended to conform to the evidence that has been submitted.

MR. DAN SLOTCHIVER: I understand, and that's exactly what the Samples case talks about is the right to do discovery and the right to have information in advance. I would argue to the court that the motion to amend the pleadings to the evidence applies when you allege that somebody was hurt, but you forgot to say there was negligence, when everybody knows the arguments, and everybody can do the discovery, and there's no surprises, but here, there's clearly surprise, because if --

And we argued this, Your Honor, at the transcript, and I could pull it up, but we argued the same thing. If they're going to come into court and argue, we have the right to know what

they're going to say with reference to Robin Morris. And they asserted the attorney-client privilege, and they did not list her as a witness, and therefore, we had no affirmative duty to go seek out people, and we could not take the deposition of her if we wanted to.

It directly relates to Ms. Hedgepath's motion, because intrinsic in conforming the pleadings is that we would have the right then to do discovery on this exact issue, and we haven't been provided that in discovery, and we don't have the names with which we could do discovery on. We couldn't take the subpoenas. We couldn't do those things. That's why we object to it.

MR. BOYD: Your Honor, as we briefly covered on the record previously, we wrote Mr. Slotchiver, invited him to take the deposition of Robin Morris.

MR. DAN SLOTCHIVER: It's actually -- Your Honor, in the same sense that Mrs. Cohen offered Dan Dorn an opportunity to settle on her terms, they offered me the opportunity to accept their limited basis for taking the deposition. Because they had not listed her as a witness, because they hadn't listed her as an expert, and

because they did not -- and because they came into court and asserted it was privileged, at that point, they put a blanket around her. There was no reason for us to do anything more.

I want to go back to the issue we've discussed over and over again, which is if you have a right to comply with discovery, you're saying we'll give it to you if you do XYZ, does not preclude you from having the right or the requirement to do it, and they haven't provided it. They don't have -- they're not the court. They don't have the right to tell us: We'll give it to you only if you agree to these particular conditions, and if you don't agree to these conditions, we won't give it to you. We assert the privilege, but we'll still come into court and try to use it against you, and that's exactly what they're trying to do on this case.

And if we conform the pleadings, we've created exactly that scenario, when we have not had the opportunity to do the necessary due diligence that we would otherwise do with these witnesses or based on the testimony, because they blocked us from it.

It was their decision. They had the

right -- whenever they wanted to, they could have said to us, you know what, we're going to list these people as witnesses, and they could have told us that nine months ago, a year ago, but they didn't. Not even today. They still haven't done it. But they want to call -- they want to be able to rely on them without any balances, without any check system.

MS. HEDGEPATH: Your Honor, I want him to clarify who he is referring to as they. I can't respond to discovery if I get none.

MR. DAN SLOTCHIVER: I'm referring to the Cohens and their counsel.

THE COURT: Anything else from you, Ms. Hedgepath, on your motion?

MS. HEDGEPATH: No, ma'am.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, for the record, I would just state the following: This case has been something of a moving target. We've been discussing quite a few things since we began taking testimony in this matter that go beyond the four corners of Mr. Slotchiver's pleadings. The way the case evolved I would say is unusual.

With regard to Ms. Morris, again, the

intent of the rule is to provide notice to the other party. With respect to those things, we had many, many written communications at length. We had a motion, in fact, regarding Ms. Morris. With respect to our failure to technically name her as a witness in that particular interrogatory, Your Honor, I would say that is form over substance.

We clearly -- Mrs. Cohen relied on the testimony -- or excuse me, the prior actions of Ms. Morris in her deposition. We subsequently had the voluminous exchange of information related to Ms. Morris that the court's well acquainted with, and so I think --

Again, I can understand the desire to win this on a technicality, but if you look at the spirit of the discovery rules, Your Honor, and the purpose that the discovery rules have for their construct, we have had more than ample disclosure related to Ms. Morris.

And just for the record, Your Honor, given the nature of how the case has evolved, I, too, would like to join, just for the record, in the motion that I think what the appropriate thing to do is for the court to allow the pleadings to be amended to conform to what's actually been

pled.
THE COURT: I'll be happy, if Ms. Hedgepath would like to submit something in writing on her motion, to reserve my ruling on that. And, of course, there can be rebuttals.
MR. BOYD: Would you also extend the same right to the Cohens, Your Honor?
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: Your Honor, is this is a matter that I take you will rule upon after the trial is over or after this week is over, depending on which one takes place, but not before the week is over?
THE COURT: I don't -- I would not think I'd be able to rule on it before the week is over.
MR. DAN SLOTCHIVER: Fair enough. I ask because I don't have the liberty of going back to my office when I leave here today to do it, but I have some cases.
THE COURT: Well, then I'm not going to tell you it's due tomorrow.
MR. BOYD: Thank you, Your Honor.
THE COURT: Were we with you, Ms. Moore?

MS. MOORE: Yes, ma'am.
BY MS. MOORE:
Q. Mrs. Cohen, going back to the attorney that you had hired in California, initially, you had one attorney. Is that correct?
A. Yes.
Q. And what was her name?
A. Marina Korol.
Q. And then after we once again secured the order here in South Carolina, sometime later, you secured the services of another attorney. Is that correct?
A. That's correct.
Q. And her name is?
A. Her name is -- well, it's a firm, Meyer, Olson, Myers and --
Q. That's okay. Who was the lead attorney that you worked with?
A. Lisa Meyer was the lead attorney.
Q. Now, as far as the action in California is concerned, there were various issues to be addressed. Would you agree with that?
A. Many, many issues, yes.
Q. And would you agree that the issue of child support and visitation, that those two

issues were not resolved until fairly recently?
A. That's correct.
Q. Was there ever a point which Dan Dorn, via his attorney, filed a formal pleading withdrawing the request for child support?
A. Never.
Q. So was there ever a dismissal or a withdrawal of the request for child support until the final resolution was reached?
A. Not until even beyond the final resolution. After it was supposedly agreed upon, it took many, many letters before she wrote it in a form that would be acceptable for the courts in South Carolina to have them dropped, child support.
Q. Now, unfortunately, I wasn't here during your direct, so I've read your testimony, but it's my understanding that various inquiries were made by you to try to stop the California case. Is that correct?
A. Yes.
Q. And in what fashion did you try to pursue stopping the California case? How did you try to stop it?
A. Well, I made several offers of

settlement. I spoke -- what am I allowed to --
Q. Without getting into what anyone told you. I just want to know what you did.
A. I personally contacted Dan on a number of occasions. I went to his home. I went to the synagogue, in hopes to talk to him. I went through every route that I could think of, both in terms of trying to reach him from a point of view of human kindness and from a point of view of his claim to be religious, to try to get him to see that what he was doing was harming Abbie tremendously and --
MR. DAN SLOTCHIVER: Your Honor, I object to the reference that it was harming her. I don't believe there's a foundation to that.
THE COURT: I'll strike that.
BY MS. MOORE:
Q. Mrs. Cohen, did you have a concern over the amount of money that was being expended from the trust for the California litigation?
A. Definitely. That's why I kept trying to deal with it in any way I could imagine to deal with it.
Q. And did you try to work with your 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

with it, and I would ask -- I don't believe, and hopefully we will, but I would ask that the court instruct us as to how you want us to proceed, because otherwise, as soon as this is done, I'm going to hear about the advice, perhaps, from all kinds of other people, and it's the same objection over and over and over again. And I believe that it is an absolute right we have to object to this. It is absolutely prejudicial to us. The case law is clear, in my opinion, that she cannot testify as to reliance on witnesses without having pled it.

And perhaps if the court will consider that over the evening or maybe do some -- look at the law, Your Honor, over the evening, to give yourself comfort, I would ask that you would consider ruling earlier, instead of later, and withhold this testimony from coming in until Your Honor is ready to rule, understanding that Mrs. Cohen can be re-called for the limited purpose of testifying about her affirmative defenses, if, in fact, you believe or you rule that it would be appropriate.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, Ms. Moore's

questioning -- we named as witnesses both Lisa Helfend Meyer and Vicki Greene. Ms. Moore received no discovery. And our pleadings, as I've previously stated, I believe, establish the basis for what the witness is discussing.

Now, I am not familiar with reliance on counsel as a single affirmative defense that must be pled individually under its own heading. I understand reliance on counsel to be a factor that goes into the consideration of the other factors that can contribute to establish the reasonableness of the trustees' conduct.

But I'm happy to brief the issue, but again, Mrs. Cohen raised the issue in her deposition, we've noticed these people as witnesses, and she's simply being questioned in a manner that does not invoke the privilege as to why these people were retained. And Ms. Meyer, Lisa Meyer, has already submitted a factual affidavit in these proceedings. Nobody objected to that.

THE COURT: Ms. Moore?

MS. MOORE: Your Honor, if I can just be heard on one issue.

To be quite frank, I thought it

strange that I had not been served with discovery requests, and in fact, I called Ms. Hedgepath to ask if perhaps she had been served with discovery, so I could make sure that we get in some witnesses that I felt were not being provided in the discovery that were being submitted by Attorney Slotchiver and Attorney Boyd. I was concerned that certain witnesses that would be important and necessary witnesses were not listed. And so when I contacted Ms. Hedgepath, she advised me that she had been not been provided with any discovery requests, and therefore, there was no obligation on our part to provide the names of these witnesses.

And what was interesting is when some -- and I'm going to call it games. All attorneys do it. You look at what the rules are and what your obligations are and what you have to do and when you have to do it, the timing of it, and as long as you do it within the Rules of Civil Procedure, you are complying with the rules of the court, and one of which is at one point I believe Mr. Slotchiver realized that it would be beneficial to him to know who our witnesses would be.

And initially, Ms. Hedgepath thought that was a good idea, and I said: No, I don't want to do that, for various reasons. One, I felt like it was not a benefit to Abbie for Mr. Slotchiver, at this point, to know who our witnesses would be, and two, I wasn't certain as to what witnesses would be produced by Mr. Slotchiver, much less what witnesses would be produced by Mr. Boyd and Mr. Davis.

So the bottom line, I was concerned that those certain witnesses were not listed. I did not know why they weren't listed. I felt like they were important and would be necessary witnesses to be called at the time of trial.

So if they were not called by Mr. Boyd and Mr. Davis, fully intended -- either whether it be through Ms. Hedgepath or through myself, there were certain witnesses that we did intend to call, if they were not produced by the parties. That's number one.

Number two, as far as Robin Morris is concerned, that was an issue at the very beginning, and there was a lot of activity and efforts that were made to coordinate the scheduling of the deposition. I've had numerous

conversations with Ms. Morris as far as the scheduling of the deposition. And then at some point, for whatever reason, attempts to take her deposition stopped.

I know of no order that prohibited Mr. Slotchiver from taking her deposition. There was no motion to quash the service of a subpoena upon her for the attendance at the deposition. I did not know why he didn't. The only thing I thought, perhaps he wanted to call her himself as a witness. Be that as it may, he certainly had an opportunity to take her deposition.

And Your Honor, I want to make it very clear, I do intend to ask whether or not she took certain steps in reliance upon advice of both medical professionals, as well as legal professionals. So I don't want to mislead this court to think that all I'm going to do is ask the appropriateness and whether she expended money and stop there. I don't intend to stop there.

But I think it is an argument that is lacking as far as surprise. There's no surprise. Everybody's known that Robin Morris has been here from day one and that she was involved in the preparation of the trust and had provided counsel

to the Cohens prior to retiring and then transferring the file to Mr. Davis, so there's no surprise there.

So I just want to make sure I was heard on those two issues.

MR. DAN SLOTCHIVER: Your Honor, Ms. Moore does not have the right to assert an affirmative defense on behalf of the Cohens. She does not have the standing. The Cohens have been sued in their capacity as trustees, as conservators, and individually. They have the right to assert an affirmative defense. It doesn't belong to the guardian. Her asking questions of them does not alleviate their responsibility to have asserted that defense or not have asserted that defense. That's their choice.

Now, when we go back to Robin Morris, just for clarity, we had subpoenaed records. The court ordered that we could notice her deposition if we so desired, and at that point, they could object, and then we could bring it back to the court if that happened. But once again, as discussed, since they did not list her as a witness, they did not list her as an expert, we

had -- while we knew of her existence, they made a calculated decision to assert the attorney-client privilege, one that the court withheld, or upheld. No different than the California ones. The court upheld it when it came to the subpoena and said it doesn't matter anyhow because she's already said she has no documents. They asserted on the record that everything she had is attorney-client privileged.

So the affirmative defense, more clearly, is that that belong to the Cohens. They were the ones who had to have raised it. And for the guardian to come in and to ask questions eliciting the affirmative defense, which belongs to the Cohens, which they did not raise, would be inappropriate, and it brings us back to the same position.

And I know Your Honor wants to look at the matter, but we're going to continue to deal with this as they continue to try to assert other documents and other people that we can't check. The whole purpose of having disclosure is so we have the ability to check, to know what's out there, to have an opportunity to ask. And Your Honor, I believe that the court can take notice

that we did ask, a long time ago, and we've come in here over and over again and asked supplement, supplement. You're not giving us what we need. We need to have supplements. And they've said: We've given you everything, we've given you everything. And we've come in here asking for these documents. They have not asserted an affirmative defense. Had they done it, we would have had other rights that we would have.

But we've got to look at the totality of what we're dealing with, and from our perspective, we don't have to create an issue where it doesn't exist. If they're not going to list somebody as a witness, we don't have to take their deposition. If they're not going to list somebody as an expert, we can make the decision if we want to take the deposition or if it's a waste of our time.

THE COURT: But Mr. Slotchiver, you didn't submit any discovery requests on the attorney for Abbie or her guardian ad litem.

MR. DAN SLOTCHIVER: I understand that.

THE COURT: So I don't know how that they are precluded from going into these areas or

to call witnesses or to examine the witness with respect to the things that maybe Mrs. Cohen, through her attorneys, is precluded from entering.

MR. DAN SLOTCHIVER: Because, Your Honor, the only relevancy to this issue for the court to consider would be whether or not it does, in fact, create an affirmative defense.

Let's assume that Mrs. Cohen says: I talked to John Smith. John Smith told me I could do this, and I had to do it, and it's my duty to do it, and to spend all the money necessary. Go and do it. And let's assume that Lee Moore asks that question, and that is what is elicited from Mrs. Cohen as to what she was told she could do and what she was told she should do.

Even then, at that juncture, it has not been pled as a defense, so it would not be appropriately before the court. And the only purpose of bringing it in would be to show that there was a defense, which she has not asserted, and the case law says that you must assert the affirmative defense.

So even if Ms. Moore and Ms. Hedgepath want to go down that road, it would be inappropriate for Mrs. Cohen to testify to it,

because the court could not, based on my understanding of the law, consider that as an affirmative defense, and if it's not considered as an affirmative defense, then it has no value.

And that's exactly -- this is another issue of going around the requirement of discovery. Had discovery -- had they been -- had they asserted their affirmative defense, we would have had the right to do discovery. Without having asserted it, they can't rely on it as a defense.

MR. BOYD: Your Honor, again, there were entire hearings, obviously, dedicated to the subject of Robin Morris and the attempt to obtain the entirety of her file. We didn't object to the deposition of Robin Morris. In fact, we invited the deposition of Robin Morris.

And again, I don't know if Mr. Slotchiver -- I think he's trying to impose an obligation on our pleadings. In our pleadings, we specifically responded to his actions in stating that the trustees acted in a manner -- and this is the third defense. This is our third defense, Your Honor. They acted within the scope -- on a good faith basis, within the scope of their

fiduciary authority. No less broadly than his allegation that they breached their fiduciary duty, Your Honor.

And when we had the hearing -- and so I think we have provided all the notice in our pleadings that we're obliged to provide. And when we had the hearing with Robin Morris, there was no, hey, you can't raise this issue anyway, there's no -- you haven't pled this issue. There was no allegation to that effect that that issue was not raised at the time. In fact, we had the arguments related to Robin Morris. The court ruled. We abided by the court's ruling. The same thing happened in California, Your Honor, and now Mr. Slotchiver is trying to impose limitations on the parties that have not been discussed in months and years of litigation, Your Honor.

MR. DAN SLOTCHIVER: I've got some law. I'd be happy to hand it to the court, if you'd like, Your Honor. This is a matter that is incredibly crucial to this case, as you are aware, because without the opportunity to take the depositions, we have no way to verify what happened in advance of trial.

MR. BOYD: Your Honor, I invited him

to take the deposition of Robin Morris.

MR. DAN SLOTCHIVER: They haven't listed her as a witness, and they asserted the attorney-client privilege in the transcript over and over again.

THE COURT: I'll be happy to take a look at the cases. I'm not sure, Mr. Slotchiver, if this is going to prevent the attorney or the guardian ad litem for Abbie from calling these witnesses, from examining the witnesses in this respect, but I'll be happy to take a look at your cases.

MR. DAN SLOTCHIVER: Well, Your Honor, in that regard, if the Cohens have asserted an attorney-client privilege that precluded us from talking to the witnesses, then how can they waive the privilege and allow the witnesses to come into court and testify? I mean, you cannot have it both ways.

And so I understand what you're saying, but that's the problem. Once we start doing that, the whole system falls apart, because you're allowing somebody to say it's privileged, you call them, I'll waive the privilege, but -- because it would have to be effectively the Cohens

waiving the privilege. And the Cohens to waive the privilege would put us back in the same position that we're in now.

So I would take exception, Your Honor, and I would like to be heard on that, if you are inclined to do that, because what if it happens, because I believe it's exactly what the rules were aimed to prevent.

MR. BOYD: Your Honor, again, we named Lisa Meyer as a witness. Petitioners did not seek to depose her. We specifically wrote the petitioner, inviting them to take the deposition of Robin Morris. They did not follow up.

MR. DAN SLOTCHIVER: Actually, on that issue of Lisa Meyer, Your Honor, we're interested to see what she's being offered for. She's not been listed as an expert. She cannot testify as to the law. She has the attorney-client privilege. They invoked the privilege with reference to her documents when we came to the court seeking to get it. I'm not really sure how -- what she'll be able to testify to, but I figured I'd wait until they put her on the stand and then find out.

But before we proceed, Your Honor, I

would ask that you review these cases, because I don't know -- I don't want to stop the court, we need to move forward, we've got some issues with other witnesses, obviously, but this is an issue which I think needs to be addressed, I would ask be addressed before Your Honor allows the testimony to proceed.

THE COURT: I'll be happy to take a look at the cases.

MS. HEDGEPATH: Would he be kind enough to share copies with counsel?

MR. DAN SLOTCHIVER: Well, it's not a memorandum, and it wasn't something I was prepared to give. It was just some general case law that I brought with me, so --

MR. BOYD: Can we at least get a copy of what's being handed up, Your Honor?

THE COURT: I'll be happy to get you a copy.

MR. BOYD: Okay. Thank you.

MR. DAN SLOTCHIVER: Here's one, Your Honor. Let me look at this one and make sure this is applicable also. I believe it is.

THE COURT: This is the case?

MR. DAN SLOTCHIVER: This is

reference -- some research that we had done on some cases referencing the particular cases.

THE COURT: This is -- there's no case citing on here?

MR. DAN SLOTCHIVER: No, Your Honor. I wasn't aware that this was going to come up as it did, or it would be up to date.

THE COURT: You just want to submit this?

MR. DAN SLOTCHIVER: It's some supporting case references.

Could I have just a moment, Your Honor?

THE COURT: You may. I tell you what, I'm going to take about a five-minute break. I'll make a copy of this and provide this to counsel real quick.

(A recess transpired from 4:52 PM to 5:08 PM.)

THE COURT: We're back on the record in the Abbie Dorn matter.

Mr. Slotchiver, I believe you had made an objection to the admissibility of some of this testimony, and you provided, I guess, a portion of a case or, I don't know, a law review article or

something.

MR. DAN SLOTCHIVER: It's part of a research compilation.

THE COURT: And I did make a copy of that and provide that to opposing counsel so they would have a copy of it.

And you are concerned about the court allowing this testimony in at this time until the court rules on the objection based upon the lack of an affirmative defense?

MR. DAN SLOTCHIVER: Yes, Your Honor, based upon the lack of pleading the affirmative defense and based on the actions of objecting to our getting this information in discovery. And the claiming of the attorney-client privilege, I believe it would be improper, based on that whole -- on all of those circumstances.

THE COURT: All right. What I would propose doing is to go forward, allow them to proffer the testimony through the live testimony of the witness, instead of adjourning for the preparation of some type of affidavit to proffer the testimony, and then once I make a decision, I'm happy to allow counsel to submit whatever brief is necessary.

It sounds like to me there may be several issues before the court: One is the motion to amend the pleadings to conform to the evidence, another one is that this testimony is not admissible because the reliance of counsel had to be pled as an affirmative defense, and that wasn't done, and I think there's another issue regarding the attorney-client privilege, and also, I guess whether the attorney/guardian ad litem for the protected person, beneficiary of the trust, can call these witnesses and introduce this evidence.

MR. DAN SLOTCHIVER: Can assert it from the defense.

THE COURT: Yes.

MR. DAN SLOTCHIVER: My concern, Your Honor, is that if --

THE COURT: If I hear all this testimony --

MR. DAN SLOTCHIVER: No, no. Close, but no. If you determine that this testimony is, in fact, permissible, then at that point, I would move before the court to stay this entire proceeding and to afford me the opportunity that the discovery rules give me in order to take -- in

order to receive adequate -- or the same thing would be so if you happen to amend it, in order to receive the information and to do my discovery, so if -- and that's why I'm asking Your Honor to make a decision, because otherwise, we proceed with the trial, they proffer the testimony, and assuming next week you make your decision, and you make that decision, which I hope you wouldn't, but if you do, then at that point, I would want the opportunity to come back to take the deposition of -- or to take the testimony of Mrs. Cohen again relative to that issue before you rule. So I believe that these are critical --

THE COURT: On the ultimate petition.

MR. DAN SLOTCHIVER: -- on the ultimate case.

And as a result of that ruling, it may be that we end up adding other witnesses that we did not believe to be prudent or relevant at this juncture, based on the information we had.

Now, obviously, if Your Honor rules against the admissibility of that evidence, none of this applies, but it's that parade of horribles that's going to happen if you allow it in, because then we will have to come back and take more

testimony, and if we take more testimony, then there's more cross-examination, and then we're bringing more witnesses in, and I'm not sure how that's ultimately beneficial to the entire process, because it could lead me to bring -- I don't know if she's going to say she relied on four people, in which case all of them may come to testify, or certainly, I'll take all of their depositions. Based on their depositions, I may have four more people, and the trial's going to continue to go, all of this not anticipated, but this is the problem that I see us presented with at this time, Your Honor.

If I can also hand -- this is the Samples case, if you'd like. I do have a copy of this case. I don't have copies. I just brought it with me over witnesses to introduce later on, but I'm happy to hand this up to the court.

But this is why I see a problem, because if we're going to go forward and allow the testimony, I do want discovery, and if we're going to go forward and allow them to amend the pleadings, I would like to have discovery.

MS. MOORE: Your Honor, if I can be heard on one issue?

THE COURT: Yes, ma'am.

MS. MOORE: I mean, the reality is I don't know how we would even have a chance of finishing the trial this week. We're not even finished with Mrs. Cohen, much less have we started with Mr. Cohen, nor have we done anything with regard to Lisa Meyer, much less addressed any witnesses that we might want to call ourselves, much less the two experts.

Before Mr. Slotchiver started making the statements that he was going -- he, in fact, made, I was going to make a suggestion that if there is such a concern that he's not been given or afforded the opportunity to take the deposition of various parties or witnesses, that he be allowed to do so, and the only way that that could be accomplished would be through having this trial be held in abeyance and stayed until he's given an opportunity to take the deposition of any witnesses he may want to take.

Now, whether or not that then gives him the ability to send discovery requests to us, I realize that opens the door for that, and that's just the reality of that situation. But before he started that, that was the only resolution I could

come up with, because by the time we get to the end of the week, we won't be finished with this case.

MR. DAN SLOTCHIVER: Well, we agree on that point, Your Honor, but certainly, our intent right now is to proceed with the trial. My client's flown here twice. We've all spent, I believe, a considerable amount of money in preparation and taking time off.

And although I question our ability to complete the trial this week, I do believe that we can make substantial progress with the trial, and in fact, it may be to the point that there are some witnesses we may be able to conclude, but we can come back to court and resolve the case, even if some of the witnesses aren't here, because we come back another day to hear testimony. It's one of the advantages of Your Honor hearing the case is that we can, in fact, stop and proceed down the road. I do not want to continue the case.

MS. MOORE: I apologize. I didn't mean it in that fashion.

MR. DAN SLOTCHIVER: I know.

THE COURT: I wasn't sure.

MS. MOORE: I didn't mean it in that

fashion. I meant --

MR. DAN SLOTCHIVER: I didn't think you did. But I think that that's the reality of where we are without a decision being made. Not to pass the buck, but I think we're stuck in that boat.

THE COURT: So is it your position that we could go forward over the next day or two to hear some additional testimony, to at least move this case along, until counsel has a time to brief these couple of issues and then I have a time to make a decision?

MR. DAN SLOTCHIVER: Absolutely, so long as this line of questioning is discontinued. If this line of questioning continues, then I believe that I would have the right to have evidence before it goes forward, so I can respond to it, which I don't have.

Your Honor, by no means am I suggesting that I want to continue the case. I want to proceed with the case, and it's -- and I don't believe that it would be proper to cure this, to just put a Band-Aid on it by saying, okay, well, if we do that, then we can all do discovery and come back, because part of the trial

preparation is what did you do and what did you not do and what happens at court, and frankly, what -- discovery affords us things, and if we come back in two months from now, there's a whole lot of other issues that have come forward, just like Ms. Moore said, that we would have the opportunity to throw discovery at them, everybody's going to throw more discovery, and this case is going to blow up even longer.

This is the longest -- I will tell you this has made up to be the longest trial I've ever been involved in, and it's going to double in length, is my guess, if we do that. And if we do it, I certainly would have some motions to make before we conclude, but my request is that Your Honor would consider where we are and give us some guidance as to what to do.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, just a couple of brief points.

One thing that I want to just observe is there's this suggestion or maybe a direct statement that all of this is a surprise. I just want to remind the parties for the record that Robin Morris is not a new topic of conversation.

In her deposition May 2011 --

THE COURT: I didn't think she was deposed.

MR. BOYD: No. Excuse me. I'm referring to the witness's deposition, Your Honor. She was asked: You accepted responsibility as the trustee. This is a reference to Dan Dorn's request that the trustees bring a marital dissolution action. This is on Page 70. Answer: Yes. And before you accepted it, you had an opportunity to see the trust and to consult with counsel if so desired, correct? Answer: Right. And I'm assuming you did that? Answer: Yes. To understand what you were accepting? Answer: Yes. I spoke with Robin Morris, who advised me, as I said, that I had to defend against the action.

Then there's another reference, flipping to Page 87, Your Honor: I believe I had been given approval. This is referring to the -- well, let me back up.

Were you ever concerned about your ability to pay attorneys fees without court approval in advance? Answer: Yes. Was I concerned? Question: Yes. I believed that I'd been given approval. Which court gave you the

approval to pay the attorneys fees? Answer: From my understanding, when I talked to Robin Morris, Horry County court told me I had to defend the invasion of the trust by Dan Dorn. That was my understanding.

So this is not, Your Honor, a new issue. Now, we can split infinitely-fine hairs all day long, but this is not a new issue.

The other observation I would make is that I think a lot of what Mr. Slotchiver is now raising would have been the appropriate subject for motions in limine prior to these proceedings, but to bring these issues up in the middle of these proceedings puts everyone at a terrible disadvantage, Your Honor.

MR. DAN SLOTCHIVER: I had no idea they were going to rely on this affirmative defense, Your Honor.

And the statement here, once again, in one of the transcripts, Bret Davis's testimony here, or his statement here, he talks about how the -- and while Mr. Slotchiver's correct, but there is a timeline where she had to file and I had to file, but I've also done a lot of work on this matter, and I have retained documents that

may predate my involvement or whatever, so I'm not completely certain that I can separate the things as easily as he may think I can separate them. It is all what I consider my file now and privileged. So it's the same issue we've been discussing.

As far as raising the issue, nobody listed Robin Morris as a witness. The last notification -- we had brought this matter to the court, because we knew that she testified in her deposition that based on her deposition, we did try to get documents. We tried exactly that. And they said no, they objected to it, and Your Honor agreed with them that we could not get these documents.

You know, the fact that Robin existed, a surprise? No. The fact that they were going to bring her in to testify -- or not to testify, that they were going rely on her and assert her as an affirmative defense, absolutely a surprise. They made the tactical decision we're not going to do that, we're going to claim the attorney-client privilege instead, and we're not going to let you go into it. And that's exactly what they did. Now they want to rely on it, and it's just improper.

MR. BOYD: Your Honor, again, we objected to the subpoena which Mr. Slotchiver propounded, which was a subpoena for the entirety of the file. And I keep repeating myself. We did not object to appropriate discovery with respect to Ms. Morris, so --

MR. DAN SLOTCHIVER: The transcript speaks for itself, Your Honor. Mr. Boyd, Mr. Davis, and Ms. Morris, each one of them individually, claimed that privilege, and I don't know how they can tell me that it was a limited privilege. And they said: We'll consider interrogatories by questions if you send them to us. Once again, we made a decision based on the fact they never disclosed her as a witness, they never disclosed her as an expert, and they asserted the attorney-client privilege.

And what we anticipated was that even if we served her with notice for her deposition, they were going to assert the same privilege they'd asserted all along. We also assumed that if they are asserting these privileges or if they aren't asserting these privileges, that they would have had a duty under the requirements to give us the documents, which they have not done, even 'til

today's date they haven't done. I've heard over and over again about the fact that we've offered them opportunity. We have not been provided documents.

Your Honor, it goes back to an argument that I made several months ago, maybe twice. It is not our duty -- and we made this on the motions to compel. It's not our responsibility, as petitioner's counsel, to ask somebody to supplement the discovery. It is their responsibility to be proactive, not reactive.

In the same vein, it's not our duty to ask them again: Are you going to call her as a witness, or are you going to assert documents? In good faith we trusted their answers, which are governed by the court to be correct. When they said it's -- they came into court -- and we have the transcript. I believe we've turned it into evidence. But it clearly stated we got a privilege, we got a privilege, we got a privilege.

MR. BOYD: Your Honor, with respect to the specific advice that Mr. Slotchiver is referring to, I believe Ms. Morris was right, I believe Bret Davis was right, and I don't believe I made any representation to this court that was

incorrect. I don't believe there was a responsive document.

Now, when a document from Ms. Morris was delivered to me by email, yes, it was a rather recent arrival, but I did produce it. I produced it along with the email which showed the provenance of the document, Your Honor, but that document has been produced. It is the document that Robin Morris provided me, and I did produce it.

Now, I don't believe there's a written document that says exactly and specifically, in my opinion, what advice that Mr. Slotchiver is getting at, but that doesn't mean that the witness should be precluded from referencing her consult with counsel throughout this process.

MR. DAN SLOTCHIVER: We also requested witnesses to the defense. Now they want to assert that she's a witness to the defense because she had a conversation with Mrs. Cohen. And even if it's not a document, if she is a critical witness with which they are relying their defense on, they should have provided us with her as a witness, which they did not do, never. We only learned about Robin Morris through taking the deposition

of Mrs. Cohen, not through discovery responses.

MR. BOYD: Your Honor, again, discovery is a multifaceted undertaking. It's intended to provide notice, prevent surprise. There's written discovery. There's interrogatories, there's requests for production, obviously, but there's also the deposition of witnesses, and Mrs. Cohen made it plain in her deposition that she had relied on the advice of Robin Morris throughout these proceedings.

MR. DAN SLOTCHIVER: Followed by our moving for the court to give us the documents that I'm objecting to it based on privilege.

MR. DAVIS: He just said there was no documents. There was a conversation.

MR. BOYD: I just explained, Your Honor, that I still to this day don't believe there's a responsive document that provides -- I have not seen it. If it exists, I have not seen it, Your Honor. But the witness has testified previously and would testify -- her testimony has not changed. It's been consistent.

THE COURT: So, Mr. Slotchiver, your position is that you would rather the court not allow the testimony of the witness with respect to

reliance upon counsel --

MR. DAN SLOTCHIVER: Yes, Your Honor.

THE COURT: -- until I've ruled on the matter?

MR. DAN SLOTCHIVER: Yes, Your Honor.

THE COURT: And is there other testimony, Ms. Moore, from the witness that you would like to enter at this time? I think there was some discussion that counsel felt like that there were other witnesses that we could hear from over the next couple of days.

MS. MOORE: Your Honor, some of the testimony that I wanted to elicit would be kind of intermingled with some other testimony.

THE COURT: That's already been introduced?

MS. MOORE: Correct, but I'd rather not pick and choose those pieces, because I intended to question her kind of in a chronological order. And if I understand, are they only objecting to her reliance upon the advice of attorneys, not the reliance of advice as to doctors?

MR. DAN SLOTCHIVER: Your Honor, we're relying on -- or we're objecting to any matter

which should have been pled by an affirmative defense.

I'm at a little bit of a handicap here, because I'm provided new things different days I come into court, so I don't want to limit myself to that. Right now what I'm objecting to is the introduction of testimony from what the lawyer told them, but likewise, it appears that there's an attempt to bring in testimony from what a doctor told them.

For example -- and I don't know what would happen, but for example, if they said: A doctor told me that if you don't do these things, it will be critical, well, we don't have -- and that, I think, would be an affirmative defense: We had to do it because we were told if we didn't do it, it would be critical. Well, I don't have that information. I don't know if it's true. I've never been provided that information. And I'm just making it up, Your Honor. I have no idea if it exists.

But those are items which we believe should have been pled if they existed, so that we would have an opportunity to look at them. We've got a lot of eyes on us, obviously, but I'm not

asking for something that I haven't asked for all along, and we just want that information, and I've provided the court with what I believe is the proper law to support what I'm asking for. I've said it in discovery. I've given the court authority to substantiate what I have, and I'm asking for the opportunity to continue with the case.

It seems to me, Your Honor, that if you were so inclined to allow the testimony to go forward, limited to not testifying about issues which arguably would be an affirmative defense, but it is a very small -- hoping a very small area that you would be precluding, and that if, in fact, you were to decide a week from now or ten days from now that you were inclined to allow it to come in, it would be as simple a task as to call in Susan or Paul Cohen, because they're the only people involved, to come testify to it, but for the fact that it might open the door for us to do other things. It's -- that's our position.

THE COURT: Does that answer your question, Ms. Moore?

MS. MOORE: I'm not sure it did, Judge. If I understood Mr. Slotchiver correctly,

that if I were to go into questions about her reliance upon various medical professions as to what steps she may have then taken, he would object?

MR. DAN SLOTCHIVER: Well, I have no objection to her testifying as to what she did and what she paid for to be done. It's more along the lines of the basis for why she did it, and I think there is a distinction. And it goes back to the same example as before. If she says: I did this because I was told that if I don't do this, it would be critical, I would object to that. If she says: I did -- I gave her this therapy because I believe it prudent and appropriate to give her, then there'd be no objection to it.

THE COURT: But reliance on the opinion of a medical provider --

MR. DAN SLOTCHIVER: Well, and only so much as it goes toward the ultimate defense of the case. I mean, there were questions asked earlier that we certainly had no objection to -- there were a few -- such as who referred you to this doctor, and we weren't objecting because that doesn't go to the underlying issue of the case. It wasn't what we thought would be inappropriate.

It was a very appropriate question.

But why did you do this? Well, because I was told if I don't do this, this would happen. I'm just making it up, because I don't know that that's going to be the testimony. That would be objectionable, because that appears to me to go back into the issue of being an affirmative defense. I had to do it, and if I didn't do it, it would be a problem. And that's the things that we have not been provided.

THE COURT: So Ms. Moore?

MS. MOORE: I think that for a different variation of the hypothetical he's giving, he would probably object to the balance of my inquiries to Mrs. Cohen, because it's more than simply whether or not she expended money for the purpose of various therapies. It's based on what advice she received from various medical professionals as to why that would have been an appropriate therapy for Abbie to have been engaged in in the first place, much less whether or not it was reasonable to pay for it and continue to provide her with such therapy.

THE COURT: So at this point, you don't have any further questions for Mrs. Cohen?

MS. MOORE: Based -- I want to make sure I'm real clear. I do have other questions --

THE COURT: Yes, ma'am.

MS. MOORE: -- but it's in the area of dealing with what steps she took based on advice provided to her by attorneys, by medical professionals, et cetera.

THE COURT: But based on Mr. Slotchiver's objection to those questions, at this time, until the court rules on the objections before the court and the motions, you don't have any further testimony at this time and would like the opportunity to re-call Mrs. Cohen to get into these matters --

MS. MOORE: Re-call, correct.

THE COURT: -- once the court rules?

MS. MOORE: Correct.

THE COURT: Thank you.

Mr. Kachmarsky, anything from you at this time?

MR. KACHMARSKY: I do have -- I would like to request about a two- or three-minute recess and come back in and get started.

THE COURT: All right. That would be fine. We'll go off the record, take a very, very

brief recess.
(A recess transpired from 5:32 PM to 5:40 PM.)
THE COURT: We're back on the record in the Abbie Dorn matter, and I believe Mr. Kachmarsky was going to examine Mrs. Cohen.
CROSS-EXAMINATION
BY MR. KACHMARSKY:
Q. Good afternoon, Mrs. Cohen.
A. Good afternoon.
Q. I think Ms. Moore probably asked you a lot of questions I was going to ask, so I'm hoping this will go a lot quicker.
A. Excuse me. Could you speak a little bit louder?
Q. Sure.
A. Thank you.
Q. I wanted to take a look at some of the trust expenses. We had previously looked at the spreadsheet that was filed with the court for the accountings, 2008, '09, '10, and '11.
MR. KACHMARSKY: Could you put 2008 up, please?
THE WITNESS: I can't see anything. Do I get a copy?

THE COURT: Do we have that document, the exhibit number?
MR. DAN SLOTCHIVER: Is this the accounting or the ledger?
MR. KACHMARSKY: The accounting.
MR. DAN SLOTCHIVER: The accounting, I believe, is No. 95, Your Honor.
THE WITNESS: Excuse me. Is this what you're referring to?
MR. KACHMARSKY: This is 2008, that's correct.
BY MR. KACHMARSKY:
Q. Ms. Moore asked you earlier if you had considered placing Abbie in a nursing home, and you responded that for a lot of reasons, you had not decided to go that way, so to speak, but did you look into the price of what it would cost to put her into a nursing home?
A. Well, she was in an initial nursing home in California. It was $1,000 a day.
Q. Was she still in like a critical care unit? I was talking about in her present condition now.
A. She was not in critical care, no. She was not on a ventilator. She was not requiring

any particular -- any particular critical care needs.
Q. So do you believe if she were to go into a nursing facility today, it would be a similar cost?
A. I have no idea. I just would not do that.
Q. Since she's already gone through the expenses, the ones I wanted to ask you about were the agency employee cost. In 2008, that cost was $65,000?
A. Yes.
Q. And then you also have net salary paid through AccuChex, that's another $68,000. Could you explain --
A. Show me what line. Could you tell me what line?
Q. That is Line 25.
MS. MOORE: She's referring to the two point number.
BY MR. KACHMARSKY:
Q. 2.19.
A. Salary paid through AccuChex, that's correct.
Q. So what are the differences between

the two costs?
A. Well, these are -- the ones from AccuChex are from all of my other caretakers. I have two people who I employ for a large number of hours, about 50 to 60 hours, because they wanted those additional hours, and then I pay an agency fee, and they chose to be employed that way, and they're excellent employees.
Q. So arguably, it's all just one number, adding the two numbers together?
A. Yes, it is.
Q. So the total salaries in 2008 looks like it's about $65,000 and $68,000, for a total of roughly 133?
A. Approximately, yes.
Q. And then, also, I wanted to take a look at physician. And can I see the detail on that one? That is 2.20. And you have McCarthy Counseling included in that item as well?
A. I don't know if McCarthy Counseling is included. He's not a physician.
Q. It is included in there as well. It looks like there are some other physicians as well, but there are some -- it looks like a lot of that could be classified really as therapy?

A. Therapists, 2.23.
Q. If we can go back to the 2.23. Or back to the total expenses, I guess. And we have therapists of $12,000, roughly. So for 2008, again, would you agree that the total -- I guess mostly therapy would be roughly about $22,000 for that year, $10,000 and $12,000?
A. I can't tell you a physician is a therapy. That may have been -- there are medical expenses that are not paid by Medicaid.
Q. Let's take a look at 2009 real quick. I just want to look at the same expenses.
A. I don't have 2009. I just have 2008.
Q. Again --
A. What page?
Q. We're looking at the ledger page that has the total expenses.
A. I'm sorry. I don't know what the ledger page is. That one was obvious because of the long columns. Cash expenses, the back page, QuickBooks?
Q. Let me see if I can help you. And you've got Item 2.01, again, agency employee cost. It's approximately $88,000. Is that correct?
A. That's correct, yes.

Q. And let's see. Scooting down to payroll expense through agency, $105,000?
A. 2.22?
Q. Correct. So I'm coming up with $105,000, $88,000, for roughly a total cost in 2009 for employees equaling $193,000. Would you agree with me on that?
A. I don't understand what you're talking about right now.
Q. I'm talking about the total, 2.01 plus 2.22. It's $88,000 plus $105,000. It's $193,000. And you testified for 2008 that would have been roughly the employee costs that you incurred in 2008, and for 2009, that cost would be $193,000?
A. Are you saying that that's AccuChex?
Q. Let's look at 2.01. That's agency employee cost, $88,000. Is that correct?
A. I'm assuming it is, yes.
Q. Well, are you looking at it?
A. Yes.
Q. It's 2.01. It's $88,000.
A. Yes, I see that.
Q. And then look at 2.22, payroll expense through agency, $105,000?
A. I think that means that that's

supposed to be written as AccuChex, through AccuChex. There's not another line for AccuChex.
Q. But those two expenses equal your total employee cost for that year. Is that correct? That's what you testified for 2008.
A. I guess.
Q. And 2.27, therapists, would you agree that number is -- I'm just going to round it down to $21,000.
A. Yes.
Q. And then also look at the physician expense, 2.23, and that's another $21,000. And I would like to look at the detail of that, please.
A. What do you mean the detail? What am I supposed to look at?
Q. Are you able to see -- you're not able to see the screen, or are you?
A. Now I can, if you make it large.
Q. If you scroll through most of that, I think you'll see that most of that is McCarthy Counseling.
A. McCarthy, Lisa, okay.
Q. If we could go in and back out -- who is Lisa Falcone, by the way?
A. She is her chiropractor, and Corrine

is --
Q. So she wouldn't really be a physician, either, would she?
A. No. Corrine Merrill is the only physician.
Q. You can keep scrolling down.
A. Yes. She sees her five times a week.
Q. There's Ms. Merrill. She is a physician, right?
A. Yes.
Q. But the bulk of that $21,000 is basically therapy?
A. That's correct.
Q. I just want to run through all the years real quick and just look at those numbers. We're going to go ahead and move to 2010, and we have a line item 2.01, agency employee cost. You would agree it's $94,000?
A. Yes.
Q. Are you okay looking at the screen, or would you want the physical document?
A. I'm fine with that. Can you make it a tad larger?
Q. And then let's scroll down and look at -- the payroll agency through -- payroll

expense through agency is $118,000. Would you agree with me on that?
A. Yes.
Q. And that's a total of $212,000 for 2010. Also, take a look at the therapy expenses on 2.24 of $36,000. Do you agree with that?
A. Yes.
Q. And also the physician fees of $46,000?
A. Yes.
Q. And let's take a look at the detail on that, as well, 2.20. Who is Joe Cozolino? Did you testify about him previously?
A. I didn't testify about him, but he's a psychologist.
Q. Is he a medical doctor?
A. He's a PhD psychologist.
Q. But not an MD?
A. No.
Q. Who's Dr. John Brown?
A. He is also a psychologist.
Q. Ms. Falcone, it says psych evaluations. Is she also a psychologist?
A. No. Psych evaluation? I don't know.
Q. And I do see some miscellaneous

expenses for Ms. Merrill again, and there's a dentist, but for the most part, the $46,000 would appear to be related to therapy. Is that correct?
A. Tell me what number.
Q. You got McCarthy Counseling, 238 payments for $27,000.
A. Yes.
Q. Lisa Falcone, chiropractor, $3,760. What's Oasis Hyper --
A. Hyperbarics is a treatment to add additional oxygen to the brain.
Q. Let's just move on to 2011. And Line 2.01 is agency employer cost. Let's call it $93,000. Then scroll down to payroll expense through agency, $106,000. Do you agree with those two numbers?
A. Yes.
Q. So that would be a total of $199,000 for that year.
And now looking at therapists is $27,000. Do you agree with that number?
A. Yes.
Q. Then also looking at physicians, which I'm just going to say is basically therapy, unless you would like to look at the detail again.

A. No. That's fine.
Q. So that's a total of $61,000 in therapy for 2011.
And then finally, 2012. Agency employee cost, $86,000. Do you agree with that?
A. Yes.
Q. Then down to the payroll expense through agency, $67,000?
A. Yes.
Q. That would be a total of $153,000 for 2012, and then we have therapists at $24,000. Do you agree with that?
A. Yes.
Q. And then also physicians, which I'm also going to call therapy, for $27,000, 2.20. Do you agree with that?
A. Yes.
Q. Could you explain -- basically, your employee cost goes from, in 2008, $133,000, then it goes to 2009, $193,000, up to $212,000 for 2010, back down to $199,000 in 2011, and then finally, now at $153,000 for 2012. What's going on in 2012 that are making these expenses go down?
A. Well, in 2012, Abbie is much better. She can go out to therapists, thank God. That

does make a huge, huge difference in cost. I don't need as much help as I used to need. She's able to help herself more.
MR. DAN SLOTCHIVER: Your Honor, I object to the statement that she's better, and I object to the statement that she's able to help herself more. She's testifying as to things that Abbie -- about Abbie, not about herself, and I don't believe she has the capacity to testify as to those items. We've talked about this over and over again. I believe you've continuously ruled that she cannot testify as to what Abbie can do, but instead, she can testify as to her observations.
THE WITNESS: My observation is that I don't need as much help.
THE COURT: Thank you. I'll strike the other statement.
MR. KACHMARSKY: I think that's responsive to the question. Thank you.
I've prepared a document which makes a couple of assumptions, but it basically shows what the trust might look like, the trust balance, and I'd like to admit this.
MR. BOYD: Your Honor, I'm going to

object to this document on the grounds that this is just purely speculative, and there's no foundation for what he's put in here in the way of projections. I'm not sure it has any relevancy. The issue here is not what might have happened in a perfect world. The issue is what's actually happened, what the trustees have actually done.

MR. DAN SLOTCHIVER: Your Honor, I'm seeing this document now, but I believe that the issue before the court is not just what happened with money that was spent, but what it would require the court to make the trust whole. In other words, if you determined, Your Honor, that $10,000 was inappropriately spent, putting $10 back doesn't make the trust whole.

As I understand it, the litigation I've done in FINRA, is they've got to put the $10 back and figure out how much money would that $10 have made, had it been invested appropriately, where would you be today, and I believe that's what this document is going to attest to.

MR. BOYD: Your Honor, this is completely speculative.

MR. KACHMARSKY: I don't think it's completely speculative. It is based on assets

that did exist in the trust and arguably might need to be put back into the trust in order to -- in the finding of a breach of fiduciary duty, does calculate what that amount might look like, and it makes -- there have to be some assumptions, I mean, a reasonable assumption as to an interest rate. There's no assumption as to the annuity payments. They go up 3.5 percent per year, period.

I did make an assumption on interest income being calculated on a balance at 3 percent, and that number would vary. The 3 percent is not unreasonable over a sustained period of time. And then also what would be reasonable expenses being paid out of the trust, because what we've seen in a lot of these years is that the money's been completely dissipated. And now we understand that there's not as much need for as many expenses, and I'm just attempting to demonstrate that this trust could have a lot of money in it and --

MR. DAVIS: Your Honor, I would like to say one thing, if I may. Apparently, he's taking the position that the ward should be -- or Abbie should be placed in a nursing home. The money should not -- as much money should not have

been spent on doctors. It should have been held in the trust for the children. We can't lose sight of the purpose of the trust.

And I think this is irrelevant. We're here talking about Abbie's care. We've got information in an order from California that says they provide her excellent care, and now he's going back and questioning what the California court said and said they shouldn't have spent so much money on these medical or therapists, or whatever he just went through, and should put it back in the trust and use these fantasy numbers to come up with some kind of $9 million figure. It's fantasy, and it's irrelevant. This should not be admitted at all.

MR. KACHMARSKY: It's not fantasy, Your Honor. The trust -- and I could pull this up and take a look at it -- I saw at the end of the 2012 accounting has $150,000 in it, and that's all that's in it.

And it seems like at this juncture that they have stopped spending all the money, but I maintain that a lot of the expenses -- it looks like, when you look at the total numbers and the total amounts that have come out of here, I mean,

arguably, it's kind of a free-for-all, and I'm just attempting to demonstrate what something a little more reasonable might look like, still spending a substantial amount of money on Abbie's care -- I think I started at $20,000 a month -- and then also showing what the result would be if they had not spent all the money from the attorneys fees.

MR. DAVIS: And that's fine, Your Honor, but he's first got to overcome the reason for the need for a trust, and I would encourage him, along with the court, to remember what the d4A trust is for. It's for Abbie's sole benefit. Whatever she needs -- whatever she needs -- the trust can pay for it. It's not -- it's not designed to retain money for the children. It is there for Abbie, and the trustees have used the money for Abbie's benefit, so it doesn't make any sense to then come back and say after the California court has said they've acted properly, to come back and say, well, they spent too much money on medical care. That is exactly what the trust is for, that is the sole purpose of the trust, so it doesn't make any sense for him to come back and give us these numbers here that are

highly inflated.
MR. DAN SLOTCHIVER: I don't believe there's a place where California has ruled that they acted appropriately with reference to the expenditures. I don't believe that's ever been an issue in front of California.
MR. BOYD: Your Honor, the court --
MR. DAN SLOTCHIVER: And Your Honor, now both are arguing. We've gone back and forth. I've heard Bret and Reese. It's back and forth. I'm going to ask that only one of them argue, Your Honor, as we discussed last week.
THE COURT: I would give Mr. Davis a little bit of leeway in arguing on this particular issue. I understand that the Cohens retained him after Ms. Moore, so I think he is probably a little bit more familiar with the special needs trust, so I'd certainly appreciate the right to hear from him on that.
MR. BOYD: Your Honor, the court in California, in contrast to fantasy, whatever this -- you may call this, again, it's not the purpose of the trust. Abbie is the beneficiary of the care that the Cohens have provided.
Specifically, the California order

that's been talked about so much, on Page 4, the court says: Abbie has already outlived the life expectancy given to her by her treating physicians because of Susan's extremely persistent and devoted attention to every detail of Abbie Dorn's life.
So now you want to come in and make the argument that the care should have been the economy special, that the money should be pooling in the trust. The fact of the matter is, Your Honor, if Abbie Dorn had not been receiving the extremely devoted care that Mrs. Cohen has provided, there's a very good chance she wouldn't be here today, and there would be no annuity.
THE COURT: Anything from Ms. Hedgepath or Ms. Moore on this?
MS. HEDGEPATH: He has reasonable expenses, but there's been no testimony or evidence presented as to what are reasonable expenses, so I don't know where he got his numbers. There's been no foundation or basis laid for these calculations.
THE COURT: Anything from you, Ms. Moore?
MS. MOORE: Your Honor, whether or not

this is something he may want to argue in closing arguments is one thing, but he's producing an exhibit and then wants this witness to testify based on numbers that he's calculated. I just don't think that's an appropriate foundation for her to be able to testify to, number one. And number two, the numbers are calculations that Mr. Kachmarsky admits that he came up with. From where? Where does the number 240 come from?
And that's assuming that all the other expenses that were actually expended from the trust in any given year were, in fact, not reasonable and should not have been used to reduce the gross amount of the monies that were being held in trust.
So I don't see a foundation. I think the more appropriate use, if there is an appropriate use, would be for him to utilize it in the closing argument.
MR. KACHMARSKY: I would like to -- I'll go into the employee agency expenses and also some of the therapies each year.
BY MR. KACHMARSKY:
Q. How many employees do you employ that total this $199,000 that was incurred in 2011?

A. Well, that depends, but sometimes I've had as many as nine people in AccuChex. The list of therapists also varies. That could be anywhere from 10 to 15, 20 people. So there are quite a number of people involved in Abbie's care, and we try to get her the best care available. That's why the trust was set up, not to save the money for the children. It's the Abbie Dorn Special Needs Trust, and my concern is about Abbie and getting Abbie the best care and keeping Abbie alive.
Q. Well, let's talk about the nine people. Tell me who they are, and tell me what they do.
A. Well, right now, there aren't nine people, but I've had up to six caretakers doing the work of now it's four caretakers. One of the reasons is that some of the caretakers requested additional hours.
Q. They requested additional hours?
A. Right, and that seemed to be more efficient, to give them additional hours and because they were very experienced.
Q. Is somebody with her 24 hours a day?
A. Absolutely, 24 hours a day.

Q. How many times during a 24-hour period would she have more than one person with her?
A. At any time that it's needed. If we need to take her in the pool, she needs two caretakers. If I'm gone like this all day, then she needs two caretakers. I am the second person when there isn't a second person in the room. If I am gone, she may need a second caretaker, for whatever reason.
Q. If she had two caretakers with her working eight-hour shifts, she would have -- two, four, six -- six caretakers would be sufficient to keep her 24/7, with two caretakers around the clock. Is that not true?
A. There are two caretakers. Nobody works only an eight-hour shift. Sometimes, unless it's a second person.
Q. So sometimes you would have maybe three caretakers?
A. No, never three. There's no need for three. If I am home, and it's not the pool, because I can't handle the pool anymore, because it's too hot for me, then I have to have a second caretaker.
Q. I'm still trying to understand how you

got to nine when six would be sufficient to have two with her --
A. No, six would be sufficient. I have a physical therapist who's on the payroll, that's Heidi McGovern, who is my Felderchrist therapist. She's a physical therapist, a licensed physical therapist. She comes five days a week.
And then I have Abbie -- because we have a lot of people in the house, we've got a cleaning staff.
And then I have my son Jeffrey, who does some of the accounting and some other tasks to make my life a little easier, because I work with Abbie approximately 12 to 14 hours a day. There are times that I need a rest, many times that I need a rest.
Q. And when you need a rest, you need one or two caretakers?
A. I need -- if I am gone, I need to either have Jeffrey in the home, or I need another caretaker in the home. You can't move Abbie from one activity to the other with one person.
Q. What do most of the caretakers get paid on an hourly basis?
A. That depends. One caretaker who is

not there as long I believe gets either $9.50 or $9.75 an hour up to $14.50 or $15.50 an hour.
Q. So on a high end, it'd be $15.50 an hour?
A. Yes.
Q. I need to do a little math.
THE COURT: Do you need a calculator?
THE WITNESS: Every person I have is there for Abbie's benefit, and Abbie needs that care. That's why the trust was established.
MR. DAN SLOTCHIVER: Your Honor, I object to the --
THE COURT: I didn't know if you needed a calculator.
MR. DAN SLOTCHIVER: I object to the reference that everybody that she has is there for Abbie's benefit. I don't believe it proper. I believe she can state in her opinion, she's hired everybody for Abbie's benefit, but there's a distinction between her opinion of what benefits Abbie and what actually does benefit Abbie.
THE COURT: I'll so note that on the record, your objection --
MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: -- and strike her testimony to the extent it was -- allow it as her opinion as to --
MR. BOYD: Your Honor, I believe that's what she said. She's just giving her response to the people that she had hired for the benefit of Abbie.
THE COURT: I'll allow it to that extent.
MR. KACHMARSKY: I've calculated that at $12 an hour, 365 days a year, 24 hours a day, that was costing about $105,000 for somebody to be with her 24/7. That's one person. And then we make a little adjustment for people who would be in there during times when she needs to go into the pool, and I come up with something maybe $150,000, or something like that. So the basis of, I guess, my $240,000 number is just having some sort of, I guess, limits on what is done for her and not just being basically a free-for-all.
Your Honor, this case --
MR. BOYD: Your Honor, I object to the use of the term free-for-all. I mean, the majority of the -- there's no basis or foundation for what Mr. Kachmarsky is saying. As a matter of

fact --
MR. KACHMARSKY: I'll withdraw it.
THE COURT: Thank you.
BY MR. KACHMARSKY:
Q. And you maintain that the trust, the special needs trust, is for the sole benefit of Abbie?
A. Absolutely. It's for Abbie's sole benefit, not to save money for the children.
Q. And do you understand that South Carolina also has laws relating to duties of loyalty, impartiality, prudent administration, and prudent investment that apply to your decisions in the trust?
A. I think that I have been extremely prudent. I have put innumerable hours, to the point of utter and complete exhaustion. I'm looking into everything for Abbie and doing very careful due diligence in every single thing I have done. And the only reason she was awarded this amount of money is because we were paying that much for her care. I was right at her side. I was not sleeping at night.
MR. DAN SLOTCHIVER: Your Honor, I'm going to object to her --

THE COURT: I'm going to -- yes, sir.
MR. DAN SLOTCHIVER: She's testifying now as to why they were awarded that amount of money that they were given. I don't believe she has any foundation with which to testify to that.
THE WITNESS: Yes, I do.
MR. BOYD: She's just answering based on her personal knowledge, Your Honor. She's doing her best to answer Mr. Kachmarsky's question. She's entitled to answer the question.
THE COURT: To the extent --
MR. DAN SLOTCHIVER: Actually, Your Honor, she is using it as an opportunity to say what she wants to say, not in response to the question, and I don't believe that she has the ability to give that opinion.
THE COURT: To the extent that she is testifying as to her own knowledge, I will allow that.
THE WITNESS: In my own knowledge, I have looked up California awards. We had, apparently, the second-largest malpractice award. It was because of the care that we were giving to Abbie. It had no other basis than the care that my husband and I were providing for Abbie.

BY MR. KACHMARSKY:
Q. I'm asking you about South Carolina law as it relates to the --
A. Yes, and I do believe that I was very, very careful with all that, that I did comply.
Q. Have you ever considered the interest of the three children in any decision you've ever made out of this trust?
A. That's not what I'm supposed to do. It's about Abbie.
MR. DAVIS: I object. Again, I would implore him and the court to remember what the purpose of the trust was and who the trust was for. The children are remote contingent beneficiaries. If there happens to be something there, then they may get something after Medicaid is paid back. That is not the purpose of this trust.
I've written a memorandum to this court. And his questioning here is putting the witness in an awkward position. She has no responsibility whatsoever to think about the interest of the minor children, and I believe there's provisions in the trust that say that she does not have to consider that interest. It's

solely for Abbie. That's an improper question, Your Honor.
MR. KACHMARSKY: Your Honor, I would like to introduce this case, Lewis v. Alexander. And as I said in my opening, this case was heard, I think, back in March or April of 2012. The decision came down in June, and then there was a writ for certiorari up to the supreme court that was denied in January of this year.
So basically, this case is, as I see it, the law of the land, and it's gone into a lot of detail regarding special needs trusts.
It's been asserted throughout this trial that the interests of the children can be completely ignored. This case talks about duties of loyalty, impartiality, and prudent investment and says that it is the state, in this case, the state of South Carolina and the probate court, who has the right to make decisions as to whether or not the trustee acted prudently.
THE COURT: I'll be happy to consider that case if there's not an objection.
MR. DAVIS: I'd like to see it first, Your Honor, to see what --
MR. BOYD: We've got it.

Your Honor, it is my understanding that Mr. Kachmarsky said this was a South Carolina case. I just want to point out --

MR. KACHMARSKY: I did not say it was a South Carolina case. It's a Pennsylvania case.

MR. BOYD: I just wanted to clarify that.

MR. DAVIS: He also said it was probate.

MR. KACHMARSKY: These do not have page numbers, which makes them kind of difficult to look at. I'm looking at the page that has -- the number is VE6 at the bottom. It's about five from the back.

MS. HEDGEPATH: I'm sorry?

MR. KACHMARSKY: It's five from the back.

It states that Pennsylvania's general trust law contains numerous provisions for protecting the trust and the interest of its beneficiaries. For example, Pennsylvania law imposes duties of loyalty, impartiality, prudent administration, and prudent investment. These duties may be enforced by a court when the court's jurisdiction is invoked by an interested person or

as provided by law, and the proceeding may relate to any other -- any matter involving the trust administration. The court's authority includes the power to remedy breaches of trust, remove the trustee, or terminate trust.

It basically stands for the general proposition that all of the South Carolina -- in this case, South Carolina trust law, does not simply go out the window because we're talking about specialties trusts. So I take objection to Mr. Davis's objection about me talking about the interest of the remainder beneficiaries, who are the children in this case.

THE COURT: At this point I will overrule the objection and allow him to question her in that respect.

MR. BOYD: Your Honor, just for the record, I just want to point out I don't object to the court considering this for the weight of the authority of the opinion, but it's not binding, obviously, on this tribunal.

THE COURT: Thank you. I'll take that into consideration.

If you've got a copy, I'll be happy to include that.

BY MR. KACHMARSKY:

Q. Your testimony is that you have not, in fact, sought to see how much it would cost to put Abbie in a nursing home here in Myrtle Beach? You've never even looked at the cost?

A. No.

Q. You never even considered it?

A. And it's totally inappropriate. We take care of her at home. She's our daughter. The trust was set up for her care, not to put her in a nursing home to get ulcers and die, when there are two nurses, at most, for 24 patients. That is absolutely not acceptable.

MR. DAVIS: Your Honor, may I say one more thing for the record? I need to respond to Mr. Kachmarsky. Paragraph 17 on Page 11 of the trust: In the administration and management of the trust, including, without limitation, the investment and reinvestment of the trust estate, the trustees shall consider solely the interest of the beneficiary, Abbie Dorn.

THE COURT: Thank you. So noted.

BY MR. KACHMARSKY:

Q. You said that there was a lot of concern about whether or not certain expenditures

would disqualify the trust for Medicaid. Is that correct?

A. I didn't say certain expenditures; I said the request for the child support. That was the concern. That has always been the concern. I didn't say anything about certain.

Q. Did you have a concern that the payment of the California GAL fees would disqualify the trust?

A. Not for Abbie, but for Dan's portion, yes.

Q. Were you concerned that payment of my fees out of the trust would disqualify the trust?

A. Not if the court told me to pay them.

Q. But you were certain that there would be a problem with child support payments?

A. Yes. I had been given --

Q. Even if they were done pursuant to a court order?

A. Didn't matter. You couldn't pay child support. It was only for Abbie.

Q. But the trust has been ordered to pay, for example, the expenses of Dan and the children coming to see Abbie?

A. Oh, no, oh, no. We pay that

privately. The trust has not been ordered to pay that, and the trust has not. And he has not even documented it. He just makes up any number he wants, and we write him a check.

Q. I've read the order. The order states that the Cohens shall pay for those expenses.

A. We do.

Q. Correct?

A. We do, not the trust.

Q. But you were in that -- you've taken that position, and that's fine, but the order, when it says that you're supposed to pay those expenses, it's talking to you as conservator or as trustee. Is that not correct?

A. I don't know. I'm not an attorney. I pay them myself.

Q. You did pay the California GAL fees, did you not?

A. We paid them personally, yes.

Q. And you did pay my fees out of the trust. Is that correct?

A. Yes.

Q. And as far as you know, neither of those events, nothing has caused any problem with the Medicaid qualification, nobody's asserted that

Abbie should not be on Medicaid because of those expenditures?

A. I paid -- they did assert if I had paid in California, that she would be disqualified, that was definitely a claim, so I paid it myself.

Q. You paid the expenses for the GAL yourself out of the trust?

A. In California, yes. I was -- Medicaid asserted that they would not accept that. It was not acceptable for us to pay that out of the trust.

Q. What about the payment of my fees?

A. This nonsensical action was brought here in South Carolina.

Q. I'm just asking you what about the payment of my fees? Was it paid out of the trust or not?

MR. BOYD: Your Honor, objection, asked and answered. And he's talking about fees that were specifically argued and approved in this tribunal after a lengthy argument. He's already asked and answered this. The witness has told him what she did.

MR. KACHMARSKY: I've actually asked a

very simple question. I've yet to get an answer. I asked if my fees were paid out of the trust or not.

MR. BOYD: And she's answered it.

THE COURT: And she said yes.

THE WITNESS: Yes.

MR. BOYD: She said yes, pursuant to this court's authority.

THE COURT: Thank you.

MR. KACHMARSKY: I didn't hear that. Thank you.

THE WITNESS: Yes. Pursuant to this court's authority, your fees and all the -- Lee and Lynette have been paid out of the trust.

THE COURT: And it's my understanding, based on her testimony, that the California guardian ad litem was paid for by the Cohens personally and not out of the trust?

THE WITNESS: That's exactly correct.

THE COURT: Thank you.

MR. BOYD: Just want to point out for the record, Your Honor, she wasn't a minor -- she wasn't a GAL; she was minors' counsel.

THE COURT: Thank you.

MR. BOYD: Just clarification for the

record.

THE COURT: Thank you.

BY MR. KACHMARSKY:

Q. Do you recall what year those fees were paid, the GAL fees? Was that 2012?

A. I don't recall, maybe 2011. I'd be making it up. It's 2010, 2011, or 2012, but we paid them ourselves, so it wouldn't be on there. Or I don't know if it would be on there. I don't know anything about -- I don't look at those accounting sheets. I testified to that.

Q. We'll go to the detail on 2.21. Let's go to 2011, please. Back up to the top, please. Who is Ruth Estep, E-S-T-E-P?

A. She is minors' counsel, and that's Abbie's portion.

Q. I'm sorry. She's who?

A. She is minors' counsel, and that's Abbie's portion. Did you say Ruth Estep?

Q. Yes.

A. I cannot see this at all.

Q. Is that the California GAL?

A. She's not a GAL; she's minors' counsel.

Q. The court ordered ultimately you to

pay all the minors' fees. Is that correct?
A. All the minors' fees?
Q. Yes.
A. They ordered Abbie to pay it, but we made arrangements for us to pay Abbie's -- Dan's half that he put on us by releasing confidential documents claiming that he was poor and couldn't pay them, and suddenly he's rich now and can afford all this nonsense.
Q. I'm just asking you paid these two amounts out of the trust?
A. Those were Abbie's half. They were part of Abbie's.
Q. And nobody's ever asserted that payment of those amounts would disqualify --
A. Because that was for Abbie. That was not Dan's.
Q. Could you just answer the question, please?
A. Yes, I did, because they were for Abbie.
Q. Nobody's ever asserted that the trust should be disqualified for Medicaid, or Abbie should be disqualified?
A. No, but they did assert if I paid

Dan's half, it would disqualify.
MR. DAN SLOTCHIVER: Your Honor, I object to the last statement. I don't know of any evidence where there's a document or -- and I haven't been provided any evidence that Medicaid had communication with her where they asserted this.
MR. BOYD: Your Honor, she's explaining why she paid the funds out of her own pocket, as opposed to drawing money out of the trust. I thought this case was about drawing money out of the trust improperly. Now she can't even justify spending money out of her own pocket.
MR. DAN SLOTCHIVER: Your Honor, all we're asking for is that if they have a document or a person they're going to rely upon as part of their defense, that they provide that person or that document in advance.
And now, for the first time, I'm hearing about this communication with Medicaid where they told her certain things that she could or couldn't do, without disqualifying it. I've never been privy to that information before. I don't know about Medicaid having any communication with her and talking with her and speaking with

her and telling her these are problems, and this is going to disqualify you if you do these things. I'm not familiar with this stuff.
THE COURT: Mr. Boyd?
MR. BOYD: Your Honor, Mr. Kachmarsky asked the witness why the funds were paid in the manner that they were paid. She's answered to the best of her ability. I'm not sure what Mr. Slotchiver would have the witness do, other than answer the question truthfully. She's answered it based on her own knowledge, based on her own reason for paying the money out of her own pocket, as opposed to paying the money out of the trust.
MR. DAN SLOTCHIVER: It goes back to the affirmative defense issue we asserted earlier.
MR. BOYD: Your Honor, this case is not about the payment of Ruth Estep's fees. The fees that they're talking about were paid by the witness, by the Cohens, out of their own pockets. Mr. Slotchiver keeps saying that Mr. Dorn is not accountable for any of the things that the Cohens are, simply because he's spending his own money. She's talking about money that came out of her own pocket, Your Honor.

MR. DAN SLOTCHIVER: And Your Honor, Mrs. Cohen was also served in this action. She is an individual party to this action. There's not just an action against her as a trustee of the conservator. She has individually been sued in this action. She is part of it.
MR. BOYD: Your Honor, how did Mrs. Cohen run afoul of any of the allegations in Mr. Slotchiver's complaint? I would love for him to point out to the court how she, the witness, in any way ran afoul of any of the allegations that he makes in his complaint by paying a minor counsel's fee out of her own pocket, which is a fee that was rightly chargeable to Mr. Slotchiver's client.
MR. DAN SLOTCHIVER: From my perspective, Your Honor, had she testified that: I paid the fee, I wouldn't be making the suggestion, but she's testifying as to why she paid the fee and who contacted her. My objection is limited to the contact and the interaction that she allegedly had and is now testifying to with Medicaid. It's not objecting to her stating that: I made the payment. I understand that I've seen that document. I'm objecting to the hearsay

statement about a communication she had with Medicaid.

MR. BOYD: She's testified, Your Honor, that she was concerned that payment of those fees out of the trust would create a problem for the trust, end of story.

THE COURT: I'm going to sustain the objection. She testified that she was concerned based on I believe the Medicaid agency in California told her if she paid it --

THE WITNESS: No. I didn't mean the agency in California.

THE COURT: I'm sorry.

THE WITNESS: It wasn't -- it didn't have anything to do with California.

THE COURT: Did you not testify, ma'am, that you paid Ruth Estep because that was -- out of the trust -- you paid Ms. Estep's fees, one-half for Abbie, because that was for Abbie's benefit, but that you were told that if you paid Dan Dorn's fees out of the trust, that would be a problem for Medicaid.

THE WITNESS: Yes, but I thought you said something about California, that that would be --

THE COURT: I thought that was in California that you were -- maybe the California Medicaid agency that told you that.

THE WITNESS: No, no. It wasn't the California Medicaid agency.

THE COURT: But someone told you that?

THE WITNESS: Someone did tell me that.

MR. DAN SLOTCHIVER: And that's what we object to.

THE WITNESS: I acquired the knowledge. Would that be more acceptable?

THE COURT: I don't think so, ma'am. Thank you.

I'll sustain the objection and strike that.

MR. DAVIS: Well, Your Honor, one thing.

MR. DAN SLOTCHIVER: Now they're both arguing the case again.

MR. DAVIS: How would she obtain that information is how I'm just going to -- how would she know whether to do it or not to do it? There's got to be at some point where she gathers information.

THE COURT: And I think Mr. Slotchiver's objection is that the information wasn't provided him through discovery. Is that correct?

MR. DAN SLOTCHIVER: Yes, or through an affirmative defense.

THE COURT: Or an affirmative defense.

MR. DAVIS: So all the information that she's -- I know this sounds wacky, but it sounds like where we're headed. All the information that she's ever used in the past to formulate her opinions is subject to being produced to him is basically what he's saying. How can she formulate any knowledge without some hearsay somewhere sometime? It's impossible.

So, I mean, I don't know how much information we can provide to him. She's got to formulate an opinion, and it's got to be based on something. It's not appropriate for him to say -- just throws up his hands: Nope, I don't have it in discovery. Can't talk about it. I mean, you can't do that, Your Honor. She's got to formulate an opinion. It's got to be based on something.

THE COURT: Thank you, Mr. Davis. Mr. Slotchiver?

MR. DAN SLOTCHIVER: If you're going to rely upon advice or a statement made by somebody else in defending your actions, then you have to plead an affirmative defense or have it provided to us. This is new information, but that's all I'm objecting to, and that's why I did.

THE COURT: Thank you.

BY MR. KACHMARSKY:

Q. There's been a lot of testimony here today about the California litigation, and I guess what each of the parties' roles were and fees that were spent.

When you first went to California right after the, I guess, accident that Abbie had, was it your understanding that Dan was the person who would be making medical decisions on Abbie's behalf?

A. He turned it over to my husband immediately.

MR. DAN SLOTCHIVER: Your Honor, briefly, can my client be excused until tomorrow? He did the red-eye last night, and it's been a long day for him, as all of us, but I'd certainly like him to be excused. He was subpoenaed to be here, and I wanted to make sure he could be

excused.
THE COURT: Any objection?
MR. BOYD: No objection, Your Honor.
THE COURT: No objection.
MR. DAN SLOTCHIVER: He'll be back tomorrow.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: Thank you, Judge.
BY MR. KACHMARSKY:
Q. But you understood that under California law, that those decisions were his to make if he'd wanted to make them. Is that correct?
A. Had he chosen to make them.
Q. Had he chosen to make them. But he didn't choose to make them, did he?
A. No. He knew he didn't have the confidence.
Q. He allowed you and your husband to make them. Isn't that correct?
A. Primarily my husband.
Q. And also under California law, he would have been the sole beneficiary of Abbie's estate. Is that correct, or do you know?
A. Abbie had no estate. He had stolen

everything from her.
MR. DAN SLOTCHIVER: Objection, Your Honor.
MR. KACHMARSKY: I would move to strike that as --
THE WITNESS: She had no estate.
THE COURT: Okay. I'll strike the statement that he stole everything from her.
BY MR. KACHMARSKY:
Q. I think, Mrs. Cohen, under California law, there was a period of time for about a month when Abbie's care, it was very acute. Is that correct?
A. That's correct.
Q. She was on a ventilator. Is that correct?
A. That's correct.
Q. And he could have, for lack of a better way of saying it, pulled the plug on her?
A. He could have murdered her, yeah, he could have.
Q. He could have done that?
A. Yes, he could have murdered her.
Q. But he didn't do that, did he?
A. He was very aware of community

opinion, and he was pretending to be a God-fearing man at the time.
MR. DAN SLOTCHIVER: Your Honor, I object to her statement that he was aware or what he was aware of. There's no foundation for her to be able to support what my client was aware of.
THE WITNESS: Okay. Then can I change that?
THE COURT: Thank you. I'll strike that.
THE WITNESS: Okay. The hospital was surrounded by rabbis at that time and other people from the religious community. I saw them with my own eyes.
BY MR. KACHMARSKY:
Q. I only want to make the point that these are decisions that he had the right to make, and he chose not to do them?
A. Yes. He could have murdered her. He chose not to murder her in front of his rabbis.
Q. And he was also the person who would have been the trustee of this Abbie Dorn Special Needs Trust if he had so chosen to be, right?
A. He didn't even want her to come into her house to visit her children. He said --

Q. Could you answer the question? The question is: He would have been the person who could have been the trustee of the trust if he so chose to. Is that correct?
A. If he so chose to actually take care of her --
Q. Is that correct?
A. -- and not desert her --
Q. Please answer the --
A. -- it is correct.
MR. DAVIS: Your Honor, I object. I don't know if that was established -- I don't know if that was established in California, because in South Carolina we have to go through a whole process, as you know. I've brought a number of them before you. There's no way she can say that he would have been the trustee. There's not enough information for her to provide that to Mr. Kachmarsky today.
MR. BOYD: There's no foundation --
MR. DAN SLOTCHIVER: Your Honor, they're both arguing.
THE COURT: I know. Please, Mr. Boyd, if you and Mr. Davis could decide who's going to raise the objections and argue, please.

MR. BOYD: Your Honor, the objection is there's just no foundation for the question, and I don't know how Mr. Kachmarsky expects the witness to respond. There's absolutely no foundation for the question that he asks. It's totally speculative.

MR. KACHMARSKY: He's the surviving spouse and, as such, would be the first person to be in the slot for --

MR. BOYD: He's asking the witness to comment on something that Mr. Dorn affirmatively avoided and affirmatively chose not to do.

MR. DAN SLOTCHIVER: Your Honor, at this point now Mr. Boyd is testifying about what Mr. Dorn did, and I would ask that that be stricken from the record. I don't believe Mr. Boyd has a foundation to testify as to what my client did, nor would it be proper for him to testify about what anybody did in this case.

MR. BOYD: Your Honor, I'm simply commenting that Mr. Kachmarsky is asking the witness questions about what may have happened or what might have happened. It's not -- he's not asking her about what actually happened.

MR. DAVIS: I hate to do this, Your

Honor --

MR. KACHMARSKY: I've got to object to this now, double-teaming.

THE COURT: Mr. Davis --

MR. DAVIS: As it relates the trust, I do have particular information and knowledge that I think would be helpful to the court.

THE COURT: But Mr. Davis, this relates to, I believe, California law, I believe is what Mr. Kachmarsky was asking her, as to who would be the trustee normally of the trust under California. Was that not your question, Mr. Kachmarsky?

MR. KACHMARSKY: Yes. I'm just asking her since he is the surviving spouse, obviously, he would be a person who would be -- if he wasn't first in line, he certainly would have been right at the top of the names that would have been thrown in the hat for all those positions.

THE COURT: I will allow that, and I will --

MR. DAVIS: Well, that sounds more reasonable. Names thrown in the hat is more reasonable than assuming that he would be the first choice.

THE COURT: Thank you. If you could rephrase your question, Mr. Kachmarsky.

BY MR. KACHMARSKY:

Q. As the surviving spouse, Dan would have been a person who, first of all, could have -- would have and could have made the medical decisions on Abbie's behalf. Is that correct?

A. He could have.

Q. And he was a person who would have and could have been most likely the trustee and the conservator?

A. You're assuming he was a decent human being and he took care of her and showed an interest.

MR. DAN SLOTCHIVER: Your Honor, that's not responsive.

THE COURT: Ma'am, I'm sorry. I know you're upset. I'm trying to --

THE WITNESS: I'm sorry. The name would have been thrown into the hat, okay.

THE COURT: Wait, please.

MR. DAN SLOTCHIVER: If I --

THE COURT: No. All right. I'm going to strike that from the record.

Let me just caution you, Mrs. Cohen.

THE WITNESS: I'm sorry.

THE COURT: I understand your personal feelings are getting the better of you. I know we've been here for a long time. We would like to continue for a little bit longer. If you could please try to keep your personal feelings to yourself.

THE WITNESS: I'm sorry. So the answer is yes, his name would have been thrown into the hat.

THE COURT: Thank you.

BY MR. KACHMARSKY:

Q. About a year after the accident, is that when the lawsuit was basically getting ready to settle?

A. No. It was considerably longer than that.

Q. How much longer?

A. Well, we were out there for 17 months, and they were talking about settling by August, September, and it didn't actually -- the paperwork didn't get signed, I don't believe, until November, we didn't get the first check until January of 2008, so it was -- I don't know the months -- 19 months, 20 months. I don't know.

Q. After he let you make the medical decisions, after he let you take Abbie to South Carolina, after he let you become the conservator, after he let you become the trustee of the special needs trust, you brought this action for divorce, which you said you had agreed with him that that was what he wanted. Y'all were in agreement on that. Is that correct?

A. We were in agreement, and he asked me to bring the action because he was embarrassed.

Q. And with regard to the visitation action, is it true that you told Dan initially that you wanted his children to be raised by your daughter Amy?

A. That is -- there's absolutely no basis for that. My daughter has five children. She runs a house. She has no time to raise three more children, God forbid, if she was needed, but never, never, never, never.

Q. When you started discussing visitation with him, is it true that you wanted to have the children for the entire summer or wanted Abbie to have the children for the entire summer?

A. I wanted Abbie to have -- I called -- I can't say that. I looked up how much normal

visitation was. Eight weeks was what I put in, but I had said all along, every time I tried to settle, that I would accept anything --

Q. I'm just asking you about the initial period of time.

MR. BOYD: Your Honor, the witness has a right to answer the question.

MR. KACHMARSKY: She's not being responsive to my question.

MR. BOYD: She's answering the question that counsel asked her. She has a right to answer the question.

MR. KACHMARSKY: I asked her if it was true whether or not she had asked for the entire summer.

MR. BOYD: And she was --

THE WITNESS: I didn't ask -- eight weeks is not three months.

BY MR. KACHMARSKY:

Q. And eight weeks is a sufficient answer.

Did you also not want the visitation to be without Dan being present?

A. I would have preferred that, yes.

Q. And those were the items that Dan

objected to, and that's how this thing got sideways, so to speak. Is that not true?

A. Not at all. I was perfectly clear that I was more than willing to compromise on that, very clear.

Q. Did you or Lisa Meyer hire a publicist in the California case?

A. I never hired a publicist, and I don't know about Lisa Meyer. I can't speak for her.

Q. Did you take the position in the court and in the media that Abbie was merely disabled and that Dan was denying her visitation?

A. Abbie is merely disabled, whatever merely means. I don't understand that term.

Q. So would you agree or disagree that her condition while she was at Mt. Sinai in Los Angeles, that she was -- was she in a coma for any period of time?

A. She was never at Mt. Sinai. She was only in a coma for about a month.

Q. What was the hospital she was at?

A. She was at Cedars-Sinai Medical Center.

Q. Cedars-Sinai. I stand corrected. Thank you.

And was she in a coma at any period of time?

A. Yes.

Q. Was there ever a point in time when there was discussion about possibly, I guess, removing life-sustaining procedures?

A. There was a physician who called a conference, but even Dr. Mamelak said he would not have permitted her to be removed from life support.

MR. KACHMARSKY: I have nothing further.

THE COURT: Thank you.

I don't believe that this was admitted.

MR. BOYD: What are you referring to, Your Honor?

THE COURT: This is the --

MR. DAN SLOTCHIVER: Do you want to introduce that?

MR. KACHMARSKY: Yes. I would introduce it as -- what would it be? -- R2-1?

THE COURT: I don't think I --

MR. BOYD: Your Honor, I'd object to this again.

THE COURT: I ruled that it was -- no. I said I don't think it was admitted.
MR. KACHMARSKY: No. I apologize.
MR. DAN SLOTCHIVER: Your Honor, it's almost 7:00. We've been at it for almost --
THE COURT: How long do you think it would take you to reexamine Mrs. Cohen?
MR. DAN SLOTCHIVER: I never imagined it would take as long as it did today. I don't know, to be honest with you. My guess is maybe, at most, an hour.
MR. BOYD: Your Honor, if I may, it appears to me that the witness is about at the limit of her endurance. She's been on the stand a long time. If I may suggest, if Mr. Slotchiver is agreeable -- I'm going to go way out on a limb. If Mr. Slotchiver is agreeable, what I'd like to suggest is that we call Ms. Meyer first thing in the morning, because time is now becoming an issue for her, that we interrupt the witness's testimony, we do Lisa Meyer first thing in the morning, and that we take up whatever questioning Mr. Slotchiver or anyone else may have for this witness at the conclusion of that testimony.
THE COURT: Any objection to that?

MR. DAN SLOTCHIVER: Your Honor, I'm not opposed to that, provided that we kind of have our own little schedule. I want to make sure that -- because I don't know how long Ms. Meyer is going to take it, and it might be a long time, it might be very brief, and I don't know how long the redirect and recross of Mrs. Cohen will take, and then I presume that afterwards, we'll call Paul Cohen. I would just like to be in a position to advise my other witnesses that we'll call them the next day, and other than that --
THE COURT: On Wednesday.
MR. DAN SLOTCHIVER: -- I have no objection.
THE COURT: Okay. I wouldn't think, because I --
Any objection?
MR. BOYD: No objection, Your Honor, but I do think there's some disclosure that we're entitled to at this point with respect to -- I'm hearing about a surprise expert witness, and I think whatever there may be in that regard, I think at this point we're entitled to know that.
THE COURT: So at this point -- we'll get to that in just a minute. The witness can

step down.
THE WITNESS: Thank you.
THE COURT: So we'll be adjourning in just a few moments, and Mr. Boyd has requested to call Ms. Meyer in the morning. We will take her testimony -- there's not an objection to that -- and allow everyone to examine her, because I understand that she has to go back to California tomorrow.
MR. BOYD: That's correct, Your Honor.
THE COURT: So we'll try to get her out of the way so that she can leave, and then we will -- Mr. Slotchiver has asked that we go forward with re-calling Mrs. Cohen, Dr. Cohen, and then you have an opportunity to tell your expert witness, Professor Freeman, that we will start with him on Wednesday or at some point early Wednesday, I assume.
MR. DAN SLOTCHIVER: Yes.
THE COURT: Try to finish Mrs. Cohen, Dr. Cohen, and then your witness beginning mid-morning or so on the --
MR. DAN SLOTCHIVER: I was going to ask if we could do it mid-morning. That would be great. And I'm assuming all of that, obviously,

predicated on our being able to finish Dr. Cohen tomorrow and Mrs. Cohen tomorrow after the testimony of --
THE COURT: And I'm prepared to go tomorrow night late again if we need to, so that we could try to finish them up and -- or we would finish them first thing on Wednesday morning, because I understand that your witness is coming from Columbia.
MR. DAN SLOTCHIVER: Correct. That would be great, yes, Your Honor.
THE COURT: And if he could be here, we would say, by 10:00, and that would give us a couple hours or an hour-and-a-half on Wednesday morning to try to finish up.
All right. Now, Mr. Boyd raised an issue about entitled to discovery.
MR. BOYD: Yes, Your Honor.
MR. DAN SLOTCHIVER: We have responded to discovery. We stuck everything in the mail on Friday.
THE COURT: Perhaps you should check with your office.
MR. BOYD: As of today, Your Honor, my office advised that nothing had been received, but

we will double-check, and if that's still the case in the morning, we'll raise the issue. I don't understand why -- it's certainly within this court's authority to simply say disclose whatever information was provided by mail. We're all in the same courtroom, Your Honor. This is -- quite frankly, this is too cute by half.

MR. DAN SLOTCHIVER: Your Honor, I had offered to do it, but to coin a phrase used by Lee Moore earlier today when she referenced all lawyers can have some games that they can play, she herself refused -- and I offered on last week. Mr. Boyd wasn't here, but I offered to disclose all -- everybody, but I said I want to make sure that if I do it, everybody does it, and they decided they didn't want to do it, which is their right, and I had exercised the same right, subject to Your Honor overruling that right.

MR. BOYD: I wasn't aware of that discussion, Your Honor, but again, I think the whole issue of I mailed it on Friday is just, quite frankly, too cute by half. I'm not sure why the document simply wasn't handed to us today.

MR. DAN SLOTCHIVER: See you tomorrow morning, Judge.

THE COURT: I think he has a right to mail it to you. I looked at the rule, like I said I would. I didn't see that it was -- I didn't see the need to order him to give it to you, other than by mail, which he was entitled to do.

MR. BOYD: Thank you, Your Honor.

THE COURT: So perhaps it will be here tomorrow.

We are adjourned. We'll start again in the morning, like we did this morning, to be here at 8:00 to get in, and then we'll start as soon as we can get set up, if that's okay.

MR. DAN SLOTCHIVER: Can we start at 8:30? Would that be okay?

THE COURT: So what time -- we can start at 8:30. What time would you like to get here?

MR. DAN SLOTCHIVER: Well, it's just -- I think you want to work late tomorrow night, and it's been a long day today.

THE COURT: It has. I understand. Okay. So we'll be here and try to start at 8:30?

MR. DAN SLOTCHIVER: That would be great.

THE COURT: We have a deputy here, so

I guess we're going to lock the courtroom?

THE SHERIFF DEPUTY: Yes.

THE COURT: So everybody, you can leave what you want. Nobody will be able to get in the back door. Nobody will be able to get in the front door. And to the extent you want to leave things, you can certainly leave any and all things that you would like. And we'll be here and try to start at 8:30 in the morning.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

MR. KACHMARSKY: Thank you, Your Honor.

MR. BOYD: Thank you, Your Honor.

THE COURT: Thank you.

MR. DAVIS: Your Honor, would you advise her on who she can talk to and who she cannot talk to?

THE WITNESS: I thought I was finished. I'm very confused.

THE COURT: No, ma'am. Because Mr. Slotchiver is going to call you to re-question you again, so you can't talk about your testimony to anyone, ma'am.

THE WITNESS: Oh, just my testimony.

THE COURT: Or anything related to your testimony in this case.

THE WITNESS: Okay.

MS. MOORE: It's not that you can't talk to people, like say: Hi, how was your dinner? That's a great TV show. You can fuss at your husband.

THE COURT: I'm sorry you were here all day, ma'am. We will get to you in the morning first thing.

(The proceedings were concluded at 6:57 PM.)

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 Professional Reporter, CRR

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THE COURT: We are back in the matter of Abbie Dorn, File No. 2008-GC-26-25 is the conservatorship matter, and File No. 2008-GC-26-50 is the supplemental needs trust matter. Today is March 5th, Tuesday morning.

And I think we were going to proceed this morning, Mr. Slotchiver, Mr. Boyd, with some preliminary matters?

MR. DAN SLOTCHIVER: Yes, Your Honor. I'd like to take something up outside the presence of the witness, if I may, Your Honor.

THE COURT: On the record?

MR. DAN SLOTCHIVER: On the record. I would ask that she be excused until we've heard this matter.

MR. BOYD: Which witness are you referring to?

MR. DAN SLOTCHIVER: Ms. Meyers.

THE WITNESS: It's Meyer.

MR. DAN SLOTCHIVER: Meyer, excuse me, Ms. Meyer.

THE COURT: Ms. Meyer, if you could step out.

THE WITNESS: Sure, of course.

(The witness is excused from the

courtroom.)
THE COURT: Mr. Slotchiver?
MR. DAN SLOTCHIVER: Thank you, Your Honor.
As stated to the court when we began this matter, I advised the court that I anticipated some objections to Ms. Meyer testifying, and while some of these objections will come in the form of hearsay, attorney-client privilege, work product, and so forth, before we even get there, more pending, and the reason I want to bring this matter in front of the court without Ms. Meyer is it appears to us that Ms. Meyer is co-counsel in this case, and if I can provide the court some evidence supporting same, and as co-counsel, she would not be allowed to testify whatsoever.
THE COURT: Okay.
MR. DAN SLOTCHIVER: I'm looking at the redacted bills that have been introduced into evidence, and I'll start with Exhibit 16. On Exhibit 16, Page 4 --
THE COURT: Just so I'm clear, is that Exhibit 16 that was submitted in this action?
MR. DAN SLOTCHIVER: Every exhibit I'm

going to refer to is one that I've exhibited in my case-in-chief, for clarity.
THE COURT: Okay. Thank you.
MR. DAN SLOTCHIVER: On Page 4 of Exhibit 16 --
THE COURT: And let me -- I'm sorry. If I could get that exhibit. Do you have that, ma'am?
THE REPORTER: He's got it.
THE COURT: Oh, you have got it.
MR. DAN SLOTCHIVER: I grabbed it to read off of, but if I can provide you with other copies.
THE COURT: You go ahead while he pulls that out, and then once he gets that, if you could let me have one to look at while you're --
MR. DAN SLOTCHIVER: Yes, absolutely. I'm sorry I marked the exhibit, but we'll give you copies to look at.
THE COURT: You've marked on them?
MR. DAN SLOTCHIVER: No. I've put stickers.
THE COURT: Well, I wouldn't want to take that one, then. It would throw you off, I'm sure.

MR. DAN SLOTCHIVER: It would very much. It would slow us down.
MR. STEVE SLOTCHIVER: These are the exhibits.
THE COURT: So on Exhibit 16?
MR. DAN SLOTCHIVER: On Exhibit 16, on Page 4 of Exhibit 16, the third entry: Continue drafting declaration of Lisa Helfend Meyer in response to the South Carolina probate action.
THE COURT: What page, sir?
MR. DAN SLOTCHIVER: I'm sorry. 3632 Bates number, and it's Page 4.
THE COURT: Third item down?
MR. DAN SLOTCHIVER: Yes.
And then again, if you go down to the third-to-the-last item: Continue drafting declaration of Lisa Helfend Meyer in response to the South Carolina probate action.
We go further in this document, Your Honor, to 3636, which is Page 8.
THE COURT: 38?
MR. DAN SLOTCHIVER: 3638, Page 8. Are you with me?
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: The fourth entry:

Review of Bret Davis' changes to the declaration of Lisa Meyer. Review and advise declaration to reflect same.
This shows that they're working together, but I'll keep going, Your Honor. There's some --
THE COURT: I'm sorry. The first one I didn't get.
MR. DAN SLOTCHIVER: I'm sorry.
THE COURT: I'm on 3638.
MR. DAN SLOTCHIVER: 3638, and this is the fifth entry.
THE COURT: Fifth entry down?
MR. BOYD: Would you cite that again? I'm not -- what I have doesn't match.
MR. DAN SLOTCHIVER: Page 3638, the fifth entry: EAS, review and advise correspondence to -- excuse me. Did I reference the wrong one? I'm sorry. I moved ahead.
3636, I apologize, Your Honor, and the fifth entry.
THE COURT: I see that.
MR. DAN SLOTCHIVER: Review of Bret Davis' changes to declaration.
If we go to Page 3638, sixth entry

down: Phone call with Reese re protective order issues.

Next, Your Honor, if we go to Exhibit 17.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: And if we start with the third entry -- excuse me, the second entry on Page 3654.

THE COURT: Which entry, sir?

MR. DAN SLOTCHIVER: Let's start with the second entry: Receipt and review of email from Bret, respond to Bret.

Fourth entry: Receipt and review of emails from Reese, Felicia, and Erica and response.

Fifth entry -- or I guess the fourth entry -- review of email from Bret Davis re the status of the South Carolina action and upcoming hearing. Review of Lisa's response to same.

Next entry: Review of email from Reese.

Next entry: Phone call with Reese.

If you move a little further down the page, Your Honor, at the last entry: Receipt and review of complete email by Reese, proposed order

from South Carolina, draft memo.

We go to Exhibit 18.

MR. BOYD: Your Honor, if it'll save us some time, I'm willing to stipulate that these billing records have numerous references to both Bret Davis and myself. I don't know that it's really necessary for counsel to walk through -- we'll stipulate that the records reflect references to both Bret Davis and myself.

MR. DAN SLOTCHIVER: Your Honor, I believe that -- unless they're willing to stipulate that she's co-counsel, I believe the records speak to the fact that she's advising them all along the way, apparently is working with them on every matter of this case dealing with the South Carolina action. They have asserted an attorney-client privilege, and now they're calling her as a witness, which is improper.

THE COURT: One of you, just one.

MR. DAVIS: He referenced both, that he advised me and him.

THE COURT: Bret -- excuse me, Mr. Davis -- are you going to make the objections or Mr. Boyd?

MR. DAVIS: Well, I'm willing to

address any reference to me, and I think it's fair that we both have an opportunity, because there's references to Bret and to Reese, so she was not co-counsel to me, so if he wants to speak, I just want to make that clear.

THE COURT: Thank you.

MR. BOYD: Your Honor, I'll respond. She is not on the record. She has not been co-counsel in this case. She's never made an appearance. In fact, she was designated as a witness from the beginning, if Mr. Slotchiver wants to continue, but I certainly want to respond to what he suggested.

MR. DAN SLOTCHIVER: Perhaps I can finish before they respond, Your Honor.

THE COURT: Let me let him finish real quick. Thank you.

So we're on 18?

MR. DAN SLOTCHIVER: Yes, Your Honor, 18, Page 3681, second-to-the-last-entry: Receipt and review of email to Bret.

Next entry: Phone call with -- excuse me. That's not one. I apologize.

If we go to the next page, at the very top of 3682: Phone call to Bret Davis re blank.

Third entry: Draft electronic correspondence to Felicia and Lisa regarding edited DVDs for the South Carolina probate action.

Two entries down: Phone call with Bret, blank, draft email to Reese and Bret, blank.

If we go to the fourth -- excuse me, the fifth from the bottom, 2/25/11: Phone call with Reese.

Two more: Phone call with Reese.

That's the end of that exhibit, Your Honor. If you go to Exhibit 20. I'm sorry.

THE COURT: That's okay. Yes, sir.

MR. DAN SLOTCHIVER: Page 3705, the entry date stamped 4/13/11: Organize files --

Excuse me. Let's go one before that, Your Honor. Research re the case docket for use in probate action. Draft email to Reese.

The next action: Organize files for photographs for probate action. Take photos. Draft email to Reese.

Next entry: Receipt and review of email to Reese.

Next action, next one: Develop telephone call to Terry re hearing in South Carolina, receipt and review of emails.

Next entry, Your Honor: Review of message from Reese re blank, draft email re same with attachments.

Next number, we don't know what this is for, the phone call with Reese -- or with Susan, but the next entry: Meet with Erica re South Carolina case.

Next number, we don't know what it's referring to, but the one after, which is the last one: Telephone conference with Reese Boyd.

Go to the next page, Your Honor. Second entry: Receipt and review email re the South Carolina.

Next number: Telephone call to Reese and Felicia.

Next entry: Receipt and review of email from Reese.

Next entry: Two telephone conferences with Reese Boyd. Research the guardian ad litem.

Next entry: Review of -- excuse me, two more down: Call to Reese Boyd, email.

Next entry, Your Honor: Review Reese's documents.

Next entry: Receipt and review of answer to petition filed by the Cohens in the

South Carolina, draft notes.

Next number: Receipt and review of email from Reese. Respond to Felicia and Reese.

Next number: Review file and compile timeline of hearings and depositions for use in call to John Kachmarsky. Phone call with Felicia.

Last entry on this page: Phone conference with Bret, John, and Reese.

Go to the next page, Your Honor, 3707: Phone call with Reese re blank.

If we go a few more down, it's the eighth entry: Emails to and from Reese and team re blank.

If we go towards the bottom of the page, Your Honor, three up from the bottom: Telephone call to Reese Boyd, then phone conference with Reese Boyd re something, then phone call to court re status of order. Draft email to Reese.

Go to the next page: Telephone conference with Reese Boyd.

Next entry: Draft email re South Carolina case.

MR. BOYD: Your Honor, just again, in the interest of time, I'm willing to stipulate --

MR. DAN SLOTCHIVER: If I can finish, Your Honor. I want to establish the record.

THE COURT: Okay. I'm going to let him --

MR. BOYD: Fair enough.

MR. DAN SLOTCHIVER: Under the 4/28/11 date on Page 3708: Conference call with Lisa, Felicia, and Reese.

Next entry: Calls with Leah Bishop and Reese Boyd.

Next entry: Emails re settlement. Telephone conference with client re blank. Telephone conference with Reese Boyd re blank. Calls to expert in Los Angeles.

And Your Honor, the last entry on Page 3708: Receipt and review of minute order from court. Receipt -- and carry on to the next page -- of emails from Susan and Reese.

Next exhibit, Your Honor, is 21.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Last entry on the page: Phone call with Reese. That's on page, I'm sorry --

MR. BOYD: What's the Bates number?

MR. DAN SLOTCHIVER: 3713.

On Page 3714, fifth entry down, Your Honor: Telephone conference with Reese Boyd.

And on Page 3715, first entry: Phone call to Reese Boyd re something, left message. Draft email.

Next entry: Telephone conference with Reese Boyd.

And the third from the last entry: Review of email from Reese re something. Draft response to same.

And next entry: Email to and from Bret.

Exhibit 22. Are you ready, Your Honor?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Page 1, first entry: Receipt and review of emails between Bret and Reese. Draft notes.

Second entry: Phone conference with Reese and Bret re something, re blank.

Next entry: Draft memo Lisa to probate. Letter/phone call with Felicia and Bret re blank.

Last entry on that page -- this is 3718 -- telephone conference with Reese Boyd.

. Review of letter re minors' counsel fees. This is other stuff that isn't relevant to it.

If we go to the next page, Your Honor, 3719, first entry: Telephone conference with Reese Boyd re blank.

Third entry: Review of settlement proposal from Reese Boyd. Phone call with Reese re blank.

Next entry: Phone call with Reese re blank.

Next number, or next entry: Review of additional comments from Reese re blank.

Next entry: Phone call with Bret Davis re changes.

Two more entries down: Review of draft letter from Bret Davis.

Next entry: Email to Bret re changes to the letter.

Next entry: Review and revise letter from Bret.

Next entry: Preview or review of email from Reese re blank.

Next entry: Go through file and identify pleadings to send to South Carolina counsel in response to their request for same.

Next entry: Receipt and review of final letter from Bret re blank.

If we can go to Page 3722, Your Honor, same exhibit.

THE COURT: May I ask you a question?

MR. DAN SLOTCHIVER: Yes. I'm sorry?

THE COURT: Never mind. I'm just wondering. I see this receipt and review of emails from Dan. Would that have been you?

MR. DAN SLOTCHIVER: I don't know. I never sent her a letter.

THE COURT: Your client?

MR. DAN SLOTCHIVER: I doubt it. I'm assuming it's probably an email that I would have sent to -- I don't know, because I don't have the privy to know, but I'm assuming it would be an email that I would have sent to counsel, and they would have shared with her, which is perfectly fine for them to do, but that's my best guess. I don't know, because I don't have -- I don't have the ability to review the file because they objected to my reviewing it.

MR. BOYD: Your Honor, I'm going to object. He never requested to review the file in its entirety. What he requested for -- what he

requested were billings, which we obviously provided, because he's reading them to you now.

MR. DAN SLOTCHIVER: We can rehash this again, Your Honor. I requested discovery.

THE COURT: Let's focus on this one issue, and then we'll move on.

MR. DAN SLOTCHIVER: If we can go to Page 3722, Your Honor. The fourth entry: Phone call with Reese Boyd re something.

Sixth entry: Review -- receipt and review of emails from Reese and Susan.

Next entry: Review of email from Reese.

Two more down: Receipt and review of emails from Reese and Susan and respond to Reese.

Next entry: Telephone conferences with Susan and Reese.

Last entry: Phone conference with Honey, Lisa, Reese, and Felicia re something. I don't know what it was for.

And on the next page, Your Honor, 3723, the second entry: Telephone conference with client, Honey Amado, and Reese Boyd re blank. Analyze the appropriate motion.

If we go, Judge, to Exhibit 23. I

believe it starts on Page 3729, the ninth entry: Phone call with Reese Boyd re blank. And then there's some more language: Office conference with Mary re blank. Legal research re joinder of parties. Phone conference to client advising of status. Phone conference with Gary Zimmerman. Phone calls with Reese Boyd.

Two more entries down: Phone calls with Reese Boyd re something. I don't know what it is.

Your Honor, I'm not putting in the times, if you'd like me to go back, but I'm assuming you can follow the time entries next to it or review that if you're so inclined, but it's a substantial amount of time, as the record reflects.

Next page, Your Honor, 3730, which is a carryover from 3729, but then at the top of the page, there is a new entry: Phone calls with Reese Boyd.

Second entry: Phone calls to Reese Boyd.

Third entry: Phone call with Reese Boyd.

If we can go, Your Honor, to

Exhibit 24, whenever you're ready. I'm sorry.
THE COURT: I'm good.
MR. DAN SLOTCHIVER: At the bottom of the first page, 3733: Phone call with Reese re blank.
Next page, 3734, third entry: Receipt and review of emails from Felicia and Reese.
Page 3735, third entry: Phone call with Reese Boyd.
Fifth entry: Review of email from Reese re something.
Seventh entry: Phone call with Reese re something.
Ninth entry: Receipt and review of email from Reese. Email from Honey, email from Erica and response. Prepare memo.
I believe that is it for that document, Your Honor. If we can go to Document No. 25.
THE COURT: All right.
MR. DAN SLOTCHIVER: First entry: Receipt of emails from Reese and Susan re settlement.
Second entry: Receipt and review of email from Reese and response.

Last entry: Telephone call to Reese. Carry on to the second page. Receipt and review of email from Susan and respond. Email from Patricia.
THE COURT: Felicia.
MR. DAN SLOTCHIVER: Felicia, excuse me.
And if we go to Page 4743.
MR. BOYD: Dan, could you repeat that last entry that you just entered into the record, please?
MR. DAN SLOTCHIVER: Telephone conference with Reese. Email to Lisa re something.
MR. BOYD: Are you on 3742?
MR. DAN SLOTCHIVER: I am.
3743, the fourth entry: Prepare for telephone call. Telephone conference with Susan, Felicia, and Reese.
Next entry: Telephone conference with Reese and Susan re conference with Lisa.
And Your Honor, we haven't gone through the billing, but this one shows almost two-and-a-half hours of billings just for that one call, or the two calls combined.

Next entry, or two entries down: Receipt and review of email from Reese.
The second entry under 9/23/11: Telephone conference with Susan and Reese.
Two more down: Conference call with Reese and Susan.
Two more to go, Your Honor.
Exhibit 26. Fourth entry: Review emails and telephone conference with Reese.
Seventh entry: Telephone conference with client and Reese Boyd.
Second page, 3749, seventh entry: Receipt and review of emails from Susan, Felicia, and Bret. Draft note re stipulation.
Next entry: Continue review of investigator report. I don't even know what that's referring to. Emails with Reese and Susan.
Next entry: Receipt and review of emails from Susan, Felicia, and Bret.
Last entry: Telephone conference with Reese. Revise stipulation.
Your Honor, if we can go to Exhibit 29.
THE COURT: Not 27 or 28?
MR. DAN SLOTCHIVER: Correct. There

is something I've listed in those, but 29 clearly has more.
The second entry: Receipt and review of email from Reese.
And I believe, Your Honor, that is the last entry that I saw.
Judge Edmonds, between December 31st of 2010 and January 31st, 2012 --
THE COURT: What is that date?
MR. DAN SLOTCHIVER: The invoice, it showed December 31st, 2010, which actually go back to December 1st, based on the billing, but from the period of December 1st, 2010, until January 31st of 2012 -- I haven't counted them. I'm assuming it's about 40 entries, but I can count them if you like, Your Honor. I believe you have them listed. But there have been a tremendous amount of entries, communications, emails, correspondence, reviews between counsel.
Now, assuming that Ms. Meyer was, in fact, acting as co-counsel, but not listed on the pleadings, I believe that there was nothing inappropriate with reference to those communications. However, assuming that she is not co-counsel, then the privilege would not extend,

and we should have had those communications, if they're relying on them as part of their defense.

Also, Your Honor, assuming that she is not co-counsel, then she should not be able -- or excuse me. Believing that she is co-counsel, based on the documents that clearly support that she's advising them in the South Carolina case, and I could take a few minutes and add it, but I would venture, Your Honor, that we're going to find somewhere 50 or 60 or 70 hours of time, which we can't clearly delineate because we don't have all the entries because they were redacted, but I do not believe she should be able to testify. If she's counsel, the privilege has been asserted.

Alternatively, if she comes to testify, she will only be testifying to a limited amount of information, not providing us with everything. We haven't had the opportunity to see any communication between her and Mr. Boyd or Mr. Davis. We had asked for it. The court ruled we were not entitled to it.

That being the case, we should have had an opportunity to see it and to review it, if she's going to testify, so we can ask her about those particular communications. Other than that,

I don't know of anything that she could testify to that the witnesses themselves, the parties, could not testify to.

But certainly, Your Honor, I believe that there is more than ample evidence to support the fact that she is, in fact, acting as co-counsel. Whether they call her co-counsel or not, she's clearly advising them. She's clearly working with them. She's talking with them on, if not a daily, certainly a weekly or certainly a monthly basis, except for just a couple periods of time, oftentimes, many times in a row, and they're meeting with her together with their client, and she is giving advice, based on the entries, on dealing with the South Carolina issue.

So based on that, Your Honor, I would move to exclude her from testifying in any manner whatsoever as a result of her having acted as, we can call it, de facto co-counsel, although I would assume that it's co-counsel in this case. She should not be allowed to testify. Thank you.

THE COURT: So it's your position, Mr. Slotchiver, that she's precluded from testifying whether she's co-counsel or not?

MR. DAN SLOTCHIVER: She is just as

precluded as I'm precluded from testifying, as Mr. Boyd is precluded from testifying, as Mr. Davis is precluded from testifying. To call her would be waiving the attorney-client privilege, which was not done in advance of court.

And for her to be called to testify as to a limited amount of things, whatever they want her to testify to, would be prejudicial to us, because she is selecting certain things to testify to, but she's not giving us an opportunity to cross-examine her based on all of the things that she's done involved in this particular case. They haven't given us these documents. We don't have them.

MR. BOYD: Your Honor, he's stating things in the record that are simply not true.

THE COURT: So I just kind of wanted to clarify a little bit. Mr. Boyd?

MR. BOYD: Thank you, Your Honor, may it please the court.

THE COURT: Yes, sir.

MR. BOYD: Your Honor, this case is unusual in that what has been alleged is that the trustees acted improperly with respect to their actions in California prosecuting the marital

action. This case is about the manner in which the California proceeding was prosecuted.

The reason that Mr. Slotchiver's able to stand here and give you detailed information about the communications between the individuals involved and why he's able to tell you why he thinks that Ms. Meyer was acting as co-counsel when she was not is because we did not assert a privilege over this information. We produced this information. That's why he's able to sit here and read into the record these billing records. It's like they want to have their cake and eat it too. They want to say, well, you're asserting the privilege. Well, no, we're not asserting the privilege, because you're reading the document.

We, in fact, have done just exactly what Mr. Slotchiver suggested needed to be done. Ms. Meyer is in effect -- not in effect. She is a fact witness in this case, Your Honor. Going back to the beginning of the proceeding, way back in 2011, we named Ms. Meyer and also Ms. Greene, for that matter, as a potential fact witness in the case.

Excuse me, Your Honor. My notebooks are jumping around on me.

I'm going to go back to our answers to interrogatories, Your Honor, dated May 2nd, 2011. In our answer to interrogatory on Page 3, which is No. 2, answer to Interrogatory No. 2, we named -- the second witness -- actually, the third. We named Carl and Rosalyn Dorn, the parents of Dan Dorn, as potential witnesses. The third witness named, Your Honor, is Lisa Helfend Meyer, along with Felicia Meyers and Erica Swensson, two other attorneys at the same firm representing the Cohens in California, that handled the proceeding. The fourth witness named is Vicki Greene, who represented Dan Dorn in the California proceeding, Your Honor. These individuals -- it's not usual to name an attorney as a fact witness, Your Honor, but, in fact, in this case, the attorneys are relevant factual witnesses.

And again, we communicated with the MOLM firm throughout this case in the same manner that attorneys would communicate with any factual witness. The privilege was asserted only to the extent that it existed on behalf of our clients in the California proceeding, and the revelation of information would have been harmful to our clients over a protected piece of information in the

California proceeding.

If Your Honor will recall, Mr. Slotchiver came before this court and argued on the attorney-client privilege issue, that once the case was settled in California, that the attorney-client privilege went away.

And as Your Honor will recall, we responded no, clearly, that is not the law in South Carolina. The attorney-client privilege survives the death of the privilegee. It survives -- and it certainly survives the end of the case if it survives the end of the death of the person who owns the privilege. Our clients own that privilege with respect to the MOLM firm in California.

And because the proceeding in California and their rights within that proceeding would have been harmed, Your Honor, we did make a limited assertion, but we did exactly what Mr. Slotchiver suggested that we should do, which is we produced those documents that we rely upon. They have those documents.

Ms. Meyer filed, prepared -- as Your Honor knows, as Mr. Slotchiver's just discussed with you, she filed a factual memorandum, a fact

affidavit, which was filed in this case very early on. So not only was she listed as a witness, Your Honor, she filed a factual affidavit. Mr. Slotchiver's never objected to any of this.

And here in the midst of trial, when we're about to call her as a witness, he says: Hey, you can't use her as a witness. We named her as a witness in May of 2011, Your Honor, so to exclude her at this point would be incredibly unfair and incredibly prejudicial to my clients.

I think what we have here, Your Honor, is a question -- it's a very simple -- it's simple if you think about it this way, Your Honor. What this case has become, this case has become a case about another case, and there were privileges that existed and that remain within that other case; however, Mr. Dorn, by his petition, has made the manner in which the California proceeding was prosecuted and evolved, he's made that the substance of this case.

MR. DAN SLOTCHIVER: I'm not sure how this is addressing the argument, Your Honor.

MR. BOYD: I'm establishing, Your Honor, the context for the filing of Ms. Meyer's affidavit, the fact that we did name her as a

witness, the fact that it was nearly two years ago when we named her as a witness, and, in fact, that there's never been an objection to our reliance upon her as a witness right up until this moment. Mr. Slotchiver never witnessed her deposition -- never noticed, excuse me, her deposition, and we did produce volumes of information, Your Honor, which we did not assert a privilege over.

That's why he's able to stand before you and read these records. He's saying they asserted the privilege. Well, how do you know -- how do you know all these things if we blanket asserted a privilege to protect Ms. Meyer? We did not, Your Honor. So I think it's highly improper.

THE COURT: So let me ask you this, Mr. Boyd: What did you produce with respect to his request? I guess there was a blanket request for the discovery of Ms. Meyer's file?

MR. BOYD: May I answer the court's question, Counsel?

THE COURT: Well, let me ask: Was it a blanket request, discovery request of Ms. Meyer's file?

MR. DAN SLOTCHIVER: No, Your Honor. We asked for discovery, and at one point we made a

motion to get a copy of all of the California files.

Once again, what's repeatedly come up here, Your Honor, is that it's as if we're supposed to remind you to do your job. We sent off discovery requests. We got answers. We sent off -- we filed a motion to get California information. They stopped us.

We do have these bills, Your Honor, that you've seen, but as you can see, they've been redacted throughout, and even though there's references to memorandums and references to communications, we don't have those. I don't have any memos back and forth between Lisa Meyer, or Ms. Helfend, and Bret Davis or Reese Boyd or memos about this case that they've had that are reflected in these billings here that we've just looked at. According to the billings here, there's emails back and forth.

I don't believe that you can say piece and part. I've answered you, although I really haven't. I've said -- it would be like me saying: Do you have documents to provide? And I say I have some documents, but I don't provide them. They've given us very -- they've given us enough

here to be able --

And the court's ruling, I believe, Your Honor, was we were entitled to see the bills, but they're entitled to redact them of any privileged information, and the reason was because we would have to see the bills in order to be able to talk about the damages, but the court told them they were able to redact the bills from the attorney-client privileged information. They have done that. We have a skeleton of what they've got. We don't have the documents supporting it. And this is not, Your Honor, the first time I've mentioned it.

First off, as we all know, just because you list a witness doesn't mean you're going to call them, and it doesn't mean that there's no objection if I don't object to it the second you list the witness. That's not what the rules say.

I came into court last Monday and advised the court that understanding that Ms. Meyer may be coming, that we anticipate objections. I advised the court on several occasions, as recently as yesterday, but also last week, that we anticipate objections to her

testimony for a variety of reasons, and that I would reserve those until the time that they called her. I never really thought they were going to bring her, but they did, and they can bring her. I don't have to agree that she should testify.

But I did advise the court that we were going to do that. Just because they list her doesn't mean that she is a witness who properly can testify. What right, Your Honor, do they have to say we made a limited objection to attorney-client privilege without telling me that it's a limited objection, without writing it down, without giving me a privilege log saying that it's limited, but these are the things we're not going to give you. I don't have any of those things. I just don't have them.

All I have, relevant to the billings, is what you've seen in front of you and what -- the bills that I didn't give you because they -- I didn't see reference in there to Reese or Bret. But certainly, these documents reflect ongoing communication between counsel.

When a witness comes to testify, my understanding is that short of a protective order

given, I can ask that witness anything that's relevant to the case. I'm not limited to what other counsel says I should be limited to; I'm limited to what is relevant based on the court's ruling.

And I haven't been given privy to this information. And we can call it based on the attorney-client, we can call it based on the co-counsel, we can call it based on a lot of different things that I think fit, but in this case, I thought it relevant, Your Honor, to point out to the court what I'm guessing I thought 40, my partner thinks 100, entries I just marked per page of communications between them.

Witnesses generally testify to what they saw and what they observed, and they're subject to cross-examination. I don't know the purpose for which they seek to call her, but I don't think that she should be entitled to be called at all, any different than any lawyer in the case can be called as a witness in the case that they're involved, and especially in a matter where they haven't presented the documents.

Your Honor, counsel for the Cohens is asserting that they are prejudiced. In reality,

the person who will be prejudiced, if she's allowed to testify, is us, is Mr. Dorn. All of this -- all of this was at their hand, the old phrase you're the author of your own dilemma.

They had the right to have given us these documents. They had the right to clarify this issue. It was their choosing not to do it, and their choosing not to do it is something that shouldn't be weighed against us. It goes back to them.

We've had the same type of argument throughout this case on a variety of issues, but this is something that they chose not to do. And they've stated that we want to have our cake and eat it too. You can say it's us. The reality is it's not us. We just want to be able to examine somebody based on what we're entitled to know and what we were entitled to know in advance.

We think that she was clearly acting as counsel. She clearly was advising them on the case. She clearly was getting paid to be involved in the case. She's getting paid by the same people to be involved in the case. These are billings that went to the trust. So we've got the same clients, same person paying the bills,

talking to everybody about the same issues. How is that not acting as co-counsel?

And she's not limited her communication here from -- clearly, we can see from the record that she's not limited her role to what she's doing in California and their role in South Carolina. They're talking. She's reviewing documents that they plan to file, and they're sending documents back and forth for the cases. They're working in concert together. I don't know any other way to look at it.

THE COURT: Thank you.

MR. BOYD: Your Honor, first of all, counsel is stating things that are not accurate into the record, that we already made the point, established that the Cohens individually were paying the fees for Bret Davis and myself. The fees for the MOLM firm were being paid for the trust.

Your Honor, we did produce the relevant documents from the MOLM firm to the opposing counsel. I have here in my hand a stack of documents that were handed to counsel in December of 2010. And again, I would encourage Your Honor to --

THE COURT: Could I see those, please?

MR. BOYD: I would encourage Your Honor to look at the billings and look at the redactions that we made, Your Honor. Again, the billings were redacted --

Your Honor, I'd really enjoy another filibuster, but if you'll give me just a couple of minutes to speak, I would appreciate it.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, the approach that Mr. Slotchiver would suggest turns the whole concept of trust litigation on its ear. According to Mr. Slotchiver's approach, simply because my clients are fiduciaries, if a beneficiary, Susan, trustee, effectively, what he's suggesting is that there is no attorney-client privilege and that the trustee must open their files across the board and produce any document anywhere, regardless of the context, regardless of the nature of the counsel sought, and it's a world where nobody would be a trustee, Your Honor.

Who is going to litigate a dispute with a beneficiary under the rules that Mr. Slotchiver's suggesting to you? I mean, Mr. Slotchiver's suggesting that the entirety of

the file in California needed to be produced to him, or we effectively have no defense. It's absurd, Your Honor, and again, I would encourage the court to look at the billings that we produced and look at the very selective redactions that we undertook.

Again, Mr. Slotchiver took the position that because the California case had settled, that there was no privilege to be relied upon or that could be relied upon by my clients. Your Honor, that's clearly not the law. And we had that argument, and we did produce everything that Mr. Slotchiver requested, all the billings, very limited redactions, Your Honor, plus the documents that I handed up, which were produced initially, which are those documents that we intended to rely on in this case.

We've done exactly what he suggested that we should do, and he's got some crazy idea that the entirety of the MOLM firm's file should be produced to him or else we can't rely on anything. That's absurd, Your Honor. That's absolutely absurd.

The clients still have an attorney-client privilege in California, which

does not go away. We had that argument. It is the law. We only redacted those documents that would have been harmful to my clients in the context of the California proceeding. We don't know --

Your Honor, again, when this litigation commenced, the California proceeding was still ongoing, and again, under Mr. Slotchiver's paradigm, the only option available to my clients was unilateral disarmament.

And the fact remains that when Mr. Slotchiver started his case, the California proceeding was ongoing, and so if the only way they could defend themselves in this proceeding was to unilaterally open up the doors of the MOLM firm and say: Yes, come on in, Your Honor, it's a catch 22, and it turns the whole concept of a trustee's ability to prosecute an action, to defend themselves in court, and to engage counsel, it turns all those concepts on their ear, Your Honor. It's inconceivable that that should be the standard.

MR. DAN SLOTCHIVER: If I may?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Your Honor, first I want to clarify the Cohens were not paying the fees from the individual accounts; they were paying the fees for the lawyers from the trust proceeds. They've testified -- or Mrs. Cohen testified, and I can show you reference to Paul Cohen in his deposition, if you like, they were paying the fees from the trust. In fact, they weren't paying anything into this --

MR. BOYD: I'd ask counsel verify what fees he's referring to, Your Honor. There's multiple lawyers, multiple fees, and I'm not sure what fees he's referring to.

MR. DAN SLOTCHIVER: Your Honor, they were paying the fees for the defense of the action brought by my client in the South Carolina case directly from the trust funds. Mrs. Cohen even testified they didn't change that until we had discussed it in her deposition. And I asked her how it is that she's using trust funds to pay for her individual defense, and she said, well, after that conversation, she went back and changed it. So I wanted to clarify that. There's not a distinction between them. They certainly were using the trust funds to pay for it.

Your Honor, if I may finish. The argument that they delivered the documents they relied on, well, can you imagine if every time a lawyer only wanted to give you the documents that you wanted to rely on, but not the bad documents, that's the problem. By what right do they have to determine what they relied on?

There's a very easy answer to this matter, and I would argue that it applies all the way from the beginning of this case to the end. Our argument in this case is had they sought court approval, it's an easy answer. We wouldn't be here today. The court would have ruled on what could have been done.

At the time the case in California ended, and it did end, they, at that point, had to make the decision. In fact, they made the decision, I would argue, at the time we came into court, and I said the case in California's over, and that property -- that we should be entitled to look at these documents, to see the decision-making power and see what transpired in the California case, because we are coming to court arguing that we believe the trustees acted inappropriately, and we should be able to see what

they did.

It's not a whole lot different, Your Honor, than when the lawyers in this case came forward and took the stand and were questioned about what they did in order to get their fees. You've got to explain what you did if somebody has a question with it, and then you answer, and Your Honor makes a decision.

Well, in that case, they could have said: You know what, California case is over, and I'm going to give you those documents, because you can have them all, and you can look at everything. That was an easy decision to make. The decision they made instead was, no, we're not going to do that. We are asserting the privilege, and by asserting the privilege, they put themselves into the quandary that they're in today.

Litigation in trust cases doesn't occur all that often. I would disagree vehemently with the argument that if we make the trustees live up to all the things that the rules say, then who would ever want to be a trustee? I believe, Your Honor, there are multiple people in companies and banks and people all over the world who would jump at the opportunity to be trustees. There are

corporate trustees that are available to be involved in these cases. We all know that. I think you could take judicial notice. They're all over the country. That's what they do. But when they do it, I would argue they do it a little bit differently. And that was an option that the Cohens and their counsel, I'm assuming, conferred on and made a decision as to how do we want to proceed.

Now they want to bring in a witness to testify without giving us the opportunity to see all that she did when she was actively involved in it and to assert, Your Honor, that she was a witness, and they spoke to her.

I believe you can look at the billings yourself. It's not independently in California. She's working on the South Carolina case. References all over the file talk about the South Carolina case. She's actually editing documents submitted to her by both Mr. Boyd and Mr. Davis. I haven't seen where they were editing her documents, but I've seen numerous entries where she was editing their documents and sending them back. They've got memos going back and forth.

The case, to coin a phrase used

earlier when we tried to get Robin Morris's file, and we were told that they were commingled, these cases are highly commingled, and the lawyers are working on both sides. They're seeking her advice as to what to do, and she's advising them on how to do it. The cases are absolutely joined.

MR. BOYD: Your Honor?

THE COURT: Yes, sir.

MR. BOYD: The references to editing documents, I'd encourage the court to look at the references. I believe what Mr. Slotchiver's referring to are edits to the declaration which Ms. Meyer prepared. That's the only document that I recall any involvement with respect to editing, and that was a document that was filed in this action. They have it.

Again, Your Honor, every document filed in this action, either one of two things with respect to the MOLM firm, either the affidavit of Lisa Meyer or the attachments thereto. Generally, all of the -- I believe all of those things, for the most part, and Your Honor has the stack, everything in that stack, Your Honor, was a matter of public record in California. There were some provisions that were

redacted pursuant to public protective order, but that was something that both parties were aware of in California. Those documents were a matter of record in California, and Mr. Slotchiver's free to bring any other documents from the record in California that he wants the court to consider. We filed what we felt was relevant in this proceeding.

And again, Mr. Slotchiver's rather fabulous construction creates a world in which any disgruntled beneficiary who becomes irritated with a trustee's exercise of a trustee's authority in the pursuit or defense of litigation, a disgruntled beneficiary, no matter how remote, no matter how contingent, brings an action questioning the trustee's authority, and according to the methodology, the analysis, the paradigm that Mr. Slotchiver wants you to adopt, the trustee has got a choice. He's either got to open up the entirety of his file --

(Interruption in proceedings.)

MR. BOYD: May I proceed?

THE COURT: Yes, sir.

MR. BOYD: Your Honor, this analysis that Mr. Slotchiver's suggesting to the court,

again, it puts the trustee in an untenable position. You've got to choose -- when you're sued for the way you've prosecuted an action or the way you've defended an action, you've got to choose between either opening up the entirety of your file in the underlying action, waiving the privilege, which is a sacrosanct privilege, Your Honor, and is to be very carefully invaded.

The law -- the case law is nearly infinite, and the nature of the privilege -- and we're all extremely cautious when we get into areas of attorney-client privilege. That's our nature. That's the way we're trained to be, Your Honor.

But the fact is in this case, as Your Honor will see from the billings, we were very careful and very selective in that information that we were redacting, trying to find a balance of disclosure for Mr. Slotchiver, and we did not assert a blanket privilege in the action.

So Mr. Slotchiver's approach puts the trustee in a box where he's got to choose either give away the farm in the underlying action or raise no defense in the primary action brought by the beneficiary. It's a Hobson's choice, Your

Honor. It's not the way the law works.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: Your Honor, if the trustee stands by what they say and stands by their actions, I don't know why this is such a difficult choice. Any action a fiduciary does, they're accountable for. And they're right. They have the right to hide behind the attorney-client privilege if they want, and it's a right they have, and they can say we're not hiding it, we're just asserting it, but it's their choice.
But they have that choice. They can come forward. They can produce it or not. It's their decision, and they have the right to make that decision. It's no different than any kind of case where people can assert a privilege. They have the right to assert it. You've got to make a decision is this what I'm going to assert.
And with reference to the case, it doesn't matter, to a large extent, if Susan Meyer doesn't testify. It does matter if they call her to testify because --
MR. BOYD: Susan Meyer, Your Honor? I'm not --
MR. DAN SLOTCHIVER: Excuse me, Lisa

Meyer.
Because they selectively decided what they would give us. It wasn't within our parameter to agree to this. They never came to the court and asked the court to do an in camera review and to make a determination that this is appropriate. They never sought a protective order allowing them to limit the responses of what they would give us. So without that, without a privilege log, without any guidance, they unilaterally decided how they were going to handle the discovery.
And keeping in mind, Your Honor, that this case has had -- I think at one point we had filed four motions to compel. We had two that were granted. This is not a case without its issues dealing with discovery, so we would ask that you bar her from testifying.
THE COURT: Just very briefly, anything else, Mr. Boyd?
MR. BOYD: Yes, Your Honor, just to reiterate.
We produced -- and the matter of the MOLM firm's material information was the subject of a hearing before this court. We argued it,

Your Honor, and we did exactly what the court directed us to do with respect to the information that had been sought.
With respect to the information that we sought to produce, we did exactly what Mr. Slotchiver's suggesting, and in fact, what was appropriate. We produced -- everything that she's going to testify about and everything that we intended to rely upon, we produced, Your Honor.
And apparently, the only alternative, from Mr. Slotchiver's perspective, is to unleash the entirety of the file in California, which would be incredibly unfair, Your Honor, and incredibly imprudent on my client's part. So we have produced that information that we intend to rely upon. Mr. Slotchiver's had it for well over a year, and they've had many opportunities to look at the California file. Both parties to this litigation have access to the California proceedings.
MR. DAN SLOTCHIVER: I did not have access, Your Honor, to the memorandums, to the emails, to all of the internal communications.
MR. BOYD: She's not going to testify about any of that.

MR. DAN SLOTCHIVER: But I should be able to cross-examine her on that.
THE COURT: Thank you. Anything else from any other counsel?
MR. BOYD: She's not going to testify on that, Your Honor. Anything that she's going to testify to, they've long since had.
THE COURT: Anyone else on this issue? Ms. Hedgepath?
MS. HEDGEPATH: On behalf of Abbie, I want to know what Lisa Meyer has to say about what caused the bills to be so high in California. I want to hear it from her. We've heard from Susan, but I want to hear why the expenses were what they were and whether or not they were justified or necessary.
Now, if I buy Dan Slotchiver's argument, any time an attorney confers with another or counsels another, then they're co-counsel. Is John Freeman co-counsel to Mr. Slotchiver because he worked with him on preparing the case? That's the argument he's making.
This case is separate and apart from the one in California. I don't think Mr. Boyd

worked with him -- with Lisa Meyer in preparing the California case. She, as I understand it, and of what I'm aware, worked with him on preparing the declaration which was handed up to you, which we've all been provided.

Now, if Mr. Slotchiver was concerned about what Lisa Meyer may say or how she came about the statements made in her declaration, he certainly had the opportunity to depose her. And I don't think, in good conscience, Mr. Boyd or Mr. Davis could raise that attorney-client privilege as to that declaration.

MR. DAN SLOTCHIVER: Your Honor, as the record should reflect, the declaration was worked on on December 6th of 2010. All of the rest of it had nothing to do with the declaration.

THE COURT: Thank you.

Mr. Davis, very briefly?

MR. DAVIS: Very briefly, Your Honor.

Your Honor, as you know, they brought a case saying that the fees in California were too high. The trustees spent too much money. We have got to have an opportunity to explain why the fees were what they were.

An affidavit's been filed with a

number of exhibits. I personally handed this to Mr. Slotchiver. That is what Ms. Meyer's going to testify about, Your Honor. They have got disclosure, have had it for a year, or whatever it's been. We've also, as Reese said, provided the billings. How can he come back now and say he didn't have that information or it wasn't disclosed to him?

Assume also, Your Honor, that Mr. Dorn comes up with some crazy -- and you know this is a litigious matter and has been. That's why we're here. Comes up with some kind of crazy idea --

MR. DAN SLOTCHIVER: Your Honor, I object to the reference to --

MR. DAVIS: I don't believe that --

THE COURT: Bret, Mr. Davis. Excuse me, sir. Mr. Davis, I'm going to ask you not to speak out in that manner again. You understand? We're all here. We're all being civil. There's no sense to raise your voice like that and point over at Mr. Slotchiver and jump all over him in that manner, and I'm not going to have it.

MR. DAVIS: All right. No problem. Do you want me to finish, or do you want him to go?

THE COURT: Finish in the manner in which you should.

MR. DAVIS: Okay. As I was, Your Honor.

This is a litigious matter, very litigious. Assume, for instance, that Dan Dorn brings some kind of an unusual action in California, and assume that the MOLM firm has opened their whole entire file. Would that not give him an unfair advantage in California? He now had -- he brought an action in South Carolina to go back and get the complete information in California. And assume he brings some new action in California, he's got all this information at his disposal. That would not be fair. It would be completely prejudicial to the Cohens, Your Honor, and that should not be allowed.

And Your Honor, I would remind -- and you obviously know this, but this is in your discretion to make a decision whether she can testify or not. The case law that I've reviewed clearly indicates that.

And Your Honor, for the record, as well, counsel in California has not advised me on how I should proceed in this case in South

Carolina.

MR. DAN SLOTCHIVER: Objection. That's not before the court, Your Honor. There's no evidence to support that.

MR. DAVIS: I'll let him finish, as you mentioned, Your Honor, but I believe it's exactly before the court. He said that counsel in California advised me on this case, did he not? Am I missing something? Did he not say that?

MR. DAN SLOTCHIVER: Your Honor, I only referenced what the documents showed, but now counsel's testifying, and I don't believe that's appropriate.

MR. DAVIS: I appreciate his position, Your Honor, but that's exactly what he claims that we did, so I'm simply addressing what he claimed.

MR. DAN SLOTCHIVER: Do I understand Mr. Davis is now waiving the privilege as to attorney-client privilege also, and he's going to testify in this case?

THE COURT: No, sir.

MR. DAVIS: That's all I have, Your Honor. Thank you.

THE COURT: Thank you. Anything else?

MR. DAN SLOTCHIVER: Your Honor, the

last thing I want to address is that Ms. Meyer has not been listed as an expert in this case to testify as to the basis for the expenditure of fees. The privilege has continued to be asserted with her, and I believe that any testimony that she would provide to this court, even despite these billings, would be barred either through attorney-client privilege or work product, the affirmative defense issue that we've already discussed, hearsay.

I believe there's really nothing that I'm aware of that she could testify to that could not have been introduced or brought to the court's attention through the Cohens, so even if we get beyond the argument, which I certainly argue against, as to the attorney relationship between counsel working together, we still have the attorney-client privilege issue, and we still have all the objections related to it.

THE COURT: Thank you.

MR. BOYD: Your Honor, is this a new argument with respect to Ms. Meyer, or is it a supplement or a restatement? How many bites at the apple are we going to have on this question?

THE COURT: I think he's finished.

Anything else from you, Mr. Boyd?

MR. BOYD: Your Honor, what she's going to testify to is not hearsay. She's going to testify to her direct knowledge. Again, she filed a first person factual affidavit in this matter which was produced in December 2010 to every party involved. She's going to testify as to the contents of her direct knowledge being involved in the California proceedings, which are the subject of this litigation.

MR. DAN SLOTCHIVER: Even if it was produced, it doesn't make it admissible, Your Honor, for that purpose, for the truth of the matter asserted.

MR. BOYD: It's certainly not hearsay, Your Honor.

MR. DAN SLOTCHIVER: I believe that any communication she would give regarding interaction with other counsel, regarding interaction with other witnesses, would be hearsay unless it dealt with the parties directly, and if she talks about the parties, then it's a breach of the attorney-client privilege.

THE COURT: Which can be waived.

MR. DAN SLOTCHIVER: Which can be

waived, but if it was to be waived, it should have been waived before we came to court, so that we would have had an opportunity to do some discovery on that.

MR. BOYD: Your Honor, if the affidavit Ms. Meyer filed waived the privilege, the only thing she's going to testify to is to, in essence, confirm for the record what she testified to in her affidavit. If the affidavit did not waive the privilege, then her testimony today should not waive the privilege. And if her affidavit, in fact, waived the privilege, then Mr. Slotchiver should have raised that issue in the motion hearing before the court on the MOLM -- on the information that they sought from the MOLM firm. He did not.

MR. DAN SLOTCHIVER: Actually, Your Honor, it's not my job to be proactive. I can be reactive. If the affidavit waived the privilege, they should have given us the documents.

MR. BOYD: We did give them the documents, Your Honor.

MR. DAN SLOTCHIVER: They did not provide us the documents. They gave us the documents they wanted to introduce, but not all of

the documents.

If the affidavit did not waive the privilege, it would be inappropriate to come in here today and to waive it. Either way, this is an orchestrated defense which is coming forward to the court, and I believe that in no way whatsoever should she be allowed to testify. Thank you.

MR. BOYD: I'm not sure what an orchestrated defense is, Your Honor.

Again, it's my position that Mr. Slotchiver's argument puts the trustees in a box where they've either got to compromise legal rights that they clearly enjoy in California or effectively mount no defense in South Carolina. It's absurd. Thank you, Your Honor.

THE COURT: Thank you.

I'm going to take a break to review the documents that Mr. Boyd provided to me, as well as counsel's argument, and then come back in with a ruling on the objection to Ms. Meyer testifying. I would anticipate 20 minutes, maybe, so why don't we break until 10:30.

MR. DAVIS: Can I ask the court one thing?

THE COURT: Yes.

MR. DAVIS: May I advise Ms. Meyer why we're still waiting, or would you suggest that we not have communications?

MR. DAN SLOTCHIVER: I would object to that, Your Honor, subject to your ruling.

THE COURT: You can just let her know that there were some motions to be heard, and the court is taking them under advisement, and we'll reconvene at 10:30, and once I make my ruling, then you can advise her.

We'll be back at 10:30.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Thank you.

(A recess transpired from 10:05 AM to 11:01 AM.)

MR. DAN SLOTCHIVER: Your Honor, I understand you're going to give us your decision. I had one more matter to bring before the court when it's convenient.

THE COURT: All right.

MR. DAN SLOTCHIVER: It will take one moment.

THE COURT: We are back on the record in the matter of Abbie Dorn. Let me just get my stuff together.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: Your Honor, I would -- I'm concerned about a development that took place during this break.

THE COURT: A development?

MR. DAN SLOTCHIVER: A development or comments that were made. I'm worried that it's leading to an issue which I will call witness intimidation. My client, Daniel Dorn, is going to testify. He is here to testify. He's traveled here to testify.

While in the hallway, Mrs. Cohen, while talking to the rabbis that are here, who are in the back, made a comment he's pure evil that he overheard. While I was walking by, I overheard her make the comment: He wants to kill her. He wants her dead.

And I believe these are inappropriate comments to be made in any proceeding, Your Honor. This is a civil proceeding. I would ask that she be under a gag order to restrain her from having any conversation at all about any matters pertinent to Abbie or this case in the presence of Mr. Dorn, because we don't know where he's going to be, as the courtroom moves, in the courthouse,

unless she's separately and privately with her counsel, because I think it's inappropriate.

We've heard -- there was an admonition that Mr. Kachmarsky gave to her last week when she made comments. We've heard comments throughout the testimony yesterday referring to him as different -- in different manners. And I don't believe it's appropriate. I don't believe that anybody who comes to testify should have to face that kind of comment, and I believe it is intimidation, and he should be allowed to come and freely testify about this case without being subject to that type of conduct.

THE COURT: Thank you.

Mr. Boyd?

MR. BOYD: Your Honor, I'm not privy to the comments that Mr. Slotchiver -- I'm sure there was no effort to intimidate Mr. Dorn. Mr. Dorn's a grown man. My client -- it's a very emotional case, Your Honor, but to sit here and suggest that she's under a gag order, Your Honor, this is just -- there's no basis for that, Your Honor. That's absurd.

THE COURT: Thank you.

Let me just say this: I do understand

that this is a very emotional case for the parties, for all of the parties. I do think it's inappropriate for there to be comments by the parties to either other parties, to counsel -- I'm sorry. Let me take out the counsel. To other parties or friends or people that are here to view this trial that may be perceived as intimidation or comments that are purely derogatory towards another party. I don't think it's appropriate.

I would caution Mrs. Cohen if she could refrain especially -- I understand she has a right to say what she wants to, but when it comes to saying things that may be overheard by either Dan Dorn himself or his attorneys or the attorneys for Abbie, the guardian ad litem for Abbie, or the attorney guardian ad litem for the children, I think is inappropriate, and so Mrs. Cohen, I will caution you.

Certainly, you can speak with your attorneys and your religious advisers however you would like to, but when you are in the vicinity of Mr. Dorn or the other attorneys in this matter, I would caution you to be very careful about what you say and to say things in a very quiet manner, not in a derogatory manner or in any way to

intimidate anybody in this case.
MRS. COHEN: I'm sorry.
THE COURT: Thank you, ma'am.
She has apologized.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
THE COURT: Thank you.
MR. BOYD: Your Honor, if I may just real briefly, may I just -- for the record, there's one item that I wanted to mention to the court that I did not mention that I'd just like to read into the record, if I may.
THE COURT: Yes, sir.
MR. BOYD: Regarding the matter that's before the court at the moment.
Referring again to our interrogatories, Your Honor, which, again, go back to 2011, we provided the following with respect to the statement that we've been discussing of Lisa Meyer: Respondents are aware of a recorded statement captioned Declaration of Lisa Helfend Meyer, Esquire, which was given by Lisa Helfend Meyer, Esquire, on or about December 2010 in connection with this matter, which declaration was previously filed with the court and produced to

the petitioner.
Respondents are aware of numerous depositions that have been taken, as well as hearing transcripts that have been recorded, in connection with the California litigation involving the petitioner and respondents. Such recorded statements are not produced herewith since both respondents and petitioner presumably have access and/or possession to such recorded statements already.
I just wanted to make sure that the court was aware that those were in our discovery responses, Your Honor.
THE COURT: Thank you.
With respect to the motion by Mr. Slotchiver on behalf of Dan Dorn to preclude Ms. Meyer from testifying, just a little bit of statement of the issue, has to do with the confidential relationship between the attorney and the client, and those relationships, as we all know, are considered privileged when they are claimed to be within the attorney-client privilege, and they are not discoverable.
The attorney-client relationship privilege serves a very important public interest

by promoting a full and fair disclosure between an attorney and his or her client. Because the privilege withholds information from the fact-finder, which would be this court, it is tailored to protect only those confidences within the confidential relationship of the attorney-client, only those communications that are considered confidential.
There are some communications between an attorney and his client that are not considered confidential and that are not protected. That would be nonconfidential communications between the attorney and the client. Those that are intended to be used as evidence in a trial are not considered to be confidential communications.
That's based on the South Carolina State Highway Department versus Booker case, 195 SE 2nd 615.
Also, information that is used as part of negotiating with a third party are not confidential relationships -- communications between the attorney and the client when they're communicated with third parties.
And also, communications that are known to third persons are not considered

confidential and privileged. And just by taking the stand, a client or the attorney does not waive the privilege.
That's State v. James 12 SE 2nd 657.
The case of Booker said that privileged matter in South Carolina is matter that is not intended to be introduced into evidence and/or testified to in court.
In this matter, the Cohens have disclosed certain information to Petitioner Dan Dorn, including Ms. Meyer's declaration and documents that were filed -- produced by her, filed in the California proceeding. They have been filed with this court, admitted into evidence in this trial, numerous documents that counsel for the Dorns have provided to the court that they have turned over in discovery, some of which she drafted, some of which were responsive pleadings in the California case. These matters have been filed with the court. They are not considered privileged.
I'm going to overrule Dan Dorn's objection to Ms. Meyer testifying today, find that she can testify as to those matters that have previously been provided through discovery to Dan

Dorn, previously filed with this court, previously admitted into evidence in this court, including those matters that are set forth in her declaration.

I further find and conclude that her communications with Mr. Boyd, Mr. Davis, and/or the Cohens in this matter, based on the references in her billing statements, do not in any way make her counsel for the Cohens in this probate matter.

She is counsel for the Cohens in the California litigation, but is not counsel of record, and I do not determine that her communications with them in this case in any way make her counsel for the Cohens in this probate matter.

So therefore, I'm going to deny the motion to exclude her from testifying and allow her to be called as a witness to testify as to those matters that have been provided to Dan Dorn through his counsel.

MR. DAN SLOTCHIVER: Your Honor, may I have a short period of time in which to question Ms. Meyer before she testifies about the interaction with counsel in South Carolina?

One of the reasons that I wanted her

excluded -- she's still excluded from the courtroom -- is so that she would not know what we were asking about. I would like an opportunity to talk to her, very limited, or for the court to engage her very limited, to chat with her about would she agree or does she agree that she did have multiple communications with counsel in California, does she agree that she did, in fact, work with them in setting forth a plan to respond to certain actions and respond to certain matters, because one of the things that we don't have is anything more than what that redacted log shows. I believe the log seems to give a good faith basis to assert that she is co-counsel, but it doesn't go to the extent of listing her as co-counsel.

But if the court could allow us to make that inquiry before her testimony goes forward, then I think we'll have a better opportunity to see if she truly was co-counsel in the case.

And if the court determines that there's not sufficient basis after that testimony, then certainly, I understand the court's ruling with reference to her talking about those issues that have been provided, but before we get there,

I would certainly like the opportunity to find out, no different than the opportunity to address somebody to determine if they are an expert before they give their expert opinion.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, let me just compliment counsel. His arguments are nothing if not extensive. But there's a habit here from Mr. Slotchiver of continuing -- Your Honor, he's raised the issues, Your Honor has ruled, now Mr. Slotchiver is rearguing the point, and that's a habit that's evolved in this case is I'll continue to make objections and continue to make arguments until I get the decision that I want from the court.

We argued this matter for several hours this morning. Your Honor has ruled, as I understand it. I think further discussion at this point is inappropriate.

What Mr. Slotchiver, in effect, is talking about is a deposition, Your Honor. I'd remind the court that we named Ms. Meyer, as in evidence, in May of 2011. He's had nearly two years to depose Ms. Meyer. He has not deposed her. He's never noticed her deposition.

So now to suggest that I need 15 minutes to meet with this witness to go into matters that we just argued about over the last three hours and which the court just ruled upon, is inappropriate.

THE COURT: Thank you.

Denied. I think you had an opportunity during your initial argument to request that she be called in to question specifically on this issue, and you did not do that, and I'm not going to give you an opportunity to do it now.

MR. DAN SLOTCHIVER: I wasn't aware I had waived a different argument, which I think truly is distinguished, but I understand and ask that my objection be noted on the record.

THE COURT: So noted.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Thank you.

Mr. Boyd?

MR. BOYD: Thank you, Your Honor. Shall I retrieve the witness?

THE COURT: Yes, sir. Thank you.

MR. BOYD: Your Honor, I apologize. We caught her off guard, and she asked for five

minutes to go to the restroom.
THE COURT: That would be fine.
(A recess transpired from 11:14 AM to 11:16 AM.)
THE COURT: We're back on the record in the Abbie Dorn matter.
Mr. Boyd, I believe you've called a witness to testify.
MR. BOYD: Yes, Your Honor. Thank you. May it please the court?
THE COURT: Yes, sir.
LISA HELFEND MEYER
being first duly sworn, testified as follows:
DIRECT EXAMINATION
BY MR. BOYD:
Q. Good morning, Ms. Meyer. How are you this morning?
A. Good. How are you?
Q. I'm doing fine. I'm sorry to keep you waiting. I understand you have a flight this afternoon, and I'm going to do my best to move along so we can hopefully get you out.
Would you begin by stating your full name and address for the record, please?
A. Yes. Lisa Helfend Meyer. Do you want

my business address or my home address?
Q. Business address would be fine.
A. 10100 Santa Monica Boulevard, Suite 1425, Los Angeles, California, 90067.
Q. And what do you do, Ms. Meyer? What is your line of work?
A. I'm an attorney.
Q. And how long have you practiced as an attorney?
A. Over 30 years.
Q. What are your areas of practice, please?
A. My area of specialty is family law.
Q. I take it you are a member of the California Bar?
A. Yes, I am.
Q. Do you have any specialty designations from the California Bar?
A. Yes. I've been certified by the State Bar of California in the area of family law.
Q. Can you -- I'm sorry. I didn't mean to interrupt. Anything else?
A. No. Go ahead.
Q. Can you briefly explain to the court your role in the California litigation that is the

subject of these proceedings here in South Carolina?
A. Yes. I was originally retained by Abbie in I believe it was February of 2010.
MR. DAN SLOTCHIVER: Objection, Your Honor.
THE COURT: Yes, sir.
MR. DAN SLOTCHIVER: I don't believe she could be obtained by Abbie; it would be the trustee. And I also would object to the relevancy -- not the relevancy, but I believe, for the record, she would have been retained by trustees, unless she had direct communication with Abbie.
THE WITNESS: Actually, I was retained, not obtained, and the Cohens were conservators, not trustees.
THE COURT: So you were retained by them as conservators for Abbie?
THE WITNESS: That is correct, Your Honor.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
BY MR. BOYD:

Q. Thank you, Ms. Meyer. And I'm sorry. I'm just trying to lay a baseline foundation for why you're here today.
Again, could you just explain how you came to be involved?
A. Yes. So I was originally retained by the Cohens, who were the conservators -- or are the conservators for Abbie in the state of California, and they initially retained our firm to represent Abbie in connection with the marital dissolution proceedings in California.
Should I continue?
Q. Go ahead.
A. The initial work that we undertook was to contact Vicki Greene, who represented Mr. Dorn, and the purpose of contacting her was to ascertain whether or not she would be in agreement that Abbie could have visitation rights with her children.
Q. Do you recall -- at some point you did become aware that the Cohens had been sued in South Carolina in connection with that action, correct?
A. Yes, later on.
Q. Do you recall preparing an affidavit,

Ms. Meyer?
A. I did.
Q. To be used in these proceedings?
A. I did.
MR. BOYD: May I approach, Your Honor?
THE COURT: Yes, sir.
(RES. EXH. 5, Affidavit of Lisa Helfend Meyer, was marked for identification.)
BY MR. BOYD:
Q. I'm going to ask you if you recognize that document, please?
A. I do.
Q. Is that the affidavit that you prepared?
A. Yes.
MR. BOYD: Your Honor, I'd like to move for the admission into evidence of what's been marked as Respondent's Exhibit 5, which is the affidavit of Lisa Meyer which we have been discussing at length this morning.
THE COURT: Any objection?
MR. DAN SLOTCHIVER: Your Honor, no objection to admitting it for the purposes of proving that it is an affidavit that she created, but we certainly do not agree to admit it for the

truth of the matters asserted within it.
THE COURT: Thank you.
Any other objections?
Court will admit the affidavit of Lisa Meyer as Respondent's No. 5 without objection, other than as noted on the record.
MR. BOYD: Thank you, Your Honor.
(RES. EXH. 5 was admitted into evidence.)
BY MR. BOYD:
Q. Let's talk about the history of the case, Ms. Meyer, in California. You were not the first attorney, correct?
A. Correct.
Q. Who was originally retained to represent Ms. Dorn in the case?
A. Her name is Rosanna Velen, V-E-L-E-N.
Q. Ms. Dorn, Abbie.
A. Oh, I'm sorry. I didn't --
Q. Who was originally retained to represent Abbie Dorn in the case?
A. I believe it was Rosanna Velen.
Q. And was there counsel for Mr. Dorn in the matter?
A. I believe it was always Vicki Greene.

Q. In your experience, Ms. Meyer, what sort of lawyer, in family court, is Ms. Greene generally regarded as in terms of how aggressively she litigates?
MR. DAN SLOTCHIVER: Objection, Your Honor. There is no foundation for asking this question. She is called merely as a witness, not an expert in this case.
MR. BOYD: Your Honor, she had firsthand experience litigating cases with Vicki Greene. I've just asked her for her knowledge, her opinion, based on her experience.
MR. DAN SLOTCHIVER: Her knowledge or her opinion is different than what he asked. He asked her what is her reputation in the community. That would call for hearsay. She couldn't give a reputation without knowing what the reputation would be. It should be barred.
THE COURT: Mr. Boyd?
MR. BOYD: I'll restate the question, Your Honor.
THE COURT: Thank you.
BY MR. BOYD:
Q. When you realized that opposing counsel in the case was Vicki Greene, Ms. Meyer,

did it give you pause for concern?
A. It did.
Q. Why was that?
A. Because I have known Vicki for approximately at that time about 20 years or so, and I knew her to be a very aggressive attorney who took very hard-line positions on issues.
Q. Let's look at your affidavit. I'm going to ask you, Ms. Meyer, let's take a look at -- I'm going to ask you to take a look at what's previously been marked, Ms. Meyer, as an exhibit in this matter and admitted. Those are the letters of conservatorship that were issued by the California court with respect to the Cohens, as conservators.
A. Yes.
Q. What was your understanding of the authority? You reference this on Page 2. What was your understanding of the rights of the conservators to pursue the California marital proceeding?
MR. DAN SLOTCHIVER: Your Honor, I would object. She is not an expert to testify to the law. I don't believe that someone, even an expert, could -- if she was an expert, could be

called to testify as to the law, and that's exactly what he's asking her to do. She can testify as to what she witnessed, what she did, if it's not barred, but I don't believe she can answer this question.

MR. BOYD: Your Honor, the Cohens, as conservators, retained Ms. Meyer as counsel for Abbie in the divorce proceeding, and she explained in her affidavit, Paragraph 3, Page 1, the basis for her retention by the conservators. The letters of conservatorship were attached as Exhibit A to her affidavit. I'm merely asking her to put into the record effectively what her understanding was with respect to her retention. It's her firsthand knowledge of her being retained by the Cohens under the authority granted to them by the letters of conservatorship.

THE COURT: And I'm sorry. The question, again, for Ms. Meyer?

MR. BOYD: I was asking her did she understand that she was retained pursuant to the authority granted the Cohens under the letters of conservatorship issued by the California court, which is exactly what she addresses in Paragraph 3 of her affidavit.

MR. DAN SLOTCHIVER: And that would allow her to opine on the fact that they had the authority to hire her in this case.

MR. BOYD: Your Honor, she was the attorney that was retained. I think the court can take judicial notice of the fact that if Ms. Meyer did not feel that her clients had authority to retain her, that she would have questioned the retainer, questioned the retention by the Cohens.

THE COURT: I will allow it. Thank you.

BY MR. BOYD:

Q. So, Ms. Meyer, again I would ask you, what was your understanding of the nature of your retention by the Cohens pursuant to the authority of the letters of conservatorship?

A. That pursuant to the letters of conservatorship, that I could be retained by the Cohens on behalf of Abbie in connection with the pending proceeding for dissolution of the marriage, which would incorporate all issues in the marital dissolution proceeding, including, but not limited to, property, support, custody, et cetera.

MR. DAN SLOTCHIVER: Your Honor, once

again, I object. She is now opining as to what the California order provided, and she has now opined that it would include not only the dissolution, but also all other matters. She is not here as an expert, she is not a practicing lawyer in the field of trusts or estates, and I believe that that reference should be stricken.

THE COURT: Mr. Boyd?

MR. BOYD: Again, Your Honor, she's explaining her understanding of what she undertook as her job in the case in California and why she felt that she had -- under the documents that she reviewed, why she felt that she had authority to do that.

THE COURT: I will accept her testimony as to her understanding, not as an expert --

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: -- witness in the matter.

BY MR. BOYD:

Q. I'm losing my train of thought, Ms. Meyer.

So you did review the letters of conservatorship, correct?

A. Yes, I did.

Q. Were there any limitations set forth in the letters of conservatorship as to the scope of retainer that gave you any cause for concern?

A. My understanding was there was none.

MR. DAN SLOTCHIVER: Your Honor, now she's opining on limitations of the order. How is that not being called for expert testimony?

MR. BOYD: I've asked Your Honor --

Your Honor, can we get some leeway here? I'm really having --

THE COURT: I'm going to allow this, Mr. Slotchiver, not as an expert, but as to her understanding as to the scope of the letters of conservatorship.

MR. BOYD: I've not asked for her to be designated as an expert. I'm asking for her direct, firsthand knowledge and understanding.

THE COURT: Thank you.

BY MR. BOYD:

Q. So you reviewed the letter of conservatorship. You had -- as I understand your testimony, you didn't see limitations within that would give you pause for concern.

Is it typical practice in California

to have a divorce proceeding where the issues of child custody/visitation/property division would not be addressed?

MR. DAN SLOTCHIVER: Your Honor, I would object. Now he's asking her for a conclusion of law, is it typical in California to do this. That is absolutely an expert opinion. She has been called as a witness, not an expert in the case, and he's asking her to opine on the law.

MR. BOYD: Again, Your Honor, I'm asking her for her experience as she applied it in this case in evaluating her authority to undertake the representation.

THE COURT: If you would like to rephrase that with respect to her experience in practicing, but not as an expert in the field of family law.

MR. BOYD: I understand, Your Honor. Thank you.

BY MR. BOYD:

Q. Ms. Meyer, just based on your experience as a domestic practitioner, family law practitioner, would you have expected to see such a distinction within your authority based on the way you typically handle family law cases in your

practice, in your own practice, personal?

A. No. My understanding was when I reviewed the letters of conservatorship, and given the fact that the parties had already been divorced pursuant to a judgment of bifurcation, that I was being retained to address the remaining issues in the divorce, which included custody, visitation, support, and property. And in fact, there was a trial on the calendar on those issues which we subsequently continued after I was initially retained. So that was my understanding of what my charge was at the time.

They were already divorced, so nobody was saying that there's no issues remaining. All the issues were remaining, save for the issue of divorce, because they had been divorced, because that's what Dan had filed a previous request to do.

Q. Let me ask you this, Ms. Meyer: I'm going to show you what has previously been marked as Exhibit R-7. And do you recognize that document, Ms. Meyer?

A. I do.

Q. Now, I understand you were not the attorney who prepared that document, but can you

briefly identify it for the record?

A. Yes. It's a petition that is the -- one of the documents that initiates a divorce in California, so you can file -- to start the process, you file either a petition for dissolution, legal separation, or nullity, and that's on the first page, and the box is checked next to dissolution of marriage.

Q. Looking at that exhibit, Ms. Meyer, can you identify what's being asked for in the petition in terms of child custody and visitation?

A. Yes. If you could go to Page 2 of the petition, under 7A, this is the relief that you have to check the box in terms of what you want, so 7A, the request is that respondent be awarded legal custody, and respondent would be Dan Dorn, and legal custody means decisions regarding the children's health, education, and welfare.

B is physical custody of children. And the petitioner, who are the conservators, were requesting that Dan also be awarded physical custody, and physical custody means the actual time the children spend with each parent. Child visitation be granted to petitioner, and that would be Abbie. So that's what the initial

request was for.

And then the only other box that was -- I'm sorry. The next is attorneys fees and costs, and the request is that respondent pay petitioner's fees and costs, and then G and H are also checked.

Q. And just to be clear, the petitioner in the matter was Abbie Dorn, correct?

A. Yes, based upon my understanding that Dan had wanted the Cohens to file a divorce petition on behalf of Abbie.

Q. And the respondent in the proceeding was Dan Dorn?

A. Yes.

Q. And throughout the proceeding, from the filing of this document to the end of the settlement, were there multiple case numbers involved? Was it always adjudicated under the same case number?

A. Yes.

Q. And again, to be clear, I think you specified this, but is there any request for custody of the children made on behalf of the petitioner, Abbie Dorn, in this document?

A. No. The only thing that the

conservators requested on behalf of Abbie was visitation.
Q. Visitation?
A. Yes, visitation only.
Q. And was it your understanding that that was always a request?
MR. DAN SLOTCHIVER: Your Honor, I'm going to object to the leading question.
MR. BOYD: I'll restate, Your Honor.
THE COURT: Thank you.
BY MR. BOYD:
Q. Are you aware of any request or demand that was made throughout these proceedings for legal custody of the children by the Cohens on behalf of Abbie Dorn or by any other party?
A. Absolutely never.
Q. Ms. Meyer, next I'm going to show you what's been marked as Exhibit R-8. If you could just briefly identify that document if you're familiar with it.
A. Yes. This is the response to the petition for dissolution of the marriage. That was filed by Dan. And also, it now refreshes my recollection that he did have prior counsel, and that person is identified on the first page, at

the top half of the page. Her name is Rachel S. Silverman, who I don't know.
Q. Thank you, Ms. Meyer.
And can you briefly -- as you did with the prior exhibit, can you just run through the key substantive points of that response?
A. Yes. On Page 2, in terms of the relief Dan was seeking, and that is on -- starting at nine, he is requesting that he be awarded legal and physical custody of the children, which was what Abbie had also proposed.
Also, interestingly, under 9C, child visitation be granted to petitioner. So in his initial response to the petition, which was -- and this was filed in January 2008, he was agreeable to Abbie having visitation with the children, and that was never modified, by the way. Let me restate that. An amended response was never filed with the court.
And then he -- the other things he asked for are of a monetary nature.
Q. Thank you, Ms. Meyer.
So initially, based on your understanding of the documents, Mr. Dorn was agreeable to visitation from the Cohens?

A. Yes, and that's what I reviewed before my initial conversation with Vicki.
Q. Let me ask you this: That initial response that we just reviewed, I didn't hear you say anything about child support.
A. If I could see it again. I don't recall seeing anything.
Q. I'll be glad to let you look at it again. I think you were --
MR. DAN SLOTCHIVER: Your Honor, I would ask that you caution counsel about leading.
THE COURT: Mr. Boyd?
MR. BOYD: Yes, ma'am.
THE COURT: Be mindful of leading questions with your witness.
MR. BOYD: Yes, ma'am. I apologize, Your Honor.
THE WITNESS: There's no mention of child support in his response.
BY MR. BOYD:
Q. Subsequently, Ms. Meyer, I believe in January of 2009, did Mr. Dorn, in fact, file an order to show cause requesting child support?
MR. DAN SLOTCHIVER: Your Honor, once again, I object to the leading questions. I

believe he can ask her what happened next, what she's aware of -- she's been called as a witness -- but to put things into her head by phrasing those questions, that's exactly what the rules are designed to prevent.
THE COURT: Mr. Boyd?
MR. BOYD: I will rephrase, Your Honor. My apologies.
BY MR. BOYD:
Q. Subsequently, based on your knowledge, was there a demand that was made for child support by Mr. --
MR. DAN SLOTCHIVER: Your Honor, the same objection.
MR. BOYD: Your Honor, I'm not sure how I can be -- I'm trying not to lead her down the primrose path, Your Honor, but I am trying to keep her testimony focused. She has a plane to catch, and so I'm trying to move through it.
MR. DAN SLOTCHIVER: We don't want to waive any rights because she has a plane to catch, Your Honor. We would ask that he not lead her down the road to what he wants when he asks her questions.
THE COURT: Mr. Boyd?

BY MR. BOYD:
Q. Were you aware of any subsequent efforts, Ms. Meyer, on the part of Daniel Dorn to collect or receive child support in this case?
MR. DAN SLOTCHIVER: Same objection.
MR. BOYD: Your Honor, that's not a leading question. I asked her if she was aware of any efforts on --
MR. DAN SLOTCHIVER: It's a yes or no response, Your Honor.
BY MR. BOYD:
Q. What happened next, Ms. Meyer?
A. What happened after the original petition and response was filed was there was then a request by Dan to terminate the marital status before the other issues are resolved. In California, it's called a bifurcation. So he was seeking to bifurcate the marital status from all the other issues, including custody and visitation. That was granted I believe in 2008, and then in 2009 --
Q. Let me just stop you there. Let me just stop you there. In 2008, you mentioned the bifurcation, and what has been marked as Exhibit R-9, is that related to the bifurcation?

A. Yes. And also, the record should reflect that by this date, Vicki Greene has substituted in as Mr. Dorn's attorney, and this was filed in, it looks like, May of 2008.
Q. Thank you. And Ms. Meyer, without -- was child support ever requested in the case?
MR. DAN SLOTCHIVER: Same objection, Your Honor.
MR. BOYD: Your Honor, I'm asking the witness --
THE WITNESS: I can tell you what happened next.
BY MR. BOYD:
Q. What happened next, Ms. Meyer?
MR. DAN SLOTCHIVER: Your Honor, I don't want to make this objection over and over as the thing continues.
THE COURT: Mr. Boyd, if you would just be very careful and do not ask any leading questions. Anything other than just a simple yes/no might be considered a leading question.
MR. BOYD: Thank you, Your Honor.
BY MR. BOYD:
Q. Ms. Meyer, what next, in your mind, was a significant development in the case?

A. Yes. Next, Ms. Greene filed, on behalf of Mr. Dorn, what's called an OSC, an order to show cause, for child support under the theory that --
MR. DAN SLOTCHIVER: Your Honor, I object. This is hearsay. I do not believe that this witness has the ability to give an opinion as to what theories were followed. I don't believe she can testify as to what Vicki Greene did or as to what Dan Dorn did.
MR. BOYD: I'll show her the document, Your Honor.
MR. DAN SLOTCHIVER: Your Honor, she is limited to testifying as a witness in this case. We've already addressed several issues regarding this. I understand she can talk about the documents that she's familiar with and what she did, but I want to -- but I certainly want to make sure that I've marked for objection that she, in my opinion, should not be able to testify as to opinions, legal conclusions, or hearsay testimony about what Vicki Greene did or what Dan Dorn did. She certainly can testify as to what she did, assuming that doesn't violate the attorney-client privilege, in which case we'll discuss that later.

MR. BOYD: Your Honor, she simply -- and I'm going to hand her the exhibit that's already been admitted into evidence. She's simply commenting on the theories raised in the documents, which are in evidence.
THE COURT: I'll allow her to testify as to the documents that were filed by Mr. Dorn in the California proceeding, but she needs to limit her testimony as to the reason for doing that or any theories behind that as to their motives for having filed that.
MR. BOYD: Understood.
THE WITNESS: So I'm not supposed to answer the motives or -- okay. Got it.
MR. BOYD: But she can address the theories of --
THE COURT: She can address the relief requested and what was actually -- what is actually in the pleadings.
BY MR. BOYD:
Q. And Ms. Meyer, what I've just handed you has previously been marked as Exhibit R-10 in this case. Is that the order to show cause that you were just referring to?
A. Yes.

Q. And what happened in the proceedings as a result of the filing of that document, Ms. Meyer?

A. Fees escalated because what happened was Abbie had to file a response to this OSC, and this is not a garden variety OSC for support, so this is not where somebody is a W-2 tax and wage earner and works at a bank, and you exchange information regarding income, and the court sets support.

MR. DAN SLOTCHIVER: Your Honor, I would object. She's now giving an opinion about what is garden variety, what's not garden variety. That's an opinion testimony that can only be given by an expert, I believe, not one that can be given by a witness.

MR. BOYD: She is explaining, Your Honor, the nature of that OSC in her experience. She just testified that the OSC was not ordinary, in the normal course of her practice, and she was explaining, in the ordinary course of her practice, why it was not a normal OSC that she typically receives. That's her firsthand knowledge.

MR. DAN SLOTCHIVER: That's not

exactly what I heard her testify to. I have never heard the limitations of her practice. I believe it was more of a general practice.

THE COURT: Ma'am, if you can limit your comments, then, with regards to this particular case and your practice and your experience.

THE WITNESS: I will. Thank you, Your Honor.

THE COURT: Thank you.

THE WITNESS: So in terms of my practice, and again, I practiced -- at the time I practiced about twenty -- that was in 2010, so I was practicing about 28 years at the time. This was not a garden variety OSC for support, because Dan was trying to get a special needs trust to pay child support under the theory that part of the funds in the --

MR. DAN SLOTCHIVER: Your Honor, I object to her testimony as to what Dan was trying to do and under what theory he was trying to do it. I believe she can testify as to the document, not as to what he was trying to do or what the theory was as to what he was doing.

THE COURT: Thank you. If you'll

limit. Thank you.

THE WITNESS: Sure.

The document provides that child support should be paid from the trust, because part of the funds in the trust were as a result of Abbie's lost earnings, so it wasn't that distributions were being made from the trust, and those distributions should be considered income, but the lost wages that were part of the funds in the trust should be considered, and that's set forth in her points and authorities.

BY MR. BOYD:

Q. And the memo of points and authorities is a part of that exhibit?

A. Yes.

Q. And what happened to that demand for child support, Ms. Meyer?

A. What happened was that counsel for Abbie at the time filed extensive points and authorities, as well as responsive pleadings, objecting to the payment of child support from any portion of the funds in the trust, because to do so would invalidate the terms of the trust.

MR. DAN SLOTCHIVER: Your Honor, now she's giving an opinion about why the document was

filed. It was not filed by her.

THE WITNESS: That's what the pleadings say.

MR. BOYD: She's just explaining, Your Honor, exactly why they undertook the filings that they undertook.

THE COURT: I'll allow it. It's in her pleading is what she has testified to.

MR. DAN SLOTCHIVER: I would just ask that if she's going to testify, that if she could say the pleadings represent this is what happened, as opposed to giving an opinion as to what had happened and why it happened.

THE COURT: Thank you. That might help clarify your testimony a little bit, ma'am.

THE WITNESS: Of course. Thank you, Your Honor.

The pleadings, the responsive pleadings, stated that there was an objection to paying any monies from the trust, because to do so would invalidate the special needs trust, and then Abbie wouldn't receive any governmental benefits, such as Medicaid, if that were to occur, and that's -- so that was set forth in those pleadings.

And then your question was whatever happened. That issue never came to hearing and continued to be continued through the time of trial, and that was an issue that we only settled after the hearing on custody and visitation, or I should say on visitation.

BY MR. BOYD:

Q. In response to the objections to the request for child support that were filed by your firm on behalf of Abbie Dorn, was the request for child support ever withdrawn by Mr. Dorn's counsel?

A. No. Vicki refused to --

MR. DAN SLOTCHIVER: Objection, hearsay, Your Honor.

THE WITNESS: The answer's no.

BY MR. BOYD:

Q. Thank you. And I believe you were addressing this, Ms. Meyer, but when was the issue of child support finally resolved?

A. It was not resolved until we entered into the final judgment, which was after the hearing on the issue -- the temporary hearing on the issue of visitation, which was in March of 2010, and thereafter, we entered into the

judgment, so that would have been later in 2010, and that's when it was finally resolved.

Q. Let me ask you this question on the subject of visitation, Ms. Meyer: Did you file, on Abbie's behalf, a --

MR. DAN SLOTCHIVER: Object to the leading, Your Honor.

BY MR. BOYD:

Q. Did you ever pursue visitation?

A. Yes, we did. That was one of our first charges when we came into the case. We filed a request, an OSC for temporary visitation, in I believe it was in March of 2009. Or 2010, I'm sorry.

Q. What became of that request?

A. What became of that request was we initially filed our OSC requesting visitation. I contacted Vicki Greene to ask her whether she would voluntarily agree on behalf of her client to visitation. We then went to court on an ex parte basis with respect to the issue of visitation and the appointment of child custody evaluator to make recommendations about what was in the children's best interests.

That hearing -- and we also had to go

to court because we wanted to take Dan Dorn's deposition, and there were objections to that. The ex parte hearing was -- the court did order that Dan Dorn's deposition proceed. And it's very unusual in my practice for somebody not to agree to a deposition, especially since questions had never been asked of Mr. Dorn previously at his earlier deposition. The court did order his deposition proceed before the continued hearing date.

So I took -- we took -- well, do you want me to tell you about the deposition?

Q. Well, let's --

A. Visitation.

Q. -- stick to the visitation issue for a moment if we can.

Was it necessary for -- did you undertake subsequent filings on the visitation issue?

A. There was a hearing that was set after the deposition. We proceeded to that hearing. And between the time we filed a request for visitation and the hearing, Dan had filed a motion --

MR. DAN SLOTCHIVER: Objection, Your

Honor, hearsay.

THE WITNESS: I'm talking about the motion that was filed.

MR. DAN SLOTCHIVER: She's stating that my client filed a document. I believe she can testify -- based on your earlier ruling, that she can testify as to what she's reviewed and what she's done, but not as to what somebody else has done or what somebody else has said to her.

THE COURT: I'm sorry. I believe she can testify as to the documents of record in California that have been admitted in this proceeding.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Thank you.

THE WITNESS: A motion was filed on behalf of Dan in which the motion argued that Abbie had no standing to request visitation because, essentially, she was a vegetable. That was the essence of the motion.

BY MR. BOYD:

Q. Let me get you to pause. Is the motion you referred to what has been marked in this case as Exhibit R-11? Is that the motion you're referring to?

A. Yes.
Q. Would you briefly identify that document, if you would, please?
A. Yes. This was the motion that was filed to stay visitation and to request for attorneys fees, and the essence of the pleadings were that Abbie had absolutely no standing to request visitation because it was a personal right of hers, or actually, the conservators didn't have standing, because to request visitation is a personal right and not something conservators could do. So this was part of the hearing that proceeded on April 20, along with our request for visitation.
Q. So instead of --
MR. BOYD: I don't want to lead. Excuse me, Your Honor.
THE WITNESS: So there were --
BY MR. BOYD:
Q. Did you litigate the standing issue?
A. We certainly did. On April 20th, before Judge Diaz, we litigated the following issues: The request for visitation, the motion for stay, which actually went before the request for visitation, a request for a child custody

evaluator or developmental specialist to be appointed, as well as Dan Dorn's request that a medical expert be appointed to examine Abbie.
So all those issues were before the court on April 20th, and I believe we were there at least an entire day, and there were numerous pleadings filed, because there were competing proceedings before the court. There were competing motions. There was our request for visitation and their request to stay visitation.
So in California, there's the initial pleadings --
MR. DAN SLOTCHIVER: Objection, Your Honor. She's going to testify as to the rules in California.
MR. BOYD: She's just explaining, Your Honor, what she was doing pursuant to the rules in her experience as a practitioner.
THE COURT: I'll allow her to testify to the pleadings in this case.
MR. DAN SLOTCHIVER: But not to the rules, Your Honor? If she's going to testify as to the rules based on her experience, she's clearly testifying as an expert.
THE COURT: Just to the pleadings in

this case, what was filed in the responsive pleadings.
THE WITNESS: There were at least six pleadings filed by each side, including the initial pleadings, responsive pleadings, and reply pleadings, to the two separate motions, and then in addition to that, we had filed initial ex parte pleadings as well, so there were about seven, and Dan had also filed a response to our initial ex parte, so there was about eight pleadings in this matter.
BY MR. BOYD:
Q. And what were the results of the hearing? In particular, I'm interested about standing issue, but --
A. Well, first of all, the most important issue was the standing issue. Judge Diaz ruled that the Dorns did have standing to pursue visitation on behalf of Abbie, even though it was a personal right. He stated it unequivocally that day at the hearing.
And as a result of that ruling that the Cohens had standing to assert visitation on behalf of Abbie, the court then appointed a developmental specialist, and Vicki and I

eventually agreed upon whom that person was. The court also ordered that Abbie be examined by a neurologist to opine as to how she was doing, and there might have been some other ancillary orders, and I can't remember those at the time, but that was the thrust of what was ordered.
Q. So did that lay the issue of standing to rest?
A. Unfortunately not.
Q. What subsequently happened?
A. Well, what subsequently happened and procedurally what happened next was there was an agreement on property rights, so we reached an agreement with Vicki in terms of property. And I can't remember if there was anything else, but we still could not resolve child support.
We then agreed upon somebody by the name of Angela Hays to evaluate Abbie, and that was Vicki's proposed individual.
MR. DAN SLOTCHIVER: Objection, Your Honor, hearsay.
THE COURT: Strike that.
THE WITNESS: And we also agreed on Dr. Jane Shatz as the developmental specialist to --

MR. DAN SLOTCHIVER: Objection, Your Honor, hearsay.
MR. BOYD: Your Honor, references to Shatz are in her affidavit. It's a matter of reference.
MR. DAN SLOTCHIVER: She certainly can testify that Dr. Shatz became involved.
THE WITNESS: Then I would adopt what counsel said.
THE COURT: Thank you.
THE WITNESS: And then during the summer of 2010, I believe Dr. Hays saw Abbie, as well as Dr. Shatz did, which she needed to.
In October of 2010, after Dr. Hays completed her work and after Dr. Shatz completed her work, they each issued a report, and we all participated in a voluntary settlement conference with Judge Isabel Cohen, who was also the discovery referee, because there were issues involving discovery.
And then after that, Vicki -- there was a trial date set on the bifurcated or trifurcated issue of custody, and then before -- after we were assigned to a new judge for long cause matters, Vicki then raised the standing

issue again.
BY MR. BOYD:
Q. And how did --
MR. DAN SLOTCHIVER: Objection to hearsay.
THE WITNESS: A motion was filed by Vicki to reconsider Judge Diaz's order.
THE COURT: Thank you.
BY MR. BOYD:
Q. And ultimately, how did the court rule in the second hearing?
A. The court ruled the same as Judge Diaz did. This was now Judge Shaller, who was the judge that heard the temporary visitation hearing, and he ruled exactly the same as Judge Diaz, that the Cohens had standing to assert visitation on behalf of Abbie.
Q. Did these multiple bites at the apple, in your opinion, in your experience, did that increase the complexity and cost of the litigation in California?
A. Yes, tremendously.
Q. Let's talk about discovery in the case. Did Mr. Dorn and Ms. Greene cooperate with your efforts to conduct discovery in the case?

MR. DAN SLOTCHIVER: Objection, Your Honor.
MR. BOYD: Your Honor, she's giving her personal firsthand knowledge based on her experience in the case.
MR. DAN SLOTCHIVER: Your Honor, this goes back to the underlying argument we had earlier this morning. Now she's going to testify as to what was done, which is hearsay between her and other counsel, without us having a proper opportunity to examine the issues before the court.
I believe Your Honor limited her testimony to that as to what she did, to the documents that she can opine from, the documents that they presented, not to talk about other issues outside of it, without having given us a fair opportunity.
THE COURT: Mr. Boyd?
MR. BOYD: Your Honor, if Your Honor will refer to the declaration Ms. Meyer has filed in this matter with respect to Pages 13 and 14.
THE COURT: Can I have a copy of that, please?
MR. BOYD: Yes, Your Honor.

THE COURT: What exhibit is this? Do you have the exhibit?
THE WITNESS: It's five.
MR. BOYD: It's Exhibit 5, Your Honor.
THE WITNESS: And there's actually two declarations, Your Honor, that were attached to --
MR. BOYD: Do you want this copy?
THE COURT: Well, does the court reporter have the copy?
MR. BOYD: It's Exhibit 5, Your Honor, beginning on Page 4.
THE WITNESS: Do you want to take mine? That's okay.
THE COURT: I don't have a copy. I don't know -- is that the court's copy?
MR. BOYD: This is the original copy, Your Honor. Just a second, Your Honor, I'll get another copy.
Your Honor, I would refer to the court on -- refer to the court Page 13 of the affidavit that's previously been marked as Exhibit R-5, and you will see a series of -- Paragraphs 29, 30, 31, 32, 33, where the subject of Dan Dorn's cooperation in discovery matters, or lack thereof, is specifically addressed by the affidavit.

MR. DAN SLOTCHIVER: It is, Your Honor, and we have agreed to the admissibility of this document, subject to our objection, the objection being the truth of the matter asserted. If they want to submit it for the purposes of this is an affidavit actually created by Ms. Meyer, we have to stand on the court's ruling on that, but as far as the hearsay element of it, we object.

MR. BOYD: And again, Your Honor, she's speaking of her firsthand knowledge in the case. The evidence I'm eliciting from the witness is not hearsay.

MR. DAN SLOTCHIVER: I think, Your Honor, he can easily ask her did discovery take a long time, were there a lot of battles with discovery. He can ask those questions without giving -- without delving into particular matters dealing with communications directly with someone who is not here to respond.

THE COURT: So I will limit her testimony.

MR. BOYD: Understood, Your Honor.

THE COURT: Thank you.

BY MR. BOYD:

Q. Ms. Meyer, you'd been practicing law,

you said, 28 years at the time of this case?

A. Yes.

Q. Are you capable of evaluating whether opposing counsel is being cooperative with you in your practice?

MR. DAN SLOTCHIVER: Objection, Your Honor. There's no foundation that shows she's capable. She's been listed as a witness, not as an expert.

THE COURT: Sustained.

BY MR. BOYD:

Q. In your experience and your practice, Ms. Meyer, did you observe cooperation on opposing counsel in this proceeding?

A. Absolutely not.

MR. DAN SLOTCHIVER: And once again, Your Honor, I object. I don't believe she has the ability to opine on whether or not somebody else cooperated with her.

THE WITNESS: I can describe the discovery motions.

THE COURT: You can rephrase that.

BY MR. BOYD:

Q. Let me ask you this: Were there multiple discovery motions filed in the case?

A. Yes.

Q. Would you briefly review with the court what those were?

A. Yes. The initial discovery motion was a motion to prevent us to take Dan Dorn's deposition, which was granted. The deposition lasted about two-and-a-half hours, and Mr. Dorn and Ms. Greene exited the conference room after that period of time.

We then had to -- we then filed a motion for a discovery referee, and the judge appoint -- which was granted, and the judge appointed Judge Isabel Cohen, who is a retired judge. The court ordered each party to pay half the cost of Judge Cohen's fees.

A motion had to -- a motion was filed to compel the depositions of Dan's parents, who refused to sit for their deposition. The motion was granted.

There were documents that were not produced, and I believe a motion to compel was filed and was granted.

And I believe that's what I can recall at this time.

Q. Thank you, Ms. Meyer. Did these

discovery-related motions contribute to the cost of the California proceeding?

A. Absolutely.

Q. Let me ask you this, Ms. Meyer: Did Vicki Greene ever raise a First Amendment --

MR. DAN SLOTCHIVER: Objection to hearsay, Your Honor. It's a leading question. I believe he can ask her what happened next.

BY MR. BOYD:

Q. Were there any unusual issues in the case, in your experience, that were raised by the opposing party?

A. There was a motion by Ms. Greene to seal the -- to close the courtroom, on the basis of the children's privacy. The motion was essentially denied by Judge Shaller, except that consistent with California law --

MR. DAN SLOTCHIVER: Objection, Your Honor, if she's going to testify as to California law.

THE WITNESS: Let me just say except that the court did seal any portion -- the court sealed Dr. Shatz's report and any pleadings that discussed her report, as well as closed the courtroom when Dr. Shatz testified, and that was

very expensive.
BY MR. BOYD:
Q. So there was a lot of money spent in California in this proceeding?
A. Yes. And we haven't even gotten to the trial.
Q. But notwithstanding the amount of money that has been spent, in your experience, was the total amount of money spent in this case unusual for Los Angeles, California, in your personal experience in your practice?
A. No, and not in my practice either. And if the court wants me to go into my experience as a custody litigator, I could do that.
MR. DAN SLOTCHIVER: I don't know the relevancy of it, Your Honor.
BY MR. BOYD:
Q. As a custody litigator, how typical were the billings?
MR. DAN SLOTCHIVER: Your Honor, I would object. Now she's being called to opine. She's a witness in this case. She's not being called as an expert.
THE COURT: Sustained.
BY MR. BOYD:

Q. Ms. Meyer, a claim has been made in these proceedings and ultimately were also made in the California proceedings that the case was one of grandparent visitation. In your experience in the case, is that what was being litigated?
A. Never once did the Cohens ever request, in any pleadings that I'm aware of, nor did Mrs. Cohen testify at the hearing on visitation, as to any request for grandparent visitation.
Q. In your experience as a domestic family law practitioner, have you ever encountered a case or do you understand grandparents to have standing in California?
MR. DAN SLOTCHIVER: Objection, Your Honor. Once again, this calls for legal opinions from her, which would call for expert testimony.
THE COURT: Sustained.
BY MR. BOYD:
Q. Have you ever, Ms. Meyer, litigated on behalf of grandparents seeking --
MR. DAN SLOTCHIVER: Objection to the relevancy as to why this would be relevant to this case at hand. Her litigation in other cases has nothing to do with this particular case, Your

Honor.
MR. BOYD: Your Honor, the case at hand has been alleged to have been a grandparent visitation case, and I'm simply asking Ms. Meyer -- I've asked her, and now I'm asking her if she's ever encountered any other grandparent visitation.
MR. DAN SLOTCHIVER: We are well aware of what he's asking her, Your Honor. We do not believe it an appropriate question.
THE COURT: Sustained.
BY MR. BOYD:
Q. Ms. Meyer, did you engage in efforts to settle this case? Were there efforts to settle the case prior to trial?
A. Multiple.
Q. Could you briefly describe your efforts to settle the case?
MR. DAN SLOTCHIVER: Your Honor, under South Carolina rules, settlement negotiations are excluded. I would object to settlement negotiations coming in, at least as to the particulars, understanding that the court wants to get an overall view of expenses that were incurred and understanding that she can testify as to the

fact there were negotiations, but going into the parameters of those negotiations I believe would be inappropriate, especially in light of the fact that there are numerous documents which we've never had the privy to see. We don't know what was going on. We don't know what transpired.
So if we're limited in not having that information provided to us, in an effort to be able to cross-examine or to examine either Ms. Meyer or the Cohens, we certainly don't believe it would be appropriate for her to opine and to comment on things for which we cannot judge.
MR. BOYD: Your Honor, I simply asked her to indicate generally, without going into specifics. And the privilege -- the offering party owns the privilege in that regard, Your Honor.
MR. DAN SLOTCHIVER: We agree, Your Honor, but they haven't waived the privilege, and now they're coming forward in court, and they're saying we own the privilege, so we'll ask you some limited things. This has been heard over and over throughout the case, Your Honor.
THE COURT: Is there anything

regarding settlement in the declaration or in the documents that were provided through discovery?
MR. BOYD: I don't believe the affidavit addresses the issue of settlement, Your Honor. I'll withdraw the question.
THE COURT: Thank you.
BY MR. BOYD:
Q. Ms. Meyer, in your work in the case that we've been discussing, did you understand that the work you were undertaking was for the benefit of Abbie or for the benefit of the trustees?
A. My understanding was it was for the benefit of Abbie and that the conservators were acting on her behalf. Never once in any pleadings that I can recall did we ever argue the United States Supreme Court case of Troxel, of which we were aware, which says --
MR. DAN SLOTCHIVER: Your Honor, I object to testimony about a case. That's not what she's here for.
THE COURT: Thank you.
THE WITNESS: We didn't argue that in our pleadings.
BY MR. BOYD:

Q. Ms. Meyer, is there anything that I haven't asked you that you think's important for the court to know about the California proceeding?
A. Yes. I think it was a very complex case, that there was a lot of complex legal issues in the case, starting off with the issue --
MR. DAN SLOTCHIVER: Your Honor, I would object at this point. A complex case and giving reference to that as the nature of the type of case is giving an expert opinion on the case.
MR. BOYD: She's giving --
MR. DAN SLOTCHIVER: I believe she can testify as a witness as to what she did, what she saw, what she observed, if it's appropriate, but not to give legal opinions.
MR. BOYD: She's giving her observation, Your Honor, based on her experience litigating the case.
MR. DAN SLOTCHIVER: I'm not really sure what the difference is between giving an opinion and giving your observations as an expert. If you're an expert, you give an opinion. She's not called as an expert.
THE WITNESS: I can say it without saying the word complex.

MR. DAN SLOTCHIVER: Well, exactly. We're attempting --
THE COURT: Thank you. Sustained.
BY MR. BOYD:
Q. And again, Ms. Meyer, I'd asked you is there anything about the case that I haven't asked you that you feel is important for the court to understand?
A. There were a -- there were multiple attorneys on the case. There was a -- there were many motions that I haven't discussed this morning that were either before the discovery referee or just part of a certain hearing or motion, that almost every issue had to be litigated not once, but twice, the example of the standing issue, just wrapped in a different package.
Nobody stipulated that reports be received into evidence, so Dr. Shatz, her 100-plus page report could not be received into evidence. She had to come to court and actually testify.
There were multiple depositions, not only of the parties. A request was made to depose Abbie. Abbie's deposition was taken. The grandparents' depositions were taken. Other third party depositions were taken. There were --

Dr. Hays's deposition was taken. Dr. Shatz's deposition was taken. Dr. Mamelak's deposition was taken.
There were multiple -- without getting into the settlement negotiations, there were multiple settlement negotiations throughout the process.
There was considerable time spent preparing for trial, which, as I recall, lasted approximately five days or so, with multiple witnesses. No facts that I can recall were stipulated to, so everything had to be put on through witnesses or through documents at trial.
Because of the issue about sitting in the courtroom, we would have to -- when Dr. Shatz testified or any issue came up regarding Dr. Shatz, we'd have to clear the courtroom, because there was press in the courtroom.
So it was very, very involved.
Q. And all of these factors which made the court -- which made the proceeding involved, did they contribute to the expense of the California proceeding?
A. Absolutely.
Q. Thank you, Ms. Meyer. I have no

further questions.
A. Thank you.
Q. Please answer any questions the other attorneys have.
THE COURT: Mr. Slotchiver?
MR. DAN SLOTCHIVER: Do I go next?
THE COURT: Unless you would prefer that Ms. Hedgepath or Ms. Moore --
MR. DAN SLOTCHIVER: I didn't know what order we'd go. It doesn't matter to me. Whatever you want.
THE COURT: I guess this is Mr. Boyd's witness, so Ms. Hedgepath?
MS. HEDGEPATH: I have no questions of this witness, Your Honor.
THE COURT: Thank you. Ms. Moore?
MS. MOORE: Yes, ma'am, I have a few questions.

CROSS-EXAMINATION

BY MS. MOORE:
Q. Ms. Meyer, what percentage of your practice is concentrated in the area of family law?
A. 100 percent.
Q. And has that been throughout the

majority of your practice to have such a percentage?
A. Since 1983.
Q. And just as far as an average number of cases you might handle in a year?
A. I have 19 attorneys or so that work at my office, so I would say easily 100 or more cases, a lot.
Q. And then as far as your hourly rate is concerned, do you recall what your hourly rate was to handle this particular case?
A. It was at the time $700 an hour.
Q. Now, I just notice in your -- strike that.
As far as the billing is concerned, was there a point at which there may have been a negotiation with Mrs. Cohen as to the final payment on your bill?
THE WITNESS: Does that violate the attorney-client privilege?
MR. BOYD: Mrs. Cohen has testified with regard to that.
MR. DAN SLOTCHIVER: I'm not conceding anything, Your Honor, on the attorney-client privilege. It's been highlighted throughout the

whole trial.
MR. BOYD: Go ahead.
THE WITNESS: Yes.
BY MS. MOORE:
Q. And do you know how much you would have received in terms of fees on this particular file?
A. Had there not been that discount?
Q. Yes, ma'am.
A. No, not exactly.
Q. And with the discount, what would have been the total fees?
A. It was approximately $780,000 with the discount, I believe, without -- and then there were costs of about another $80,000 or so.
Q. You don't have any paperwork with you today that would confirm one way or the other what the fees were?
A. No. I threw them out in my hotel room before I came here.
Q. Now, as far as the billing is concerned, would you submit the billing for payment to Mr. and Mrs. Cohen?
A. Yes.
Q. And would they routinely pay based on

a cycle, or were they set up on some type of payment plan?
A. Up until the time of the hearing, they would pay a monthly basis. So our bills are sent each month, and then they would routinely pay within the 30-day period of time, and then after that, we had worked out -- I recall some kind of payment schedule.
Q. And did they make payments according to whatever arrangement was entered into between you and Mr. and Mrs. Cohen?
A. Absolutely.
Q. And has the bill now been paid in full?
A. Yes.
Q. As far as the billing is concerned, was the issue of the amount of bill, whether it be a monthly bill or the totality of it, was that issue ever questioned by the Cohens, any concern over the level of the bill?
A. Not that I can recall right now. I mean, there might have been comments from time to time about the cost of the litigation and why it's important to settle and not go through a trial, but I can't recall anything specifically right

now.
Q. And I guess I didn't ask that very artfully. Was there ever a point where Mr. or Mrs. Cohen, either one, ever became concerned about how much the California litigation, how much it was costing?
A. Oh, absolutely.
MR. DAN SLOTCHIVER: Your Honor, if I may, I want to make sure that if we're going to go down this road, that I will have an opportunity to cross-examine the witness on the breach of the attorney-client privilege and all the documents that come with it. I believe they're opening the door with advice of counsel over here.
But before we go further, if I'm not able to do it, then I would ask that you restrict the questions at this time. If I am able to do it, then I'd like to take it up with the court before I proceed.
MR. BOYD: Your Honor, I would -- if we may, can we take about a two-minute break to confer with our clients?
THE COURT: Sure. Let's take about five.
(A recess transpired from 12:18 PM to

12:29 PM.)
THE COURT: We are back on the record in the Dorn matter.
I believe, Ms. Moore, you were examining the witness.
MS. MOORE: Yes, but I would ask that the court reporter please read back my last question.
(The Court Reporter read the question commencing on Page 1023, Line 2.)
MS. MOORE: Then there was some issue with regard to whether or not there would be attorney-client privilege or something.
THE COURT: Thank you.
MR. BOYD: Yes, Your Honor. Before the witness answers that question, I would just like to caution the witness. If it's matters related to the filings she made, matters of public record, matters of the documentation that's been produced, but if it's a question -- I think that's certainly fine. If it's a matter of personal communications between client and attorney, matters in a state of mind between client and attorney, I think -- I would encourage that I think we need to protect the privilege in that

limited regard.
THE COURT: Thank you.
MR. BOYD: Thank you.
BY MS. MOORE:
Q. And would that affect your response?
A. Yes.
Q. In what regard?
A. I'm asserting the attorney-client privilege on behalf of the Cohens.
Q. Now, Ms. Meyer, were there any motions filed in the California matter that would have made a request for either attorneys fees to be paid to Mr. Dorn or any type of fees to be paid to minors' counsel?
A. There was to be paid to minors' counsel.
Q. And who initiated that motion?
A. I think it actually was the judge, because there was an outstanding order that each, Abbie and Dan, pay 50 percent of minors' counsel's fees, subject to reallocation, and Judge Shaller set a hearing after our hearing in March on that issue.
Q. And was there a hearing ultimately held on that issue?

A. Yes.
Q. And what was the outcome of that hearing?
A. The outcome was that Judge Shaller ordered that the Cohens pay 100 percent, I believe, of minors' counsel's outstanding fees.
Q. And as far as submissions either in support or opposition of that hearing, did either party have to submit an itemization of what fees they had incurred relative to their own attorneys?
A. Yes.
Q. How much fees do you believe you submitted as being incurred?
A. My recollection -- you know what, I don't know, because I don't know from the discount and everything else, I just know the total, so I'm not entirely sure.
Q. And what would have been the submission from opposing party as far as filings with the court?
A. My recollection is it was over $900,000, so it was more than our fees.
Q. Were there any other costs associated with the litigation, other than attorneys fees, that the Cohens were required to pay?

A. Yes.
Q. What type of costs were those?
A. They had to pay the cost -- a portion of the cost for Dr. Shatz. I believe they went 50/50 with Dan on that. They had to pay costs associated with Dr. Hays. They had to pay costs associated with Judge Cohen. They had to pay court costs for the court reporter. They had to pay -- let's see if there's anything. That's all I can recall now. Oh, they had to pay for expert witness costs and things like that.
Q. Now, Ms. Meyer, as far as looking at your practice as being a family court litigator for some 30 years, was there anything unusual about the cost of this litigation compared to the cost of other litigation that you've handled in your practice?
A. No.
Q. So was it in line with other cases that you have handled?
A. Yes, with high-conflict custody cases.
Q. Now, I want to make sure I'm clear on something. I may have simply misunderstood you.
In looking at what's been marked as Exhibit R2-2, could you explain to the court what

that particular pleading is?
A. Okay. This is -- the first page of this is a notice of entry of judgment, and the next couple pages -- the next couple pages is the face page to a judgment, and the last page is a proof of service.
So what this is, this is the final judgment that was rendered in connection with Dan's motion for bifurcation. So if you look at the first page of R2-2, under notice of entry judgment, Box 2 is checked or -- and it says: Dissolution status only. So the only thing the court did was dissolve their marital status and reserve all other issues.
And if you look at the next page --
MR. DAN SLOTCHIVER: Your Honor, I would object to her opinion as to what the court did. I don't believe that she's been called upon as an expert, once again, and I would ask that that be stricken.
THE WITNESS: I can explain it on the next page.
MS. MOORE: She's testifying as to what this document --
MR. DAN SLOTCHIVER: And Your Honor, I

believe all she's doing is reading a document. The document speaks for itself. I believe that Your Honor's ruling is that she can talk about documents that she had action with, but not -- it's not her opportunity to explain what the document means. And by explaining what it says -- I believe the court has seen reference to this document repeatedly throughout this proceeding, and the court can look at the document, read for itself. The document does speak for itself.
THE COURT: Sustained.
BY MS. MOORE:
Q. Was there an appearance by an attorney for Ms. Dorn at this proceeding?
MR. DAN SLOTCHIVER: Your Honor, I don't believe there's a foundation that shows she would know. She wasn't involved in the case at that time. I would move to -- I would move to strike the question.
THE COURT: Ms. Moore?
BY MS. MOORE:
Q. Did you appear at this hearing?
A. I didn't, but my predecessor did.
Q. And were you retained subsequent to the dissolution in terms of status?

A. Yes.
Q. And so all of your activity would have been related to those matters that would have been contained within the reservation of jurisdiction?
A. Yes.
Q. And did those matters proceed to a final hearing?
A. They proceeded -- they all proceeded to settlement. There was no final hearing.
Q. And so as far as settlement's concerned, that's a matter of an entry of a pleading?
A. Yes.
Q. There would be no subsequent hearing for the purpose of approving any type of such entry?
A. Correct.
MS. MOORE: I believe that's all I have, Your Honor.
THE COURT: Thank you.
Mr. Kachmarsky, maybe I'll ask you if you'd like to go next.
MR. KACHMARSKY: Actually, if I may, I'm going to sit down -- I just have two questions -- so I can see.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. KACHMARSKY:

Q. Ms. Meyer, you testified that you were concerned about the child support potential payments being paid from the trust and disqualifying the trust. Is that correct?

A. That was my understanding.

Q. Did you ever have any concern about the trust paying your fees?

A. Yes, I think I did. I think I did about the amount, not the fact that the trust was paying the fees.

Q. Well, you're aware of the fact that all of the fees that were paid to the MOLM firm were paid by Susan Cohen personally. Is that correct?

MR. BOYD: Objection, Your Honor. I believe he's asking --

Could you repeat the question?

MR. KACHMARSKY: I asked her if she was aware of the fact that Susan Cohen personally paid all of the fees.

THE WITNESS: No, I'm not aware of that.

BY MR. KACHMARSKY:

Q. Did you ever hire a publicist to represent you in the California proceedings or matters related thereto?

A. No.

Q. Did you ever give any press hearings related to the case?

A. Along with Vicki Greene, I did.

Q. Did you ever take the position that Abbie was merely disabled and not in a vegetative state?

MR. BOYD: I'm going to object to that question, Your Honor. He's getting into questions about the attorney's state of mind. I'm not sure --

MR. KACHMARSKY: Just asking her if she ever took that opinion in public.

THE WITNESS: Well, first of all, it's compound, so the first part of the question is I don't recall taking the position that she's merely disabled, and the second part of the question is -- what was your second part, that she was in a vegetative state?

BY MR. KACHMARSKY:

Q. That she was in a vegetative state,

not merely disabled, but in a vegetative state.

A. No. That's not what your -- I thought your question --

Q. Your position was that she was merely disabled. Is that correct?

A. No.

MR. BOYD: Your Honor, I think we need more clarity on when. He's asking the witness blanket statements on positions that she's taken. There's been a very specific declaration that she's filed, if he can ask her about a specific document, but just to say did you ever take a position, that could apply to any -- an endless variety of venues, some of which she's not prepared to go into.

MR. KACHMARSKY: I think it's a very simple question, Judge. I'm just asking her if that was her position in the litigation, that Abbie was merely disabled, very simple question.

MR. BOYD: And I think, Your Honor, he needs to ask her what specific reference -- he's got to give her a frame of reference. He can't just say did you ever take a position.

THE COURT: Mr. Kachmarsky?

MR. KACHMARSKY: I disagree with that.

I'm just asking a simple question. She can just answer it.

THE COURT: I'm going to sustain the objection.

MR. KACHMARSKY: I have nothing further.

THE COURT: Thank you.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: I'm just going to grab one document, Your Honor, if I may.

THE COURT: Sure. I'm not sure if this is the court's --

MR. BOYD: I believe that's the original R-5, Your Honor.

CROSS-EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Ms. Meyer, who have you spoken with in preparation for coming to South Carolina to testify?

A. I have spoken to Mr. Boyd, and I have spoken to Mr. Davis and -- before I came here?

Q. In preparation.

A. I've spoken to my assistant, I've spoken to my husband, and I have spoken to various attorneys in my office.

Q. Have you had the opportunity to review your billing records in preparation to coming here?
A. No.
Q. I will represent to you that I've gone through redacted billing records, and I've seen perhaps 100 entries referencing communications/ emails/memos between yourself and Mr. Boyd or Mr. Davis, one or the other. Does that sound about accurate to you?
A. I don't know.
MR. BOYD: Your Honor, I'm going to just object again. He's getting beyond the matters which she's testified to and the matters which are the subject of her declaration.
MR. DAN SLOTCHIVER: I'm not limited to what they asked her, Your Honor. This isn't redirect or recross. She's a witness testifying. I believe I have a right to ask her these questions.
THE COURT: I think you're limited, Mr. Slotchiver, to her declaration, the documents that were filed with the court, admitted as exhibits, provided to you through discovery.
MR. DAN SLOTCHIVER: And I cannot ask

her about any communications she had with other parties?
THE COURT: I think you can ask her about communications that may relate to those documents, but not breach the attorney-client privilege. She will exert that privilege if necessary, I assume.
MR. DAN SLOTCHIVER: And I wasn't trying to breach the attorney-client privilege. I was trying to examine with her the communications she had with counsel leading up to asking if those communications were, in fact -- I can ask her, if that's okay.
BY MR. DAN SLOTCHIVER:
Q. Did you consider all the communications between yourself and Mr. Davis or Mr. Boyd to be cloaked with the attorney-client privilege?
A. Absolutely.
Q. And would it be fair to say that in connection with that -- and I reviewed the billings, what limited information there was -- that you actually interacted with them in creating documents and looking at documents and advising in the South Carolina case, along with the California

case, so they were, to some extent, commingled?
MR. BOYD: Again, Your Honor, I'm going to object. He's getting into areas of what was done by the attorney, and it's really beyond the scope of --
MR. DAN SLOTCHIVER: I'm not asking specifically what was done. I'm asking about her relationship with the South Carolina counsel. That's it.
MR. BOYD: Your Honor's already considered that matter and ruled upon it, Your Honor.
MR. DAN SLOTCHIVER: Actually, Your Honor considered a smaller portion, but I believe that I have the right reserved to go into this questioning, and that's all I want to do. I'm not going to ask her about any communication, about the particulars of the communications, I'm not trying to breach the attorney-client privilege, but I don't believe that her relationship with the South Carolina lawyers is a privilege, and I'm trying to understand what the relationship was. That's it.
THE COURT: I'm going to allow a limited amount of questioning in this regards, but

I have made my ruling --
MR. DAN SLOTCHIVER: I understand.
THE COURT: -- as to whether --
MR. DAN SLOTCHIVER: I understand.
THE COURT: Based on your objection to her testimony today.
MR. DAN SLOTCHIVER: I understand, Your Honor.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: If you could read back the question, please.
(The Court Reporter read the question commencing on Page 1036, Line 20.)
THE WITNESS: I'm not sure what the question is. There's multiple questions within that question.
BY MR. DAN SLOTCHIVER:
Q. Be happy to rephrase.
A. Thank you.
Q. Would you agree with me that you provided counsel -- you provided guidance to the South Carolina lawyers with regard to the South Carolina action?
A. No. I'm not licensed to practice law in the state of South Carolina.

Q. I understand that you're not licensed to practice law in the state of South Carolina. I also understand the right to have lawyers admitted pro hac vice in certain situations, but I'm asking did you give them any -- let me rephrase the question.

Did you have a written, signed joint agreement with them that provided privilege, like a joint defense agreement? I know the cases are different.

A. I can't recall.

Q. You testified that you believe that your communications with them was attorney-client privileged. Without such an agreement, how do you understand those communications to be privileged?

A. Because we were both working on behalf of the same client.

Q. And was it important for you to be aware of what was going on in the South Carolina case?

MR. BOYD: Your Honor, again, he's getting into the mindset of the counsel. He's going beyond the scope of what Your Honor has ruled upon.

MR. DAN SLOTCHIVER: Your Honor, if I

add the billings, and just from a rough estimate of 100 billings, and she's charging $700 an hour, and the billings range from an hour-and-a-half, two hours, ten minutes, we're talking about not $500 or $1,000, we're talking maybe multiples of tens, if not a hundred thousand dollars. I think I'm entitled to ask the question.

MR. BOYD: Your Honor, if he gets into the mindset of Ms. Meyer and her -- he's going really beyond the scope of what Your Honor has authorized in his questioning.

THE COURT: I'm going to limit your questioning here, Mr. Slotchiver.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

BY MR. DAN SLOTCHIVER:

Q. Have you been remunerated for travel to South Carolina?

A. I'm sorry. Have I --

Q. Are you billing to be here?

A. No. I'm paying all my own costs, including plane fare, hotel, everything.

Q. Now, would you agree with me that the total billing that your firm submitted to the Cohens before the discount reached approximately

$1 million?

A. That's sounds right.

Q. My understanding is that all of your bills at the MOLM firm were paid directly by Susan Cohen, and then she received reimbursement from the trust. Is that your understanding?

A. That's my general understanding.

Q. And is that because there was a question that came up as to whether or not the trustee was even authorized to pay for this part of the litigation?

MR. BOYD: I'll object again. He's going to the ultimate issue in the case, and he's certainly beyond what the court has authorized.

MR. DAN SLOTCHIVER: She can assert the attorney-client privilege issue if she so wishes, Your Honor. I'm just asking the question.

MR. BOYD: Your Honor, his question -- the court has ordered what the proper scope of questioning would be for this proceeding for purposes of today's questioning. He's going beyond the scope of it.

MR. DAN SLOTCHIVER: It was asked by Mr. Kachmarsky. I'm just following up on the question, Your Honor. There was no objection when

he asked it.

MR. BOYD: Your Honor, the court has ruled what the proper scope of questioning is today, and Mr. Slotchiver's going beyond what the court has ruled.

THE COURT: I'm going to sustain the objection.

BY MR. DAN SLOTCHIVER:

Q. Did you ever receive your instructions as to what you were to do or what you were being requested to do directly from Abbie?

MR. BOYD: Objection, Your Honor. Again, this is not within the scope of what the court's authorized Mr. Slotchiver to question about.

MR. DAN SLOTCHIVER: Your Honor, they asked repeatedly who she met with, who she talked to, what about Susan Cohen, what were you asked to do, and I'm just trying to -- she testified earlier that --

THE COURT: Overruled.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE WITNESS: Your Honor, I believe this would violate the attorney-client privilege,

so I would have to assert the privilege on behalf of --

MR. DAN SLOTCHIVER: She testified earlier, Your Honor, about Susan Cohen and her talking about it. I'm trying to understand it. She said Abbie told her to do things, but that was not an attorney-client privilege, and I'm asking whether or not Abbie ever had a communication with her, not what the communication was about.

THE WITNESS: I can answer that. Last night, I believe I had a communication with her.

BY MR. DAN SLOTCHIVER:

Q. Have you ever spoken with her about being engaged in this case? Have you ever spoken directly with Abbie where you were able to have an exchange of communication, and she advised you what she wanted you to do?

A. I think that would violate the attorney-client privilege, so I can't answer that.

Q. Fair enough. At the time that you were engaged by the Cohens in their capacity as conservators, the dissolution of marriage bifurcation had already taken place. Is that correct?

A. Yes.

Q. And what was left over for the court to consider would have been the other matters. Is that what your testimony was before?

A. All other matters, yes.

Q. All other matters other than the dissolution of marriage?

A. Correct.

Q. In your practice in California, would it be fair to say that your obligation is to respond to the client?

MR. BOYD: Objection, Your Honor. He's asking, again, a general question that goes beyond the scope of this case.

MR. DAN SLOTCHIVER: If I could have a little bit of latitude, Your Honor.

THE COURT: I'll give you a little bit of latitude.

THE WITNESS: In part, yes.

BY MR. DAN SLOTCHIVER:

Q. Following your ethical rules also?

A. Yes.

Q. That would be the other part, I assume?

A. Yes, and providing clients with guidance.

Q. I'm assuming you can't tell me what discussions you had with the Cohens about their authority to bring this action?

A. Correct.

Q. If your engagement had been for the sole purpose of resolving the property issue and resolving the support issue, would you agree with me that your bills, instead of being around a million dollars, would be around $50,000?

A. I would agree that they would be less. Custody is very -- custody and visitation issues are very expensive.

Q. And I believe that you testified in your statement that a substantial portion of the fees incurred in the California case relate to the efforts to establish the visitation?

A. Yes.

Q. Ms. Meyer, was there anything that you did, in your opinion, relative to the California case, which was inappropriate?

MR. BOYD: Objection, Your Honor. He's asking exactly the kind of question that he repeatedly objected to when I asked it.

MR. DAN SLOTCHIVER: I'm asking about her practice. They've repeatedly wanted to ask

her about her experience, and I'm asking about her experience. I'll be happy to rephrase it, Your Honor.

THE COURT: All right. If you'd like to rephrase it, Mr. Slotchiver.

BY MR. DAN SLOTCHIVER:

Q. In your experience, was there anything that you did relative to your representation of the Cohens in their capacity as conservators and trustees of Abbie which was wrong?

A. No.

Q. Having been a litigator for quite some time, I believe you'll agree with the statement that all cases aren't won?

A. That's true.

Q. This case, though, never went to conclusion, did it?

A. No.

Q. In fact, there was a settlement entered between the Cohens, in their capacity as conservators/trustees of Abbie, and my client, Daniel Dorn?

A. Correct.

Q. And in the settlement agreement, there was language set forth in the order, correct?

A. Yes.
Q. And you would have an opportunity to advise your clients, if you were so inclined, as to the appropriateness of agreeing to that language?
A. Yes.
Q. Let me just read through a few portions of the order. I'll give you a copy of it.
MR. DAN SLOTCHIVER: If I could have one moment, Your Honor.
THE COURT: Sure. Do you have an exhibit number?
MR. DAN SLOTCHIVER: I do. This is our Plaintiff's Exhibit 86.
THE COURT: Thank you.
BY MR. DAN SLOTCHIVER:
Q. I will represent to you, Ms. Meyer, that this document's already been admitted into evidence, labeled as Exhibit 86.
Do you agree that that is a true and accurate copy of the final statement of decision in this case?
A. I believe so. There were actually two: One was partially redacted with respect to

Dr. Shatz, and the other one was unredacted.
Q. Well, let's look at this one that's already been introduced into evidence, and I want to see if you agree that this is the language that your clients would have had an opportunity to see and be counseled on prior to this being finally invoked.
On Page 3, the last paragraph reads: Dan additionally argues that this really is a case of disguised grandparent visitation because Susan's ulterior motive in this case is to gain visitation for herself and not for Abbie. On that latter argument, Dan has a point. Susan has clearly and repeatedly articulated her desire to have visitation with Esti, Reuvi, and Yosse. She has, in fact, appeared uninvited at Dan's home and temple to see the children. By her demeanor and action, Susan demonstrates a degree of preoccupation with achieving visitation with the children.
MR. BOYD: Your Honor, I'm going to object. Mr. Slotchiver repeatedly objected to me leading the witness. The document is in the record.
MR. DAN SLOTCHIVER: I can lead, Your

Honor. It's my cross-examination.
MR. BOYD: The document speaks for itself, Your Honor. There's no need for Mr. Slotchiver to read the entirety of the document into the record.
MR. DAN SLOTCHIVER: I want to make sure -- I'm not reading the entire document. I want to make sure that we're looking at the same document.
THE COURT: Overruled.
MR. BOYD: Thank you.
BY MR. DAN SLOTCHIVER:
Q. Susan demonstrates a degree of preoccupation with achieving visitation with the children, regardless of Dan's preferences. Susan has shown that she does not consider any objection that Dan may have to this concept as being valid.
That is appropriate language in the document. That is the correct language. Do you agree?
A. I agree that that's the language in this document, not that I agree with it. I don't.
Q. Did you have an opportunity, in preparing your case, to submit all evidence, based on your experience as counsel, that you thought

needed to be presented?
A. Yes.
Q. Let's look at Page 5. At the end of the page, it states: The court also viewed the videotape of Abbie's deposition taken by Paul. The deposition revealed that Abbie does move around on her own in bed, blinks her eyes, smiles at times, and changes the direction of her head.
Dan testified that the condition on -- moving to Page 6 -- the video is the same condition as the date of the visit with Abbie, and this was the same condition Abbie was in on each of the prior visits with the children.
As such, the court concludes that the children's visitation with their mother has been very limited, with no interaction by Abbie, but with Abbie's countenance and demeanor being nonthreatening and, at times of her smiles, engaging.
That is also language, right?
A. That's the correct language. That's the language in the document.
Q. This is the document that your clients consented to, correct?
A. No. This is the statement of

decision.
Q. This is the end of the case, correct?
A. No, no. This is the court's statement of decision from April 7, 2011. This is not the judgment. This was drafted by the court. This was not even --
Q. This was drafted by the court, not by you or opposing counsel?
A. No, no.
Q. Let's move to Page 7, very last line: There is no compelling evidence that the visitations by the children will have any benefit to Abbie.
Is that a correct statement?
A. As contained in this document, yes, but I don't agree with that.
Q. Based on the court's -- based on the ultimate -- let me rephrase that.
You agree with the statement that this was filed as part of the final decision, do you not?
A. No. This is not the judgment.
Q. This was filed together with it, as part of it?
A. I don't recall that. I don't believe

that there can be attachments to judgments in California.
MR. DAN SLOTCHIVER: Your Honor, she's now giving an opinion of authority.
THE COURT: I'll strike that.
THE WITNESS: You'd have to show --
MR. DAN SLOTCHIVER: Thank you, Your Honor.
BY MR. DAN SLOTCHIVER:
Q. Let's look at Page 9, top paragraph: The court does not agree with Susan that the visitation should be without father being present. The court finds that Dan must be present to protect the children from any unwanted socialization, contacts, or input that may be instilled that is contrary to his belief system.
You understand that's been one of the issues that was raised is that Susan would try to interact with the kids in order to bestow her own beliefs. Is that a fair statement?
A. That was Dan's belief, yes.
Q. And ultimately, when the court -- when this case was ended and concluded, would you agree with me that Susan was not provided any visitation with the grandchildren?

A. Correct.
Q. In fact, to go a step further, the court determined that the children -- the children, not Abbie, but the children would benefit from some interaction with their mother. Would you agree with that?
A. Definitely.
Q. And that Paul Cohen would be afforded some interaction rights with reference to the children by way of Skype?
A. Correct.
Q. But not to Susan Cohen?
A. Correct.
Q. Within your practice, would you agree that oftentimes, causes of actions are filed -- numerous causes of actions can be filed in a particular complaint. Would you agree with that?
A. Yes.
Q. And sometimes those causes of actions make it the distance, and some of them they don't?
A. Right.
MR. BOYD: Your Honor, he's asking her to testify beyond the scope of this matter to general matters within the scope of her practice.
MR. DAN SLOTCHIVER: That's exactly

what they've done, Your Honor.
THE COURT: I think you did that, too, Mr. Boyd. I'm going to allow it.
MR. BOYD: Thank you.
BY MR. DAN SLOTCHIVER:
Q. And among the reasons that an action might not make it to the end, would you agree with me, based on your experience, that it would include the court striking an action?
A. Not typically in family law, but that's my understanding in civil law.
Q. Or a party dismissing an action?
A. Not as much in family law, but I understand what you're saying.
Q. But if a party does allege numerous causes of action, would it be your experience that there are cases where a cause of action, whether you brought it or somebody brought it in a case with you, would be dismissed by that party?
A. I guess that could happen, yes.
Q. So drawing a parallel from that scenario to this case -- I'm going to strike it.
MR. DAN SLOTCHIVER: I've got nothing further, Your Honor. Thank you.
THE WITNESS: Thank you.

MR. DAN SLOTCHIVER: Should I return the exhibit or leave it with the witness?
THE COURT: If you'd give it to the court reporter, that would be good.
MR. BOYD: Actually, Your Honor, I've just got one or two quick redirect on that exhibit.
THE COURT: Mr. Boyd?
REDIRECT EXAMINATION
BY MR. BOYD:
Q. Ms. Meyer, just briefly, quickly, on the document that you've just been reviewing with Mr. Slotchiver, I'm going to ask you to turn to Page 8. Subsection 3 of the document is near the middle of the page, Subparagraph B. I'm just going to read the first section of that paragraph: Abbie --
MR. DAN SLOTCHIVER: Your Honor, this would be leading. I'm not sure what the question is, but this would be leading. If it's your witness, you cannot lead the witness.
MR. BOYD: I'm just going to ask her, Your Honor --
MR. DAN SLOTCHIVER: And Your Honor, I don't believe this is an area that I went into in

my examination, so not only is it a leading question, but it's gone beyond the parameters of what's allowed in recross.
THE COURT: Well, let me hear the --
MR. BOYD: Your Honor, he asked a question --
THE COURT: Excuse me, Mr. Boyd.
MR. BOYD: I'm sorry.
THE COURT: Thank you. Let me hear the question, and I may have to look at the document -- I'm not sure -- to determine whether it was something you covered during your cross.
MR. BOYD: He asked very specific questions, Your Honor, about the visitation terms provided in this order, and my question to the witness is did this document grant visitation to Abbie.
MR. DAN SLOTCHIVER: And Your Honor, that is a legal opinion, number one. Number two is I marked every portion of what I was going to ask questions about, and I would assure you, Your Honor, that particular page is not marked. If you'd like me to hand it up, I'm happy to do that, Your Honor.
THE COURT: If I could see --

MR. DAN SLOTCHIVER: It's also a leading question.
MR. BOYD: Your Honor, he specifically asked about the terms of the visitation and --
MR. DAN SLOTCHIVER: Actually, I did not ask. I asked her to agree that this particular language was included in that document.
MR. BOYD: He asked if the order -- if the document provided for visitation for Paul Cohen via Skype. He asked very specific questions about that.
THE COURT: I'll allow this, but without it being a leading question.
MR. BOYD: Yes, ma'am.
THE COURT: And I do believe he's allowed a little bit more latitude on redirect, based upon your cross.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
BY MR. BOYD:
Q. Did this document award visitation to Abbie?
A. Yes.
Q. And did you say this document was not the final end of the case?

A. Yes.
Q. What was the final end of the case?
A. The judgment.
MR. DAN SLOTCHIVER: Objection, Your Honor.
MR. BOYD: Your Honor, I'm clarifying exactly what Mr. Slotchiver asked her.
MR. DAN SLOTCHIVER: But now she's giving a legal conclusion. This is a conclusion different and separate from what the clients testified to in their testimony.
THE COURT: I'll allow it.
BY MR. BOYD:
Q. What was the final end of the California proceeding, Ms. Meyer?
A. The further judgment on reserved issues, which was entered at the end of 2010.
Q. Thank you.
A. Thank you.
MR. BOYD: No further questions, Your Honor.
THE COURT: Let me ask Ms. Moore, anything?
RECROSS-EXAMINATION
BY MS. MOORE:

Q. Just a couple things. And quite frankly, Ms. Meyer, I may have misunderstood what you said.

You were retained after the order was issued that changed the status as to dissolution of marriage, correct?

A. Correct.

Q. But did the action that was entitled dissolution of marriage, was that continued under the reservation order?

A. Yes, of course.

Q. If the Cohens had simply decided to drop the issue of visitation, would the case have just ended right then?

A. No.

Q. Why not?

A. Because there were other outstanding issues.

MR. DAN SLOTCHIVER: Your Honor, that calls for a legal conclusion.

THE COURT: Ms. Moore?

MS. MOORE: Your Honor, she would be aware of what other matters were contained within the pleadings that would be required to go to conclusion if the visitation should be dropped.

MR. DAN SLOTCHIVER: This was particularly addressing the Cohens in this particular action, and I believe that is calling for an expert opinion.

THE COURT: I'll allow it with respect to what was still pending at that time, that she could address that.

THE WITNESS: What was still pending at the time that we were retained, in addition to custody and visitation, was support, property, and attorneys fees and costs.

BY MS. MOORE:

Q. Now, as far as the decision to reach settlement, was any factor or consideration given to the level of attorneys fees that were being incurred?

A. Yes.

MR. DAN SLOTCHIVER: Your Honor, I would object. Now we're going into settlement negotiations, which I understood were barred. The fact that they were involved in settlement negotiations is different, but now the question is directly about the settlement negotiations and about what factors were considered, and if she wants to go there, once again, I believe it opens

the door, and it waives the attorney-client privilege.

THE COURT: Ms. Moore?

MR. BOYD: Again, Your Honor, I'd caution the witness not to get into areas of mental thought and mindset with respect to decision-making.

MS. MOORE: I'll rephrase.

BY MS. MOORE:

Q. Were there any discussions with opposing counsel as to possible bases for settlement?

MR. DAN SLOTCHIVER: Objection to hearsay.

THE COURT: I'm sorry?

MS. MOORE: Discussions from her to opposing counsel.

THE COURT: I'll allow that.

THE WITNESS: Yes.

BY MS. MOORE:

Q. And were those discussions that you would have had as far as your conversation with opposing counsel having to do with the escalation of fees?

A. Yes.

MS. MOORE: That's all I have, Your Honor.

THE COURT: Mr. Kachmarsky?

MR. KACHMARSKY: Nothing, Your Honor.

THE COURT: Thank you.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: I've got nothing further, Your Honor.

THE COURT: Anything else for this witness?

MR. BOYD: Nothing further, Your Honor.

THE COURT: Can we excuse the witness?

MR. BOYD: Yes, ma'am.

MR. DAVIS: She's going back to California.

THE WITNESS: Yes.

THE COURT: Thank you. We appreciate you coming, Ms. Meyer.

THE WITNESS: Thank you very much, Your Honor.

THE COURT: Your first trip to Horry County?

THE WITNESS: Yes, it is. I've been to South Carolina, but not here.

THE COURT: I hope you got a chance to see our beach.
THE WITNESS: I did. It was beautiful.
THE COURT: Good. Thank you. Have a safe trip home.
THE WITNESS: Thank you very much.
THE COURT: Thank you, Ms. Meyer. Any proposal that we break for lunch?
MS. MOORE: Yes.
THE COURT: I assume. It is almost 1:15. We'll be back at 2:30, all right. Thank you.
THE WITNESS: And thank you for taking me out of order. I appreciate it.
THE COURT: Certainly, absolutely.
(A luncheon recess transpired from 1:12 PM to 2:42 PM.)
THE COURT: We're back on the record in the matter of Abbie Dorn. And I hope everyone had a nice lunch, a little bit of a break.
I believe we are back with Mr. Slotchiver, Mrs. Cohen.
MR. DAN SLOTCHIVER: It's my redirect, Your Honor.

THE COURT: Mrs. Cohen?
Yes, sir, I'm ready.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
THE COURT: Thank you.
SUSAN COHEN
having first duly affirmed, testified further as follows:
REDIRECT EXAMINATION
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, I do not believe I'm going to take anywhere near as long as I took the last time, but I've got a few questions to go over with you.
A. Okay.
Q. First, would you agree with me that there is substantial discord between you and Daniel Dorn?
A. No, generally, there is not, but I was very upset that he would consider putting my daughter in a nursing home. That was very hurtful.
Q. Yesterday you referred to him as not being a decent human being, today you talked about him being evil, but your testimony is there's not

discord between you and he?
MR. BOYD: Your Honor, I think he's being a little bit harsh with the witness.
MR. DAN SLOTCHIVER: I'm using her language, Your Honor, and it is relevant.
THE COURT: I will allow it.
THE WITNESS: First of all --
MR. BOYD: Is counsel referring to statements made in court on the record or statements made out of court?
MR. DAN SLOTCHIVER: The statements about -- the statement about not being a decent human being was made in court. The statement about -- the other statement was not made in court. It was made by her, but it wasn't made in court. I'm just curious if she would agree that there is discord between she and him.
MR. BOYD: And Your Honor, I would just object on the record to out-of-court statements. I think that's improper.
THE COURT: I'll allow it.
THE WITNESS: First of all, I want to say that I believe every human being is made of the image of the HaShem, of God.
MR. DAN SLOTCHIVER: Your Honor, I

would ask that she just be instructed to answer the question.
THE WITNESS: Okay. No, I wouldn't say that. I invited him to Shabbos last week right here in the courtroom.
BY MR. DAN SLOTCHIVER:
Q. Do you agree that you did, in fact, pay part of Dan's attorneys fees in California, based on a court order? If you could just answer yes or no, please.
A. No.
Q. Mrs. Cohen, before we continue, I want to confirm, between the time the testimony started and today, you haven't spoken about this testimony with any persons. Is that correct?
A. No.
But I may have misunderstood your question. Could you clarify? I did not pay it -- did you say because of a court order? I didn't pay it for that reason, no.
Q. You stated yesterday that -- well, let me ask you this: Would you agree with me that you do receive -- you individually do receive reimbursement from Abbie's trust funds for items such as utilities, taxes, that type of stuff in

the household?
A. For half of the things that she directly uses, but as you know, we don't charge her any rent.
Q. Yesterday you talked about a lot of doctors, you were questioned by Ms. Moore about a lot of doctors, and I believe that all of those doctors you talked about would have been engaged by the trust somewhere between the time it was formed and 2010. Is that correct?
A. Probably most, but definitely not all.
Q. So you had the opportunity to provide your counsel in California with the names of all those doctors in preparation of the case, if you so chose?
A. Yes.
Q. And I take it there's no action filed against anybody in California, the law firm in California, for not having done their job correctly. Is that a fair statement?
A. What do you mean?
Q. You haven't sued them for malpractice?
A. Certainly not.
Q. Mrs. Cohen, would you agree with the statement that you are not cloaked in immunity for

your actions as a trustee?
A. I don't even know what you mean by cloaked in immunity. What are you talking about?
Q. Well, over and over again during your testimony, you talked about the fact that every dollar you spent was for Abbie?
A. It was.
Q. And that as long as you were spending it for Abbie, it was justified?
A. I believe that that is justified, that my goal is to get Abbie as high functioning as she's capable of becoming, and I believe that she has improved dramatically.
MR. DAN SLOTCHIVER: Your Honor, could she be instructed to answer the question, please.
MR. BOYD: Your Honor, I think that's what she was doing was answering Dan's question.
MR. DAN SLOTCHIVER: She actually went beyond the question.
BY MR. DAN SLOTCHIVER:
Q. Mrs. Cohen, do you understand or do you agree with the statement that not only must your expenses be for Abbie, but they also must be reasonable?
A. I believe that anything that's going

to improve Abbie's health is reasonable and necessary.
Q. And I take it it is your opinion that by spending $900,000 in California related to the visitation issue, that was to benefit Abbie's health? If you can answer yes or no, please.
A. Yes, it was.
Q. You testified in cross-examination that you had no choice. I'm not sure what the wordage was, but something like: I was in a box, I had nowhere to go. But then you heard today testimony from Lisa Meyer that actually you could have dismissed that action. Does that change your opinion?
A. No, it doesn't change my opinion. She would have lost her Medicaid.
Q. If you had dismissed the visitation issue, do you believe she would have lost her Medicaid? Yes or no, please.
A. I have no idea. You know, obviously, she needed to see her children, so what are you even asking me? You don't make sense.
Q. Do you have any basis to support the position that if the visitation issue was dismissed, she would have lost her Medicaid? If

you can answer yes or no, please.
A. I don't know. What are talking about?
MR. DAN SLOTCHIVER: Your Honor, if I could have a little assistance.
THE COURT: She said: I don't know.
MR. DAN SLOTCHIVER: A moment ago she said that if she didn't bring the action, that she would lose visitation, and then when I asked her a little more succinctly about the visitation action, then said: I don't know. So I'm trying to understand which part of it she knows versus what part she doesn't know. Maybe I can rephrase it.
THE COURT: Maybe you can.
BY MR. DAN SLOTCHIVER:
Q. So is it my understanding, then, that you believed that if you didn't bring the visitation action and the child support action, you would have lost Medicaid. Is that correct?
A. Yes. I had to bring those things.
Q. But separately, if you only brought the support action and not the visitation action, you don't know whether you would have lost it or not?
MR. BOYD: Objection, Your Honor.

She's repeatedly testified --
THE WITNESS: I don't know. How are you separating -- I don't understand how you're --
MR. DAN SLOTCHIVER: I'll be happy to take my time and go through it again.
THE WITNESS: It doesn't make sense.
THE COURT: Mr. Slotchiver, she didn't bring the support action, did she?
MR. DAN SLOTCHIVER: No.
THE COURT: I thought you said she brought the support action.
BY MR. DAN SLOTCHIVER:
Q. Well, said differently, if you continued with the support action, without having brought the visitation action, do you understand that that -- if you had --
MR. DAN SLOTCHIVER: Let me rephrase the whole thing, please.
THE COURT: Okay.
BY MR. DAN SLOTCHIVER:
Q. Do you agree with me that you could have fought the support action -- fought, not brought -- fought the support action and dismissed the visitation action without having any impact whatsoever on Medicaid?

A. Well, the judge set the agenda, so I don't understand what you're talking about.
MR. DAN SLOTCHIVER: I object, Your Honor. Now she's --
THE WITNESS: How could I drop one --
MR. DAN SLOTCHIVER: It's hearsay. I don't know how she can tell us what a court said.
BY MR. DAN SLOTCHIVER:
Q. I'm asking your opinion. Do you believe --
A. But you --
MR. DAN SLOTCHIVER: Your Honor, I'm going to ask once again that she be instructed to answer the question. This is what's happened throughout my examination.
THE WITNESS: Your Honor, I'm answering, and I don't know. I don't understand how I can set the agenda.
THE COURT: Ma'am, give me just one second. Mr. Boyd is standing up.
MR. BOYD: Your Honor, again, I object. She testified at length on this subject. She testified with respect to her inability to set the agenda in the court proceedings, and Mr. Slotchiver's trying to twist her testimony.

MR. DAN SLOTCHIVER: Actually, she did testify on cross-examination, and I'm asking her on redirect.
MR. BOYD: But Your Honor, he's asking her a question that -- it's a faulty premise that's not supported by what she said previously about --
MR. DAN SLOTCHIVER: I'm not sure what it's supportive of. I'm trying to find the answer to that.
THE COURT: If you could maybe try to rephrase the question a little bit.
MR. DAN SLOTCHIVER: Be happy to, Your Honor.
BY MR. DAN SLOTCHIVER:
Q. What prudence did you undertake, if any, in order to determine that you -- that the risk of losing Medicaid was -- let me rephrase it.
What prudence did you take, if any, to determine if you had to fight for visitation in order to protect the trust from losing Medicaid benefits?
A. What the judge said.
MR. DAN SLOTCHIVER: Objection.
THE WITNESS: Well, then I don't know.

MR. DAN SLOTCHIVER: I'd ask to strike that, Your Honor.
THE WITNESS: I don't know. I don't understand how I could have separated it. I just don't get it. I'm sorry. I'm not --
BY MR. DAN SLOTCHIVER:
Q. Well, you heard Ms. Meyer testify today that you could have dismissed that action. Actions are dismissed -- parts of actions are dismissed all the time. Did you hear that?
A. Yes, but the judge said we had to do the first part first.
Q. Understanding that you heard that, what prudence did you do to determine if you were going to continue to spend the money on the visitation action?
A. We set it before a judge.
MR. DAN SLOTCHIVER: Objection, Your Honor.
THE WITNESS: You asked me what prudence.
BY MR. DAN SLOTCHIVER:
Q. After spending $100,000 in legal fees related to the visitation action, did you undergo any new prudence or any prudence to determine: Do

I have to continue to do this? If you can answer yes or no, please.
A. I don't know.
Q. After spending $200,000 in the visitation, you don't know? If you don't know, just say you don't know. It's perfectly fine. I'm just trying to understand.
A. I don't know. I had this issue of standing both times. I don't understand.
Q. After $5,000 related to the visitation action?
A. But at that point we were still fighting about standing. I don't -- you're not making sense to me. I'm sorry. I had all those issues of standing.
Q. At that point you were still fighting about what?
A. Standing. We had two issues of standing. I don't -- and then the judge --
Q. Did the standing issue have anything to do with bringing your visitation action?
A. Well, it had to do with both of them.
Q. If you had dismissed the visitation action, would you agree that the standing action related to it would have likewise been dismissed?

A. No.
Q. Did you ever make any effort to determine whether or not you could dismiss the standing action or dismiss the visitation action, thereby saving the trust hundreds and hundreds of thousands of dollars?
A. No, that's not correct.
Q. Did you ever make any inquiry to find out the answer to that issue?
MR. BOYD: Your Honor, he's badgering the witness.
MR. DAN SLOTCHIVER: I'm not badgering. I'm trying to get an answer, Your Honor.
MR. BOYD: He's asked this question a dozen times, Your Honor. She's answered to the best of her ability.
THE COURT: And I think, Mr. Boyd, I'm going to overrule your objection. I think he's trying to get answers, and she hasn't understood his question well enough, and I'll allow him to continue.
Do you want to ask that last question?
MR. DAN SLOTCHIVER: If the court reporter could read it back, please?

(The Court Reporter read the question commencing on Page 1076, Line 8.)
THE WITNESS: Well, I did inquire if we could move the issue about the child support up.
BY MR. DAN SLOTCHIVER:
Q. Did you ever inquire --
A. That's the inquiry.
Q. -- into whether or not you could dismiss the standing issue and/or the visitation issue without impacting your rights to protect the trust from Medicaid losses?
MR. BOYD: Your Honor, again, I have to object. He's asking a question that's a faulty premise. Her -- Mrs. Cohen's efforts did not raise the standing issue. It wasn't her issue to drop.
THE WITNESS: I didn't bring it up.
MR. DAN SLOTCHIVER: As a fiduciary, Your Honor, she can -- she's looking at money going out like a sieve in this case, $50,000, $150,000, $300,000, $500,000, $700,000, $800,000, $900,000 related to visitation. I believe -- I'm trying to understand if at any time she exercised prudence to determine can I dismiss this action,

and I believe the answer's no, but I'm just trying to confirm.
MR. BOYD: He's asking the witness why she didn't drop an issue that she didn't raise. It's a faulty question.
MR. DAN SLOTCHIVER: She brought the visitation issue.
THE WITNESS: I didn't bring the standing.
BY MR. DAN SLOTCHIVER:
Q. The visitation issue.
A. But he had checked in the beginning that she could have visitation, so what are you -- how are you -- you're just twisting everything around. It's not logical. I don't get it.
Q. Mrs. Cohen, I'm not trying to mix everything around.
A. You are. He's the one --
MR. DAN SLOTCHIVER: Your Honor, I don't want to argue with the witness.
THE COURT: Ma'am --
THE WITNESS: Okay. I'm sorry. I'm sorry.
BY MR. DAN SLOTCHIVER:
Q. Do you have a basis to disagree with

the statement by Lisa Meyer that you could have dropped the visitation issue?
A. Do I have a basis?
Q. Yes. Do you have any authority, any document, anything you've relied on to understand that she's wrong?
A. I don't know.
Q. Is the reason that the checks to the MOLM firm were written personally by you and then reimbursed to you from the trust because the MOLM firm was unwilling to accept payments from the trust due to concerns?
A. Never, never. That was my suggestion.
Q. You heard the testimony of Ms. Meyer earlier wherein she stated that there were some concerns not about payment, but the amounts of the payments. Do you know what she's talking about?
A. Yeah. I was trying to settle. I tried to settle continuously. That's why there was 60 emails to Dan Dorn.
Q. That's not --
A. But that is what I tried to do. I tried to settle.
Q. Under your terms?
A. Under reasonable terms. He wouldn't

listen to me. He wouldn't even let her see her children on Skype. We asked to let --
Q. Under your determination of what the word reasonable is, correct?
A. All I wanted --
Q. Mrs. Cohen --
A. All I'm asking for -- please let me finish.
MR. DAN SLOTCHIVER: Your Honor, I believe she's gone far astray from the question that I asked her. And once again, this is another opportunity she's used -- when I asked a question, she used it as a pulpit to give her statement that she wants to address. This is my opportunity to recross.
THE COURT: Ma'am, if you will be so kind as to answer his questions.
THE WITNESS: I'm sorry. I don't remember the question. Oh, you asked me about that I advanced the money and then --
BY MR. DAN SLOTCHIVER:
Q. I believe the question was: Do you disagree with the statement, then, of Ms. Meyer that it was that she had received payment from you because there was concern not about payment of

legal fees, but the amount of legal fees?
A. Yes. We wanted to stop it. We did want to stop it.
Q. Do you disagree with her statement? Yes or no, please.
A. That we wanted to reduce it?
Q. No, that wasn't her statement. That the payments were received from you personally, as opposed to from the trust, because there was concern about the amounts of payments?
A. No, that was not what we were referring to.
MR. BOYD: I don't believe Ms. Meyer testified to that fact, Your Honor.
THE WITNESS: No, that was not what we were referring to. That's not what we were referring to. I'm sorry, Reese.
MR. BOYD: I have to object. He's asking her a question that --
MR. DAN SLOTCHIVER: I believe that is what Ms. Meyer testified to, and the record will support it, but I'll move along.
THE COURT: Thank you.
THE WITNESS: Would you like me to explain it?

BY MR. DAN SLOTCHIVER:
Q. I'd like to move along.
A. That's fine.
Q. Do you understand, Mrs. Cohen, that in your capacity as a conservator, you are standing in the shoes of Abbie to do for her what she cannot do for herself?
A. Yes.
Q. And do you understand that when you take an action in your capacity as a conservator, that that action is binding on Abbie as if she had done it herself?
A. Yes. That's why I've always done what Abbie wants, what's good for Abbie.
MR. DAN SLOTCHIVER: I would move to strike that portion of it, Your Honor. There's no foundation. That wasn't the question I asked.
THE COURT: I'll allow what's good for Abbie.
BY MR. DAN SLOTCHIVER:
Q. In your opinion, correct?
Mrs. Cohen, did anything stop you -- would you agree with me that nobody stopped you from coming to the court in South Carolina and filing to clarify any issues that you could have

related to your ability to pay monies from the proceeds for attorneys fees?
A. The court had already given me permission and told me I didn't need to ask.
Q. That wasn't the question, Mrs. Cohen. Did anybody stop you?
A. In terms of physically holding me back, the order just told me that.
Q. Mrs. Cohen, after we went to the -- after we filed the temporary restraining order in this court, came to the court, addressed the issue of -- or addressed the allegations that we had presented to the court, and after the court admonished you that you need to know you could have personal liability for your actions, did anybody -- or did you take any prudence in determining that you had the right to pay for the attorneys fees related to this action directly out of the trust funds?
MS. HEDGEPATH: Your Honor, she's answered that. She said she had a court order.
MR. BOYD: And objection, Your Honor. I'm not sure what he's -- I'm sorry.
MR. DAN SLOTCHIVER: I've objected to the court order because I don't know what that

court order is, and that's not before evidence. She has referred to a court order that doesn't exist.
THE WITNESS: Yes, it is.
MR. DAN SLOTCHIVER: It's not in evidence. We don't know anything about this alleged court order.
THE WITNESS: Yes, you do. It's in evidence.
MR. DAN SLOTCHIVER: So I don't know what she's referring to. I'm asking her yes or no questions on purpose so I can try to avoid her dissertations.
THE WITNESS: Do you want me to get it out of my bag? Should I get it out of my bag?
MR. DAN SLOTCHIVER: Sure.
MR. BOYD: Your Honor, I'm not sure what counsel -- what action counsel is referring to.
BY MR. DAN SLOTCHIVER:
Q. Well, Mrs. Cohen, before you get it out of your bag, is it the same court order that you talked about in testimony the other day?
A. Yes, that gave me the permission to do this.

MR. BOYD: Are you talking about the order of transfer of jurisdiction?
MR. DAN SLOTCHIVER: One moment, Your Honor, please.
THE COURT: Sure.
MR. DAN SLOTCHIVER: Nothing further, Your Honor.
THE COURT: Thank you.
Mr. Boyd, anything from you, sir?
MR. BOYD: I don't believe I have anything further for Mrs. Cohen, Your Honor.
THE COURT: Thank you. Ms. Hedgepath?
RECROSS-EXAMINATION
BY MS. HEDGEPATH:
Q. Mrs. Cohen, I just want to clear up one thing briefly.
Mr. Dorn kept on and on asking you -- excuse me. It's been a long month.
Mr. Slotchiver kept on and on with you about you could dismiss the action for visitation, that part of the court action you could have dismissed and not sought visitation. That's what he kept asking you --
A. Uh-huh.
Q. -- and trying to get you to tell him

why you wouldn't do it, but would Abbie have gotten visitation had you not fought for it?
A. Absolutely not. He wouldn't even let her see her children on Skype. That's what we initially -- we asked if she could see that her children were in good health, just see them one way, and he said no, it would invade his privacy if he just put in a Skype camera.
Q. So in a nutshell, you had to carry on the action for visitation and fight in order to get Abbie visitation?
A. That's correct.
Q. Is visitation a benefit, in your opinion, for Abbie?
A. Absolutely, 100 percent.
MR. DAN SLOTCHIVER: Objection, Your Honor. I don't believe she is -- she has the ability to give an opinion about what benefits Abbie. She can give an opinion about what she believes.
THE COURT: I think she said in her opinion.
MS. HEDGEPATH: Yes, ma'am.
Thank you, Mrs. Cohen.
THE WITNESS: Thank you very much.

THE COURT: Ms. Moore, anything?
MS. MOORE: Nothing further, Your Honor.
THE COURT: Mr. Kachmarsky?
MR. KACHMARSKY: Nothing further.
THE COURT: Are we finished with Mrs. Cohen at this point?
THE WITNESS: Thank you, Judge. You've been very kind. Thank you.
THE COURT: Mr. Slotchiver?
MR. DAN SLOTCHIVER: If I can have one moment, Your Honor, and we're going to call Dr. Paul Cohen.
THE COURT: Shall he come up now?
MR. DAN SLOTCHIVER: That would be -- if I could have one moment, please, literally just a moment.
THE COURT: Sure.
MR. DAVIS: Your Honor, while Mr. Slotchiver is asking Dr. Cohen questions, I will be the one most likely making objections.
MR. DAN SLOTCHIVER: Your Honor, if we can agree as to who will make the objections, Your Honor, in advance, that would be great.
THE COURT: I think Mr. Davis

indicated he would be raising any objections.
MR. DAN SLOTCHIVER: Most likely, but yes.
May it please the court?
THE COURT: Yes, sir.

PAUL COHEN

having first duly affirmed, testified as follows:

DIRECT EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Dr. Cohen, if history repeats itself, I think we'll be a lot quicker with your examination than with your wife's, but I do have a few things I need to cover with you.
A. If you collapse like Mr. Boyd did the other day, it'll be a lot quicker that way, too, but hopefully that won't happen.
Q. If you feel that coming on, let me know.
A. Okay. Well, you let me know.
Q. Let's go back. Let's go through a little bit of procedural background first.
You were appointed as co-trustee with your wife. Is that correct?
A. Correct.
Q. And you were also appointed as

co-conservator with your wife?
A. Correct.
Q. And guardian with your wife?
A. Correct.
Q. And would you agree with me that all of this was done without objection by Daniel Dorn?
A. Pretty much so, yes.
Q. A lot of documents have been introduced into evidence so far throughout this case. Is there anything in particular that you object to or you disagree with?
MR. DAVIS: Your Honor, I object. That's too broad. How can he possibly know that? He asked if there's any document he objects to. What do we have, 100-and-something documents? I think that's --
MR. DAN SLOTCHIVER: Your Honor, if he says I don't know, he doesn't know. I'm just asking the question. Can he at least have an opportunity to respond before we have the objection?
THE WITNESS: There's so many documents, I really have lost track of them.
THE COURT: Thank you.
BY MR. DAN SLOTCHIVER:

Q. Have you, in your role as trustee, reviewed all the documents that were provided to us through discovery?
A. No.
Q. Have you reviewed a copy of all the checks that were paid to attorneys or medical providers?
A. Oh, I've seen the billings.
Q. Have you reviewed the bank statements?
A. No.
Q. Have you reviewed the ledgers?
A. I don't know how to read a ledger.
Q. Have you reviewed the accountings?
A. No.
May I clarify a question? I depend on my wife for that.
Q. Are you familiar with the deposition of Adam Mamelak?
A. I know it exists, yes. I've read a little bit of it.
MS. HEDGEPATH: I'm sorry. I didn't hear, Your Honor. Deposition of whom?
MR. DAN SLOTCHIVER: Dr. Mamelak.
MS. HEDGEPATH: Okay. Excuse me.
THE WITNESS: I know some of it.

BY MR. DAN SLOTCHIVER:
Q. And would you agree with me that Dr. Mamelak gave his deposition in the California action?
A. That's correct.
Q. And in that capacity, you and your wife had counsel present at the deposition?
A. Yes.
Q. And your counsel had the opportunity, if so inclined, to question Dr. Mamelak as much or as little as they wanted to?
MR. DAVIS: Your Honor, I believe we went over this attorney-client privilege stuff they did in California. I don't know how far he's going with this. Communications with counsel, what they did in depositions, if they were there, that was certainly something that was --
MR. DAN SLOTCHIVER: Your Honor, I'm just trying to confirm that they had counsel present at the deposition, and they could have asked questions if they wanted to.
THE COURT: I'll overrule it.
BY MR. DAN SLOTCHIVER:
Q. Would you agree with that?
A. Read the question again, please.

Q. Would you agree that your California counsel, if they desired, had the ability and were present to ask any question they wanted to of Dr. Mamelak at his deposition?
A. Yes.
Q. Or to cross-examine him, if so desired?
A. I don't know the difference between one or the other, so I can't answer that exact.
Q. And would you agree with me that the purpose of Dr. Mamelak's deposition was to get his opinion about the cognitive ability/the mental capacity of Abbie?
MR. DAVIS: I object, Your Honor. I don't believe that he took the deposition of Dr. Mamelak and is unaware, I believe. If I'm not mistaken, that was taken by Vicki Greene, attorney for Dan Dorn. How could he possibly say why the deposition was taken?
MR. DAN SLOTCHIVER: Your Honor, he stated that he's familiar with it, he's read a little bit of it, he stated that his counsel would have been there, and I'm just trying to understand the scenario. I'm just asking background questions right now.

THE COURT: I'm going to sustain the objection. I don't know if he can say why it was taken or not.
MR. DAN SLOTCHIVER: I don't either. I wanted him to tell me.
BY MR. DAN SLOTCHIVER:
Q. Is it your understanding, Dr. Cohen, that from what records you've reviewed in the Mamelak deposition, that he opined as to the cognitive abilities of Abbie?
A. To some extent, although he had not examined her in four years before that.
Q. Understanding that.
MR. DAN SLOTCHIVER: Your Honor, I would move that we introduce the deposition of Adam Mamelak.
MR. DAVIS: Your Honor, we object. It's a deposition taken in another hearing, another trial. I don't think he said -- he said he's generally familiar with it. He hasn't read it and not sure why it was taken. It was taken by their attorney in California. I don't think he's laid a proper foundation, Your Honor.
MR. DAN SLOTCHIVER: And I believe I have, Your Honor. There is case law to support

it -- I'll be happy to hand a memorandum to the court -- that a deposition taken in another matter where you have the same parties and the same essential issue, and on this issue, it went to cognitive ability, there is certainly precedence where within Your Honor's discretion, you can allow the Mamelak deposition to come in.
MR. DAVIS: Your Honor, I would just remind the court that we had this very same issue when Mrs. Cohen was on the stand, and this court ruled that it was not to be admitted, and he withdrew it, and it was not admitted at that time.
MR. DAN SLOTCHIVER: I tried to put it in with Mrs. Cohen, and she had no familiarity with it, and she could not confirm, Your Honor --
I apologize. I didn't bring you copies, and it's my fault completely.
MS. MOORE: That's all right.
MR. DAN SLOTCHIVER: But with Mrs. Cohen, she wasn't familiar with Dr. Mamelak's testimony. She said she knew nothing about it. She didn't read it. Dr. Cohen does have familiarity with it, and he's confirmed the requisite requirements, that it was taken, he did have counsel, it was in -- although it was in a

different matter, it dealt with the same issue, not that this matter in South Carolina deals with the same issue as the matter in California, but that the issue for which Dr. Mamelak's deposition was taken is being offered for the same purpose that it was taken in California, dealing with the cognitive ability, and he's confirmed that it was referenced. He said he hadn't seen it in several years, I agree with him, but I believe that it should come in, and I would move to introduce it on that basis.

MR. DAVIS: Your Honor -- and I appreciate Mr. Slotchiver's arguments. We do not have a copy of that deposition and have not had an opportunity to look at it, I don't believe there's a sealed copy that we've been provided with, so how can we respond intelligently to something we don't have a copy of and have been unable to receive?

MR. DAN SLOTCHIVER: They were provided with a copy of the deposition in the deposition of John Freeman. Attached to his exhibits was a copy of the Mamelak deposition. Dr. Freeman testified he relied on it to some extent, and he attached a copy of it in his

deposition.

MR. DAVIS: Again, Your Honor, that was an unsealed copy.

MR. DAN SLOTCHIVER: I think we've already given copies of that, Your Honor, to counsel earlier in this proceeding, last week.

MR. DAVIS: I'm searching to recall that, and I don't recall that. I'm not saying you didn't, but I don't recall that happening.

MR. DAN SLOTCHIVER: For the record, Your Honor, Vicki Greene, who testified here today, was counsel in the Mamelak deposition.

THE COURT: Vicki Greene?

MR. DAN SLOTCHIVER: Excuse me, Lisa Meyer, the MOLM firm, was present.

THE COURT: And can you tell me, Mr. Slotchiver, the purpose of introducing his deposition?

MR. DAN SLOTCHIVER: Well, Your Honor, Dr. Mamelak made -- I believe that as a fiduciary, you've got a duty to familiarize yourself with all the different articles, all the different commentaries, all the different evidence out there in making your decisions.

Dr. Mamelak did, in fact, opine -- and

the testimony of Mrs. Cohen was: I didn't even look at it. I refused to look at it. We disagree that that's complying with the requirements of a fiduciary. Dr. Cohen looked at it to some extent. I want to ask him what he knows, and I want to ask him what his opinion is on the findings of Dr. Mamelak. Dr. Mamelak gave a full deposition about his opinion about Abbie's cognitive abilities.

MR. DAVIS: Your Honor, I want to remind everyone that Dr. Mamelak last evaluated Abbie in 2006. His deposition was taken in 2010. He had not examined her since 2006, so we believe it to be irrelevant to this matter. We're going to show that she's made absolute improvement through the testimony and through the evidence that's going to be presented, and he's counteracting that with a document from a deposition from someone who last examined Abbie in 2006. How could that be relevant to her current condition and the benefit she receives from visitation?

MR. DAN SLOTCHIVER: Your Honor, Mrs. Cohen testified that she does not have an action, nor will she bring an action, against Lisa

Meyer for malpractice. Lisa Meyer testified that she did everything that she was told to do and everything she could do in the California case. She did it all.

Now, this action is to asking that they be removed and asking that the trust be refunded with the monies that were wrongfully spent, and what's important to know is what was the condition, even if -- there's no evidence, we've been provided with nothing to show us that Abbie is better. But even if she were better, it would not exonerate them from their responsibility.

As Your Honor is aware, the requirement to have prudence is on every single measure. Every single action you do, you must have prudence. So our position is we've got a doctor who's given testimony in a case for which they were the fiduciaries. Dr. Cohen's read part of it; Mrs. Cohen's read none of it. Seems to me like I should be able to ask them about would this affect your opinion, would you have done something different if you knew about this, and why didn't you do anything different. I think it has to come in, because it's certainly relevant to the issue.

Any evidence about future repair, which we don't know of, we haven't been advised of that until just now. This is the first time I've heard that they're going to try to present evidence that she's better.

But certainly, at the time that the court issued its order in 2012, at the time that it issued its order, Mrs. Cohen's testified that every doctor that she responded to Lee Moore about had already been engaged, except for maybe one. Lisa Meyer testified there was nothing that she couldn't do that she would do, that she hadn't done in this case.

So I'm not really sure why it is that this deposition wouldn't come into evidence and why they wouldn't be willing to discuss it and why it isn't appropriately placed into evidence.

THE COURT: And his deposition was in the California visitation?

MR. DAN SLOTCHIVER: The deposition was in the California case, Your Honor, and we're presenting a copy of the deposition to the court.

THE COURT: Anything from Ms. Hedgepath? Moore? Kachmarsky?

MR. KACHMARSKY: Nothing from me,

Judge.

THE COURT: I'm sorry. Who said that? Mr. Kachmarsky, was that you?

MR. KACHMARSKY: Yes. I said nothing.

THE COURT: Thank you.

Ms. Moore?

MS. MOORE: I hadn't had a chance to look at it completely, his memo, but just my concern would be, obviously, we weren't privy to the deposition, didn't have an opportunity to participate in the deposition, and certainly didn't have an opportunity to cross-examine the person for whom it's being presented in the deposition to be admitted today. That would be my primary concern.

Secondary concern would be is I don't believe the issues are exactly the same, and so I think part of the case law that deals with the admission of depositions from other cases, there has to be a very close similarity of the issues at hand. No question but that the parties may be the same, or some of the parties may be the same, but also, the issues have to be the same.

Obviously, in that case, the issues were whether or not Abbie should have visitation.

The issue here is whether or not the trustees have acted reasonably in the expenditure of various expenses, part of which are the attorneys fees that were incurred in California.

So I certainly would object to the introduction of the deposition. Certainly nothing to preclude Mr. Slotchiver from asking Dr. Cohen as to his understanding of what the opinion was of Dr. Mamelak and whether that impacted their decision-making in proceeding forward, but I don't think it's proper to have the deposition itself admitted into evidence.

MR. DAN SLOTCHIVER: Your Honor, for the record, all the parties were represented. Not only were the Cohens represented, but also there was counsel for the minor, who is referenced in the deposition.

THE COURT: For the minors?

MR. DAN SLOTCHIVER: For the minor, yes, for the minor children, Ruth Estep.

Your Honor, as to the argument that the issues aren't the same, they really are. Part of the argument in California has been she is disabled, and she should be able to see her children, and our position is that it was more

than disabled, it was in a vegetative state and would have no benefit in seeing her children.

And the question then became for the court -- and you'll see in their analysis the statement of -- whatever terminology they use. But in the statement, they reference that they see no compelling evidence that Abbie would have any benefit, but they see the children having a benefit.

So part of the argument, obviously, is that you've got to see where Abbie is cognitively, because it's part of the deal. It's part of where we are. And even the reference made -- Dr. Hays referred to the same thing.

So when we look at this, the issue that we're here for, Your Honor, is if Abbie had no benefit, and we had evidence that she had no benefit -- they had an opportunity to plead the whole case. But if there's evidence of it, if they listened to that evidence, they could have stopped the case much earlier, but it comes down to their refusal to read it or to listen to it or to pay attention to it, and I think that's pertinent as to their obligations as fiduciaries.

THE COURT: Mr. Davis?

MR. DAVIS: Thank you, Your Honor. Again, I appreciate his arguments. I completely disagree with them.

Again, his last examination was in 2006. If we recall from testimony, the marital action in California began in 2008, okay, and his deposition was done in 2010. It was done during the pendency. But his last examination of Abbie was done in 2006, so how can we say that from an examination in 2006, he can use that to determine that Abbie does not receive a benefit from visitation? It's stale, it's old, and it's irrelevant, Your Honor.

THE COURT: I'm going to allow the deposition to come in. I think those are matters that you can bring out in your examination of Dr. Cohen, if you would like, Mr. Davis.

MR. DAN SLOTCHIVER: If I could mark this document as an exhibit, Your Honor.

THE COURT: Yes, please.

(PLF. EXH. 109, Deposition of Adam Mamelak, was marked for identification and admitted into evidence.)

THE COURT: Petitioner's 109, with objection, so noted.

And Mr. Slotchiver, I don't know, did you provide everybody else with a copy?

MR. DAN SLOTCHIVER: Your Honor, I provided a copy to counsel. I did not provide a copy to everybody, but we could take a moment and provide copies to them.

THE COURT: When we take a break, if that's okay.

MR. DAVIS: Your Honor, I would also ask the court's indulgence for us to have a moment to take a look at the deposition. And also, I believe Dr. Cohen said he's familiar with parts of the deposition, so be able to instruct him that any parts that he's familiar with and certainly talk about that he hasn't -- he's just testified, I'm not putting words in his mouth, he's not privy to the whole deposition. We need to have an opportunity --

MR. DAN SLOTCHIVER: They can object when I ask questions, I believe, Your Honor.

THE COURT: When we finish his direct examination, I'll be happy to take a few minutes to allow you an opportunity to review the deposition so you can go forward with your examination of Dr. Cohen.

MR. DAVIS: Okay, Your Honor.

THE COURT: And then at that point, I'll make a copy of this.

Has his deposition been marked, Mr. Slotchiver?

MR. DAN SLOTCHIVER: No, it has not, Your Honor.

THE COURT: Is that it?

MR. DAN SLOTCHIVER: Yes. I've got a copy. I was going to ask him questions. If I needed to mark it, I would.

THE COURT: Well, aren't we introducing it?

MR. DAN SLOTCHIVER: Oh, I'm sorry. I introduced Dr. Mamelak's deposition a moment ago.

THE COURT: I'm sorry.

MR. DAN SLOTCHIVER: I'm not ready to go there yet, but --

THE COURT: That's what I was talking about.

MR. DAN SLOTCHIVER: That's been marked, yes, Your Honor. I apologize.

BY MR. DAN SLOTCHIVER:

Q. Dr. Cohen, do you remember telling me that you are not aware of the court advising you,

as a trustee, that you were either unable or able to make payments for attorneys fees without court approval?

A. Could you repeat that question again, please?

Q. Yes.

MR. DAVIS: Can he also express the context? Is he talking about in a deposition?

MR. DAN SLOTCHIVER: I don't believe I have to go to the context of anything, Your Honor. I believe I have the right to ask him a question.

MR. DAVIS: I just want to make sure there was no improper communications between attorney and client. I'd like to know where he's talking about this information.

MR. DAN SLOTCHIVER: Your Honor, I would ask that the record particularly note, in light of all of the disparaging comments made by Mr. Davis throughout this entire proceeding, not only at this point, over the last couple days, but also over the entire proceeding, that the commentary about comments made. There's no evidence to support this. It's a continued harassment of making allegations and insinuations without any support whatsoever. I believe his

client would have very clearly told him if he and I had spoken outside of the bar about some type of a matter. We clearly haven't.

MR. DAVIS: Thank you, Your Honor.

And I would also like to make sure the record is clear that I made zero accusations against Mr. Slotchiver. He's taken a large leap here, and it's unfounded, and I'm a little disappointed he did that. I'm not claiming anything. I simply asked for the context of the communication. That's it, Your Honor. He's gone far beyond that. I'm not accusing him of anything and have not and am not now.

MR. DAN SLOTCHIVER: I've stopped keeping track of the words that have been used. Maybe it's between Mr. Davis and Mr. Boyd together. But I know I've heard about trickery last week by Mr. Davis, I've heard about nonsensical arguments, absurd arguments, and now I'm hearing more comments. Your Honor, we have an obligation to follow the rules of civility, and I would ask that Mr. Davis be cautioned again.

THE COURT: Mr. Davis, if you don't mind, I believe you made some comment about some kind of improper communication with your client,

so if you will be mindful of the need to be civil in the court proceeding, to follow proper courtroom decorum.

MR. DAVIS: Your Honor, I'll be more than happy to receive any admonishment that you have. I don't believe -- and I'm more than happy to. I don't believe one's warranted here. I have not -- he can ask me to do whatever. I have not -- I've been very careful not to accuse him of anything, and he stands up and mentions to me to be civil and has done it before. I'm very mindful of that, and I have not done anything in this instance to indicate otherwise, Your Honor. I just want to make sure the record's clear, because I'm being careful not to. Thank you.

THE COURT: Thank you.

Mr. Slotchiver, can you ask Dr. Cohen that question?

MR. DAN SLOTCHIVER: I will, Your Honor.

THE COURT: If you could clarify, for my benefit, as to when you were talking about when you asked him that.

MR. DAN SLOTCHIVER: How about if I just ask another question.

THE COURT: I didn't know if it was in the course of this cross-examination or at a prior hearing.

MR. DAN SLOTCHIVER: I'll just ask him the question.

BY MR. DAN SLOTCHIVER:

Q. Dr. Cohen, are you familiar with any time where the court advised you, as a trustee of a special needs trust, that you were unable to make payments to attorneys or for attorneys fees without court approval?

A. What kind of attorneys fees, and whose attorneys fees?

Q. Attorneys fees from the trust.

A. I believe the document said we could hire all sorts of professionals, attorneys, as Abbie's attorneys, or for the benefit of Abbie, and we can make payments to them for their services.

Q. Let me show you a copy of your deposition, if I may.

MR. DAN SLOTCHIVER: May I open the sealed copy, Your Honor?

THE COURT: Yes.

THE WITNESS: Where am I supposed to

be looking at this?

BY MR. DAN SLOTCHIVER:

Q. Dr. Cohen, if you would please turn to Page 11.

MR. DAN SLOTCHIVER: Your Honor, would you like a copy?

THE COURT: Do you have an extra copy?

MR. DAN SLOTCHIVER: I've got original -- well, not the original, but I have an extra copy.

THE COURT: Do you have a copy?

MR. DAN SLOTCHIVER: I'd like to get it back, but if you'd like to follow along, I'd be happy to provide it to you.

BY MR. DAN SLOTCHIVER:

Q. Dr. Cohen, if you'll look at Page 11.

A. Yes.

Q. Line 13. And I'm going to read it, and tell me -- if you'd please read the response.

Are you familiar with any time wherein the court advised you, as a trustee of the special needs trust, that you were unable to make payments to attorneys fees without court approval? Your response at that time?

A. Do you want me to read it?

Q. Yes, please, if you'll read Line 18 and 19.
A. I don't recall either yes or no. I don't know.
Q. So your answer today was different?
A. Maybe I know more now than I did then.
Q. And this is when your deposition was taken back in May of 2011, correct?
A. Yes.
Q. Let me ask you some more questions, Dr. Cohen. Let me know when you're ready.
A. I'm ready.
MR. DAVIS: Are you on a certain page, Dan?
MR. DAN SLOTCHIVER: No, I'm not.
BY MR. DAN SLOTCHIVER:
Q. Dr. Cohen, did the issue of -- let me rephrase that.
Did the issue of paying legal fees without court approval concern you?
A. We had authorization to do that, according to the documents, as far as my understanding of it, for Abbie's -- anything for the benefit of Abbie's --
Q. Would you please turn to Page 12?

A. What?
Q. Would you please turn to Page 12 of your deposition? If you'll read responsively. I'll start with Line 16: Did the issue of paying legal fees without court approval ever concern you? Your response, I believe, is: I was under the impression that we had the permission to do so. My question: What was the basis for that impression? Your response was: My wife told me we could, and she learned it from her lawyer, apparently.
Dr. Cohen, did you at this point reference to me any provisions under any document that gave you that authority?
A. I believe the trust documents said that we could do that.
Q. If you would respond to the document. At this point, in May of 2011, did you at any point reference a trust document or any other document that gave you that ability?
A. I said maybe I have a different knowledge base now than I did then.
Q. But at that time, did you reference this document?
MR. DAVIS: Your Honor, I object. I

don't think that was the question that was asked in the deposition.
MR. DAN SLOTCHIVER: Actually, I read it verbatim, Your Honor.
MR. DAVIS: Did you?
MR. DAN SLOTCHIVER: Yes, I did.
MR. DAVIS: Going back to the issue of paying legal fees.
MR. DAN SLOTCHIVER: Your Honor, I would ask that he -- that if he has an objection, he place it. Otherwise, move on.
MR. DAVIS: Did he ask him in the deposition for a document, or did he ask if he had --
THE COURT: No, sir. I think he read the question in his deposition, and now he's asking him about the document.
MR. DAVIS: Okay.
BY MR. DAN SLOTCHIVER:
Q. Do you recall or would you agree with me from your perspective that all of the bills generated by the Meyer Olson firm, the MOLM firm, were for the issue of visitation?
MR. BOYD: Your Honor, I object. I don't know how he would have --

MR. DAN SLOTCHIVER: Your Honor, I am asking questions on this matter on my examination, which I haven't had an objection to yet. I'm just asking questions. I don't have to tell him where my questions come from. I'm allowed to ask questions.
THE COURT: Mr. Davis?
MR. DAVIS: I will withdraw.
MS. MOORE: Your Honor, at this point, I'm going to make an objection. I've allowed some leeway to Mr. Slotchiver at this point, but this is his witness, he's called this witness, and he is leading the witness. I think it would be appropriate for him to question him by direct.
MR. DAN SLOTCHIVER: I would move to consider Dr. Cohen a hostile witness, Your Honor. I believe if this isn't a hostile witness, I don't know what circumstance would be a hostile witness, and that would allow me to ask a leading question.
MR. DAVIS: I appreciate Mr. Slotchiver's comments. Again, I disagree. I don't think he's done anything to exhibit any hostility. He's very calm, relaxed, responded appropriately to every question. I'm searching for grounds, Your Honor. I don't see how he could

be considered a hostile witness.
MR. DAN SLOTCHIVER: I don't believe that a definition of a hostile witness pertains to his showing hostility towards me, and I believe he is a hostile witness, and I would ask the opportunity to ask him these questions.
THE COURT: Ms. Moore?
MS. MOORE: Your Honor, the mere fact that it is an opposing party does not that, in and of itself, make the person a hostile witness. There has to be some indication through the testimony that they are not responding to the questions that are being posed to them to then give him the ability to turn him or ask the court to establish him to be a hostile witness.
MR. DAN SLOTCHIVER: How about the responses I've received so far, Your Honor? I've tried to ask questions. What I'm told is: I might not have looked at that. Well, maybe my mind's changed since that point. Every answer that I've been given has had an addition to it, an explanation to change it.
I'm just trying -- I'm not asking any -- I'm asking questions I generally haven't asked before. I'm just seeing if the answers are

the same as before, and they're not, and I believe that certainly is indicative of a hostile witness.
THE COURT: Mr. Davis?
MR. DAVIS: Thank you, Your Honor.
As we all can tell, the witness is not being argumentative. He's not trying to evade questions. He's answering them to the best of his ability. He's been honest and truthful each time. He's doing the best that he knows how to do, Your Honor. He's done nothing to indicate he's being hostile.
THE COURT: I'm going to deny your request, ask you to consider this your witness on direct examination, not ask leading questions.
MR. DAN SLOTCHIVER: Fair enough, Your Honor.
THE COURT: I'll be happy to hear that motion again if you so desire at some point.
BY MR. DAN SLOTCHIVER:
Q. What issues were the bills from the Meyer firm for? They sent you bills. What were the issues they were being paid for?
A. Well, it was the totality of the divorce action in California when they took over for us in the early 2010 period, and it started

after we switched attorneys to their firm.
THE COURT: Your Honor, I'm just asking what the issues were.
THE WITNESS: I'm getting to it.
THE COURT: He's getting there.
THE WITNESS: And first it was the issue of getting into the case to get Mr. Dorn redeposed when there were apparently questions that had not been answered. It was a question of developing whether we had even standing to do that through a series of court hearings. The judge finally said we do have --
MR. DAN SLOTCHIVER: Objection to what the judge said, Your Honor, hearsay.
THE WITNESS: We were --
THE COURT: I'll strike that. I'm sorry.
THE WITNESS: We were trying to develop various things which I can't go into because I don't have enough legal knowledge to develop that, but the issues included standing, whether we had the right to do that, to ask for child visitation, and also, at some point in time, Mr. Dorn had referenced the -- checked off the box for child support, which could have seriously

impacted Abbie's ability to stay on Medicaid.
MR. DAN SLOTCHIVER: Your Honor, now we're getting way off stray from the question that was asked. The question is what are the issues before the court.
THE COURT: And I think with --
MR. DAN SLOTCHIVER: The latest thing with Mr. Dorn was -- the issues, I'm not opposed to him stating what they are.
THE COURT: I think you said the bills from the Meyer firm, what were they about.
MR. DAN SLOTCHIVER: What were the issues that they covered, what was the issues.
THE COURT: With respect to her bills. Is that correct?
MR. DAN SLOTCHIVER: Yes.
BY MR. DAN SLOTCHIVER:
Q. Well, Dr. Cohen, do you remember saying something different in your deposition?
A. I don't really know.
Q. Well, why don't we take a look at it. Page 20. We'll start with Line 18: Did you recall when your wife testified a few hours ago that the bills generated by the Meyer Olson firm --

MS. MOORE: Your Honor, that's an improper use of the deposition for impeachment purposes of this witness. He did not ask the exact same question of this witness.

MR. DAN SLOTCHIVER: Well, Your Honor, I've asked a question going to the same issue. If you will not allow me to lead the witness, then I'm attempting to address the fact that his response to the same issue, although phrased a slight bit differently, was the same question. I believe the answer would be appropriate to bring into the deposition.

If the purpose of the court, from an equitable principle, is to hear the testimony and to hear what was testified to before to test the truthfulness of what it's being tested for now, I believe that the submission of the deposition for that purpose should be allowed.

MR. DAVIS: I agree with -- thank you, Your Honor. I agree with Ms. Moore. He needs to ask the question as it was asked in the deposition, the same argument I had earlier. Thank you.

MR. DAN SLOTCHIVER: I'm trying to ask the question that was asked at the deposition.

That's exactly what I was doing.

THE COURT: Maybe you want to rephrase that. I'm going to sustain the objection.

MR. DAN SLOTCHIVER: Rephrase which one?

THE COURT: If you want to ask the question that was asked in the deposition.

MR. DAN SLOTCHIVER: Can I ask the direct question from the deposition or rephrase the question from the deposition?

THE COURT: I would rephrase it so it's not a leading question.

BY MR. DAN SLOTCHIVER:

Q. Have you had the opportunity to chat with your wife, the co-trustee/co-conservator, about what opinions she has as to the bills that were generated by the Meyer firm?

MR. DAVIS: Your Honor, earlier, I'd just remind the court that Mr. Slotchiver made a big deal out of questions that elicited a yes or no response as leading questions, if I recall correctly, and I believe he's asking the same type of questions to Dr. Cohen. And we did object to form in the deposition when the deposition was taken.

THE COURT: I'll allow it.

THE WITNESS: What was the question again?

MR. DAN SLOTCHIVER: If you could read it back, please.

(The Court Reporter read the question commencing on Page 1120, Line 14.)

THE WITNESS: Yes.

BY MR. DAN SLOTCHIVER:

Q. And what was your understanding?

A. We didn't like all the monies being spent, but we didn't know what else to do about it.

Q. Do you have an opinion as to whether or not the bills from the Meyer firm were always about visitation?

A. I believe I just mentioned that it was visitation, it was all the other admissions that went, it was standing, it was multiple issues relating to the First Amendment, it was related to child support. All these things were always on the table that always had -- it was multiple things going back and forth, depositions. You name it, everything happened. It was the totality of the bill, rather than each individual issue.

Q. Thank you, Dr. Cohen.

Now, do you recall giving a different answer in your deposition?

A. No. I said the same thing on Page 21, 22, just what I just said here now.

Q. Well, let's look at Page 20.

A. All right. I'm on Page 21, but that's okay.

Q. The question was: Do you recall, when your wife testified a few hours ago -- question in the deposition, not the question I asked -- that the bills generated by the Meyer Olson firm were for the issue of visitation?

Your response, sir, at that time?

A. It was always about visitation.

MR. DAVIS: Your Honor, I believe that was, again, a leading question. We did object to the form.

MR. DAN SLOTCHIVER: At this point we're reading from the deposition for impeachment purposes.

THE COURT: Yes, sir.

BY MR. DAN SLOTCHIVER:

Q. Likewise, if you'll please look at Page 21. You testified a moment ago that the

issues dealt with things including child support. Is that correct, Dr. Cohen?
A. Which line are we on now?
Q. Well, I would ask that you would -- instead of reading, try to determine what I'm asking about. I'm asking that you would just tell me --
A. I thought you were still reading from this.
Q. No, I'm not. Well, we can go right to it. You testified a moment ago that child support was one of the issues that the fees were being paid for to the MOLM firm. Do you recall testifying differently in your deposition?
A. I don't remember anything about the deposition, other than what I see in front of me.
Q. Well, let's look at Page 21, Line 3: And that those bills did not include monies paid for any claim by Dan Dorn for child support? And your response, sir, I believe, is: No, but child support was always on the table, since it was never taken off.
Does that refresh your recollection?
A. Yes. I can see that.
MS. MOORE: Your Honor, I realize that

Mr. Slotchiver has latitude as far as using a deposition transcript for purposes of impeachment, but I don't believe he's allowed to simply recite into the record a portion of a response, and that's what he just did when he ended with the: No, but child support was taken off the table, since it was never taken off.
MR. DAN SLOTCHIVER: I'll be happy to submit the entire deposition into the record, if you wish, Your Honor. I'm reading in the portions that I wanted to address with Dr. Cohen. Certainly, in cross-examination, they have the right to do whatever they want to.
THE COURT: Thank you. Be happy to let you proffer that on your examination.
BY MR. DAN SLOTCHIVER:
Q. Dr. Cohen, do you have any familiarity with -- I'll say it differently.
What were your concerns about your ability to pay the legal fees for the litigation in California from the trust funds?
A. Well, that we would -- it was just -- it seemed to be a never-ending cycling of back and forth, and although the attorneys fees seemed excessive, we felt that we were on a

merry-go-round that was going around and around and around real fast, and we didn't know how to get off.
Q. How about your concerns about the authority to pay?
A. Oh, I knew we had the authority to pay anything that was to do with Abbie. We were given that by the court.
Q. When?
A. When we got the custodianship and conservatorship in California, and we transferred it to South Carolina.
Q. Do you remember testifying in your deposition about concerns you had which resulted in an email being sent by counsel for you to the judge?
A. I have no idea what you're talking about.
Q. Well, why don't we go to your deposition, Page 35. If we can start, please -- and in order to have a full text, I'll do it however you want, but I'll read the whole question starting on Line 16.
A. You said my counsel. You didn't say which counsel. We've had 15 different lawyers

since we left California, and I'm not sure which counselor you were talking about.
MR. DAVIS: Your Honor, I would just ask that it be put --
MR. DAN SLOTCHIVER: Bret Davis.
MR. DAVIS: I'm sorry, Your Honor. My objection is to just ask he put the question in the form of a direct examination-type question and take it out of the form he's got in the deposition.
MR. DAN SLOTCHIVER: Well, I believe I did, Your Honor, but when he responded differently from his deposition, I now have the right to go back and review the deposition with him.
THE COURT: If you'll make sure they're not initially leading questions, then if you need to go back and draw out the deposition, you may do so.
BY MR. DAN SLOTCHIVER:
Q. In your deposition on Page 35, I'll read this to you to refresh your recollection: Were you familiar -- I have referenced a document earlier in the deposition, Plaintiff's Exhibit 3 in the deposition of Susan Cohen, which is a copy of an email sent from Bret Davis to Judge Edmonds,

where he referenced that the parents of Abbie have asked me to petition the court for an order which specifically allows them to use the funds from the special needs trust to pay the attorneys fees in California and South Carolina through defending the trust. Page 35. Do you remember making that request to your counsel? Response: Yes, but I've never seen this letter or this email.

Does that refresh your recollection?

A. I'm reading it, yes.

Q. Why did you make that request to your counsel?

A. We were going --

MR. DAVIS: Objection, Your Honor. I don't think that it was established in here that he made that.

MR. DAN SLOTCHIVER: Well, Line 6 we just read: Yes, but I've never seen the letter or this email. But he confirmed that he made the request. The question before: Do you remember making this request to your counsel? Answer: Yes. Page 36.

MR. DAVIS: I would say that you're limited to that and not the whole terms of the email, because he certainly didn't see that and

didn't write that.

THE COURT: Thank you. So noted.

BY MR. DAN SLOTCHIVER:

Q. I believe I had asked why you made the request.

A. What's the question?

Q. Why did you make that request to counsel?

A. To change the trust to add some conformity to the language of some minimal differences in wording and to basically head off any litigation that could be coming away from California.

Q. In May of 2011, what concerns, if any, did you have over whether you could or could not pay the fees?

A. I don't -- what date was this you're talking about?

Q. The date the deposition was given, in May of 2011.

A. I can't recall a specific -- my specific mindset at that day about paying fees at the moment in time that you were doing a deposition at 2:30 in the afternoon. I just don't remember what my mindset was that day.

Q. You testified a moment ago about wanting to get an accord between the different documents. Is that correct?

A. I believe I used the word conformity of language.

Q. But you don't remember why?

A. Because that's what it was about, but I can't tell you the exact -- I'm not legal eagle enough to determine what exact words needed to be changed.

Q. But you believed that you had the authority based on the paperwork you had at that point?

A. We thought that we did, yes.

Q. Can we look at Page 37, Line 11? Or excuse me, Line 8. Question was: When you say conflicting language between the documents, which documents are you referring to? And the response is: The various trusts that we have. I'm not sure what we have, whether we could or could not pay, who we had to go through, et cetera, et cetera.

Does that refresh your recollection as to your mindset in your fiduciary capacity when the deposition was taken back in May of 2011?

A. I believe my mindset -- you asked me about mindset about paying the bills that was ongoing at that time. This doesn't reflect that. It reflects an answer about the language.

Q. Dr. Cohen, why would you ask your counsel to write this letter to the court if you had no concerns?

A. I believe this is something he --

MR. DAVIS: Your Honor, I object. I don't think that there's been testimony that he told me to write a letter to the court. I think we established there was an email to the court.

BY MR. DAN SLOTCHIVER:

Q. An email to the court. Why would you ask your counsel to write correspondence to the court seeking permission and clarity if you had no concerns?

THE WITNESS: I believe -- did you have an objection?

MR. DAVIS: I'd like to, if you can, Your Honor, just go back to that part of the deposition where he says that he instructed me -- what exactly he instructed me --

MR. DAN SLOTCHIVER: Your Honor, could Mr. Davis please reserve his cross-examination

until later on?
MR. DAVIS: Just ask that he be clear in the questions, Your Honor. Thank you.
THE COURT: Thank you.
MR. DAVIS: And I don't believe there's a foundation.
MR. DAN SLOTCHIVER: I'll rephrase it.
BY MR. DAN SLOTCHIVER:
Q. Dr. Cohen, why would you ask your counsel to make that request or why would you request your counsel to contact the court to get the authority if you believed that you already had it?
A. I didn't ask him to do anything. We just -- we were talking about having the language changed, what he had to do to get it changed, and it's not -- I don't know the exact procedure. That's what he gets paid for.
Q. So earlier, when you testified a few moments ago in your deposition, and I asked you on Page 36, do you remember making that request to your counsel, you said yes. Now are you testifying that you did not make that request to counsel?
A. What line are we talking about?

Q. Let's go back to Page 36.
A. I know that. What line on 36?
Q. Line 3.
A. I remember making the request --
Q. Thank you.
A. -- for the document change, but not about -- I never told him to send an email to the judge or anything like that. I have no idea how you do that, how you change a document. I said that's how -- that's what you guys get paid for.
Q. Well, then if we go back to Page 35 that we discussed a few moments ago, and 35, I showed you -- the testimony was: Were you familiar -- I have referenced a document earlier in the deposition of -- in the deposition, Plaintiff's Exhibit 3 in the deposition of Susan Cohen, which is a copy of an email sent from Bret Davis to Judge Edmonds where he referenced that: The parents of Abbie had asked me to petition the court for an order which specifically allows them to use funds from the special needs trust to pay for the attorneys fees in California and South Carolina through defending the trust.
Are you now stating that you -- then I asked you, following that statement: Do you

remember making that request to your counsel, and you said yes.
A. Yes, I did. I was in the room, but I didn't know anything about a letter or an email to the judge.
Q. And the question that led to it, Your Honor, was: Dr. Cohen, do you -- why would you ask counsel to contact the court? Why would you ask counsel to make contact with the court to seek permission from the court if, in fact, you believed that you already had that authority?
MR. DAVIS: Your Honor, he's already asked that question, and it's already been answered.
MR. DAN SLOTCHIVER: I did ask the question, Your Honor, and when I asked the question, he said he did not do that, so then we went back to Page 36, wherein he looked at it again and confirmed that he did, in fact, based on that language in that deposition, but he denied -- he said he did make the request, but not for the email, and then we looked at the email, and then we went back to the request, and he said: Yes, I did make the request. So now I'm coming back to the original question, now that we've clarified

that and I believe refreshed his recollection and asked him the exact same question I asked before, for which I never received an answer.
MR. DAVIS: Thank you. Your Honor, I believe he testified that he did not instruct me to write or email the court. He answered the question. That's what his testimony is.
MR. DAN SLOTCHIVER: He made the request.
MR. DAVIS: I believe that that is what the question was, and that's what the answer was.
MR. DAN SLOTCHIVER: Your Honor, I'm trying to understand why he would make a request, and I believe I properly asked the question. I've shown the foundation for it. He didn't answer it, so we went back. We showed the foundation as to what he did. He confirmed that he did, in fact, make the request that the correspondence be made to the court, and now I'm asking him -- it's not asked and answered. I'm asking him why he did that if he thought he had the authority. That's all.
THE COURT: I thought you asked that before, and he answered that.

MR. DAN SLOTCHIVER: If we go back, Your Honor, he did. What he did was he said: I didn't make the request. So then I said: Well, then are you disagreeing with what you told me earlier? So went back to Page 36 and went through the whole thing again in order to confirm that he did, in fact, agree that he asked Bret Davis to do this, which he did. So then bringing it right back around full circle, I'm asking the same question, now that he has refreshed his recollection as to the fact that he did, in fact, ask Bret to communicate with the court.

THE COURT: Mr. Davis?

MR. DAVIS: Thank you, Your Honor. And again, my mind is going in circles, just like he has reiterated there with his question. The witness says in his testimony that he asked to reform -- asked the attorney, me, to reform the trust. He did not ask me to write an email or letter to the court. That's what his testimony was, and that was where the questions -- that was in response to the questions that Mr. Slotchiver asked.

MR. DAN SLOTCHIVER: Your Honor, I object. That's not what the testimony shows. We

read it twice. He's taking it out of context. I can show -- you have the document.

THE COURT: Let's have the court reporter read back, so that we're all clear as to the questions and the response from Dr. Cohen so we can see.

If you could go back, ma'am, maybe to where -- I hate for you to read it all, but so that we could all be clear as to the testimony from when Mr. Slotchiver first asked about the email to the court, was he aware, I believe -- when he referred him, I think, to Page 37. No, I'm sorry, Page 36, when he first asked him about the email to the court. Do you have that?

(The Court Reporter read several lines of testimony beginning on Page 1131, Line 19.)

THE COURT: I'm going to overrule the objection and let Mr. Slotchiver ask the question.

MR. DAVIS: I've got one other --

Thank you, Your Honor.

I've got one other -- we know the memo has been offered into evidence. I believe we all are aware of that.

MR. DAN SLOTCHIVER: Your Honor, this has gone beyond the question I asked. This is my

opportunity to ask questions.

MR. DAVIS: I have an objection, Your Honor.

THE COURT: Yes, sir.

MR. DAVIS: I want to make sure that we don't go into areas that are protected by attorney-client privilege. He's asking --

MR. DAN SLOTCHIVER: I believe they can object to anything that I ask that violates the attorney-client privilege.

MR. DAVIS: I just want to make sure that there's a veil over this, because he's getting kind of intimate in those questions about your communications with your attorney, why did you do that, and I just want to make sure we know, heading into that, that's very delicate.

THE COURT: Thank you.

Go ahead, Mr. Slotchiver.

BY MR. DAN SLOTCHIVER:

Q. Dr. Cohen, why did you ask your counsel to contact the court if you had no concerns about your authority to make payments?

A. I didn't ask him to contact the court. We just went there to have the trust modified a little bit, as I mentioned, about conformity of

language.

Q. I just want to make sure I got this right, then, Dr. Cohen. Your testimony earlier today twice -- we've gone back to it two times on Page 36 -- you disagree with the testimony you gave back in May of 11 wherein you stated that you did make the request to counsel to contact the court. Is that correct?

A. Yes, at request of your counsel. Well, it says: Do you remember making that request to your counsel? I'm talking -- I thought you meant to reform the trust. That's what we did. But I don't know anything about how you do this. That's why these guys go to law school.

Q. Dr. Cohen, the reference that we have discussed in this action -- and I want to make sure I understand this. Let's read it together, and I'm curious how it is that you thought we were talking about a reformation action in the context of the questions that were being asked.

Actually, I'm not going to ask it. I think I've asked it enough. I'll leave it alone.

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. What concern did you have, Dr. Cohen,

about the fact that even after your counsel wrote the letter to the judge, you continued to authorize the expenditure of over $500,000 in legal fees?
A. Because we had the authority to do so.
Q. Without the authority, would you have done it?
A. Without the authority, we couldn't have done it.
May I change -- may I say something different before you ask me another question?
Q. Sure.
A. The fact that we didn't have -- that we didn't have authority never really crossed our mind, because we knew that we did.
Q. Do you agree that you were aware that there were issues as to whether or not you could make payment without court approval?
A. We could not make payment to an outside party that didn't have anything to do with Abbie without a court approval, but that always had to be for Abbie's benefit.
Q. I'm going to ask you -- was it more about Abbie's benefit or more about the children, seeing the children?

A. What is it?
Q. Your goal.
A. It was -- who seeing the children, us or Abbie? Are you talking about visitation or grandparent visitation?
Q. I'll rephrase the question.
Did you consider the financial hardship that it would do to Abbie through her special needs trust if you litigated and continued to litigate the issue of visitation and spend money?
A. Finances were always a concern, but Abbie was the most important thing, and getting her to see her children was the most important thing.
Q. But seeing the children was more important than the money?
A. With parental visitation, that's Abbie getting visitation, was always important to us, yes.
Q. Regardless of the authority?
A. We had authority to do all this.
Q. Would you agree with me that at no time during your deposition did you state as to what the authority was that you had, other than

your wife told you you had it?
MR. DAVIS: Your Honor, I object. That's a blanket question. I don't know how he can answer that. He'd have to go back and memorize his entire deposition.
THE COURT: Sustained.
BY MR. DAN SLOTCHIVER:
Q. Did you, Dr. Cohen, weigh the right of Abbie to have visitation with the children against her need to have funds to support her?
A. This is the same thing you just asked me a few minutes ago in a different form, right?
Q. I'm sorry?
A. You just asked me the same question in a different form, didn't you?
Q. I don't believe so.
A. Could you read the question again?
Q. Did you weigh -- as the fiduciary, did you weigh the right for Abbie to visit with her children against her need to have funds to support her?
A. We believed that the right of Abbie to have child visitation was always important, but the -- to us because we felt that we had authority to spend the money for her benefit.

Q. How far were you willing to go with reference to spending her money?
A. We never got there. I wouldn't know.
Q. Would you have spent every dollar?
A. I can't answer that. It's a hypothetical question.
Q. Let's take a look at your deposition, please, Page 51, Line 25: Did you weigh the right for her to -- go on to Page 52 -- visit with her children against the need to have funds to support her? Your response at that time was: She has funds to support a month-to-month basis from her annuity, and that's not going to go away, and if we lose all the money, we lose all the money.
Do you remember making that statement?
A. Yes.
Q. We still can maintain. We still can help her out, as long as she doesn't lose Medicaid. The money was not an object. Her children were.
Do you remember making that statement?
A. Yes.
Q. So the money, if you lost it all, that was okay?
A. As I said, we didn't lose it all. She

still has money coming in every month. She has money in her deposit -- her account right now, but I can't tell you how much.

Q. You spent almost a $1,200,000 relative to this litigation. Would you agree with that?

A. I don't know how much it was.

MR. DAN SLOTCHIVER: If I can have just a moment, Your Honor.

THE WITNESS: Are you finished with this?

MR. DAN SLOTCHIVER: Maybe.

BY MR. DAN SLOTCHIVER:

Q. You testified that you're familiar to some extent with Dr. Mamelak and his opinion?

A. Yes.

Q. What can you tell me, your knowledge, of his opinion?

A. Well, I read his -- it's quite some time ago, so I can't tell you word for word what he said. It was quite -- he gave the deposition in 2010.

Q. Would it surprise you if I told you there was testimony that he opined it would be exceptionally unlikely, if not essentially impossible, for her to regain consciousness,

conscious function? Is that generally consistent?

A. Exceptionally unlikely doesn't mean impossible.

MR. DAVIS: Your Honor, may I --

BY MR. DAN SLOTCHIVER:

Q. The language that I read to you or the question I asked of you is: It would be exceptionally unlikely, if not essentially impossible, for her to regain conscious function. Is that consistent with what you understood from the deposition or from his testimony?

A. You just read two different things to me.

Q. Actually, I read one thing to you, but I'm asking you if that's consistent with the understanding you have from his testimony?

A. Well, that's what he said.

MR. DAVIS: Your Honor, may I make a simple request?

THE COURT: Yes, sir.

MR. DAVIS: If we're going to be reviewing that deposition, I would just ask that while he goes through that, if he could point out what page he is on, so we can respond to it.

THE COURT: If you could do that, sir.

MR. DAN SLOTCHIVER: Your Honor, I will, but I was just going to look through it and ask some random questions.

THE COURT: If you could just --

MR. DAN SLOTCHIVER: Right now, I'm not impeaching him on anything. I'm just asking him what he knew, what was consistent, what was not consistent with it, but if you'd like me to do it, I'll be happy to do it.

THE COURT: Mr. Davis just asked for a page reference when you ask him based on the deposition. I think that would be helpful.

MR. DAVIS: The last page I would like to know, he just asked about.

THE COURT: Do you have that last page, sir?

MR. DAN SLOTCHIVER: I can't tell you right now, Your Honor. I can pull up -- certainly Page 21. I can find the other page if you want to give me a moment.

THE COURT: All right.

MR. DAN SLOTCHIVER: Can I do it from this point forward, Your Honor?

THE COURT: Yes, sir, please.

MR. DAN SLOTCHIVER: I would reference

that it must have been before Page 18.

THE COURT: All right, prior to Page 18. Thank you.

BY MR. DAN SLOTCHIVER:

Q. Are you familiar with his opinion that the difference between a coma and a vegetative state is simply whether the eyes are open or not? Page 19.

A. I'm not familiar with exactly what he said, because as I said, I briefly reviewed it, and I just skimmed through a lot of everything.

Q. Did you find it important to -- or did you not find it important to review what the doctor had to say about the ward with whom you have been entrusted to manage, to manage her funds?

A. He hadn't seen her in four years. How can he make any kind of testimony in 2010 when he last saw her September 2006?

Q. Did you not find it important to see what he had to say?

A. I read -- I told you I skimmed through it, but I didn't read -- I was skimming various things, but I didn't go through every single question or every single answer.

Q. I understand that the first attorney you had, you switched, and you got a second attorney, correct?
A. Yes. What did it have to do with Dr. Mamelak's report?
Q. Sorry. It's my turn to ask questions.
And that you weren't happy with where the case was going in the first case, so you went to the second case? Or excuse me. You weren't happy with where the case was going with your first attorney, so you got a second attorney?
MR. DAVIS: Your Honor, I object. I don't think that's what the testimony was.
MR. DAN SLOTCHIVER: I'm asking a question, Your Honor.
And I would ask again at this point to be able to treat Dr. Cohen as a hostile witness. The responses I'm getting are generally argumentative. He has an agenda that he wants to accomplish and state, and I understand that, but I think we can move forward a lot quicker if I can ask -- otherwise, I'll rephrase them differently, but I think I should be entitled to at this point ask some leading questions.
MR. DAVIS: Thank you. Your Honor, I

believe that was a leading question, and I believe that they have already responded through testimony that it wasn't until Mr. Dorn hired Vicki Greene that they sought separate counsel. He's couching it in a totally different way, which is not accurate based on previous testimony.
THE COURT: If you'd like to rephrase that question, Mr. Slotchiver. I sustain the objection.
BY MR. DAN SLOTCHIVER:
Q. Dr. Cohen, you had counsel that you hired as a trustee/conservator in this action before the MOLM firm was hired, correct?
A. Yes.
Q. And they were released from their responsibility and replaced with the MOLM firm. Is that correct?
A. Yes.
Q. And is it fair to say the reason they were released and replaced is because you weren't happy with where the case was going?
A. The case didn't seem to be going anywhere.
Q. And the Meyer firm got involved and agreed to accept the case and to pursue the case

going after visitation?
A. Yes.
MR. DAVIS: I object, just for the record. Just want to make sure we don't go any further into the attorney-client privileged information.
MR. DAN SLOTCHIVER: I don't believe I've touched on the attorney-client privilege.
BY MR. DAN SLOTCHIVER:
Q. Now, down the road, you got a doctor who opines things that you don't like about Dr. Mamelak. Is that fair statement?
A. I didn't say I didn't like it or -- I didn't say how I liked it or I didn't like it. I said I didn't -- I just skimmed it.
Q. Are you familiar with his findings as they relate to Abbie's ability to sense things: Pain, hearing, sight?
A. Yes. I remember him saying that.
Q. And is your understanding that his testimony is that she has no ability to sense those things?
A. I believe he may have said that, but my exact recollection of that is unclear.
Q. Do you recall, in your review of his

testimony, his opining that the state she's in would have certain physical reactions, such as smiling or grimacing or opening your eyes, that are more brainstem function than they are -- or that would be the result of brainstem function, as opposed to cognitive ability? Do you remember that?
A. I believe so, yes.
MR. DAVIS: Page numbers again, Your Honor?
MR. DAN SLOTCHIVER: I don't even have one. I'm talking off my memory.
MS. HEDGEPATH: Your Honor, if he's going to quote from the deposition, he needs to quote from the deposition and not just from memory, and we need to know from where he's getting this from the deposition so we can go back and read.
MR. DAN SLOTCHIVER: I've provided the deposition. I've read the deposition. They had the deposition when Dr. Freeman used it. And I'm using it from memory. I have it, I'm skimming it, but I'm not using that for what I read right now, Your Honor.
THE COURT: Mr. Slotchiver, if you

certainly refer to a certain page in the deposition --

MR. DAN SLOTCHIVER: I'll be happy to do it.

THE COURT: Thank you.

BY MR. DAN SLOTCHIVER:

Q. Has there been a CT scan or an MRI done of Abbie in the last four years?

A. Yes.

Q. When's the last time it was done?

A. I believe she was in the hospital in 2010 following a problem with her Baclofen pump, and at that time, we were having a nursing service come out and fill it and reregulate it. And they may have made a mistake, we're not sure, and she wound up in the hospital, and while we were there, she had a CAT scan. We were never really sure if it was a mistake or not or what exactly happened, but she recovered and went home.

Q. Do you know of the resume of Dr. Mamelak?

A. He's a neurosurgeon.

Q. Is he a well-regarded neurosurgeon?

A. I really don't know anything about neurosurgeons. I can't tell you, sir.

Q. Do you have any reason to believe that he would not testify correctly?

A. You mean testify in his deposition or testify where I'm sitting right now?

Q. Do you have any reason to believe that he would not -- that, in giving a deposition, he would lie?

A. No, but again, he hadn't seen Abbie in four years.

Q. Are you, in fact, a neurosurgeon?

A. No.

Q. Do you understand that there are opinions that assert that someone who receives the injuries like Abbie received, if they don't recover certainly within a year, they don't recover?

A. That, I believe, is true. Apparently, there are some cases that -- where people did improve from PVS to minimal conscious state. Rare, but if it happens to you, it's 100 percent for you.

Q. In your capacity as a fiduciary, did you ever -- let me rephrase that.

In your capacity as a fiduciary, what prudence, if any, did you undertake in determining

that it was reasonable to continue -- or to spend money over the visitation issue?

A. How do you define prudence?

Q. What did you do? What, if anything, did you consider in making your decision?

A. We considered that it was important for Abbie to see her children, and we wanted to -- we thought that would be good for her benefit.

Q. Do you agree that under the testimony, for example, of Dr. Mamelak, that there would be no benefit to Abbie?

A. I'm not sure I read that portion that he had, but the trial was under way already, so --

Q. And would you agree that under the finding of the court in their reliance on Dr. Hays, as referenced in the order, that they found no compelling evidence that Abbie would have any benefit from seeing the children?

A. That's what the court said there. Different courts have different opinions on the same subject. Look at the supreme court.

Q. Did you consent to the issuing of the final decision in the California case?

A. You mean the judge's order that you read this morning or -- I don't know what you mean

by the final consent.

Q. Well, let's talk about this. As I understand, the case in California ended because the parties agreed to end it. Is that correct?

A. Yes.

Q. And in the ending of the case, it was determined that there was no compelling evidence that Abbie would benefit from seeing the children, but there was evidence that the children would benefit from seeing Abbie?

A. I know the judge said that, but I don't know if that appeared in the final agreement between the parties. I can't tell you that. Can you show it to me?

Q. I'm just asking what your understanding is right now.

A. Okay.

Q. Dr. Cohen, was the CAT scan done in 2010 a CAT scan of her brain?

A. I believe, yes. I don't know 2010.

Q. You stated that's the last time there was a CAT scan.

A. I think it may have been 2009. No, it was probably -- it had to be 2010, because we had the -- we had the thing put in 2009, so therefore,

it'd have to be 2010.
MR. DAN SLOTCHIVER: Page 32 of the Mamelak deposition.
THE COURT: I don't have that one.
MR. DAN SLOTCHIVER: I was giving the reference.
THE COURT: Thank you.
BY MR. DAN SLOTCHIVER:
Q. Do you recall Dr. Mamelak opining that in his opinion, the likelihood of Abbie regaining a conscious state is not just improbable, but essentially impossible?
A. I believe he made a statement to that, but again, there are cases where he -- there are case reports where people have improved from PVS to MCS. He quotes it himself on Page 58.
Q. Dr. Cohen, in making decisions as to what you would do as a fiduciary in your capacity as a co-trustee/co-conservator, is it my understanding that generally, your wife undertook that role and had the responsibility of making decisions?
A. We discussed things, but many things happened during the day, and she took care of it. I would come home, I'd ask her what happened, she

told me, I said agree with her, and that was it.
Q. For the times that you were involved in the decision-making, can you tell me the process you followed?
A. I can't recall off the top of my head.
Q. Do you know what process, if any, your wife followed in rendering or making decisions?
A. Ask her.
Q. I'm asking you.
A. I don't know what her process was. I can't get inside her brain.
Q. So as a trustee, you don't recall what your process was, and you don't know what, if any, process she had. Is that correct?
A. Can you repeat that question again?
Q. So in your capacity as a fiduciary, you don't know what process you undertook, and you don't know if she had a process, or if she did, what process she undertook?
A. I can't think of anything right now. I might add -- can I add that --
Q. Well, I was going to ask you, Dr. Cohen, you said on Page 56 --
A. 58.
Q. Of the Mamelak deposition?

A. Yes.
Q. The one that -- I believe you -- do you have a copy of that in front of you?
A. No. I just remembered from the top of my head, because I put a bookmark on it, and I remember it. I made a little notation to myself. That's what it was.
Q. When was the last time you would have looked at this document?
A. A while ago.
Q. But you remember that particular page. What was the quote that you referenced?
A. It's on the top of the page. Do you want me to show it to you?
Q. I'll look for it. Thank you.
A. I believe it's 58. Are there any case reports? As I was reading before, I saw a couple sentences go past. I just made that notation of them.
MR. DAN SLOTCHIVER: Nothing further.
THE COURT: Mr. Davis?
MR. DAVIS: Thank you, Your Honor. If I'm next, I believe you've given us an opportunity to take a few minutes to review the Mamelak deposition, and we'll come back. I'm assuming I'm

next in order?
THE COURT: Yes, sir.
MR. DAVIS: So give us -- how long would you like to give us?
THE COURT: 15 minutes.
Dr. Cohen, I'll caution you not to talk with anyone about your testimony.
Thank you. We'll take 15 minutes.
(A recess transpired from 4:34 PM to 5:04 PM.)
MR. DAVIS: Are we okay until 7:00 or so tonight?
THE COURT: I'm good until about 8:30, if we need to.
MR. DAN SLOTCHIVER: Your Honor, I'd prefer, if we can, to work late in an effort to finish Dr. Cohen, but then to start a little bit later tomorrow, as Professor Freeman is coming from Columbia, if that works, gives us a little bit of a reprieve, if that's acceptable to you.
THE COURT: Ms. Moore?
MS. MOORE: Judge, I didn't contemplate that we would work past as late as, say, 8:00. I coach a volleyball team. I have not made arrangements. My practice is at 8:30. It

didn't occur to me that we would not get finished in time for me to make an 8:30 practice.

THE COURT: Is Dr. Cohen the last witness we anticipate examining today?

MR. DAN SLOTCHIVER: He is, Your Honor.

THE COURT: So we've got three-and-a-half hours if -- I'm sorry. You wanted to try to quit by 8:00, if possible?

MS. MOORE: Yes, ma'am.

THE COURT: So we've got three hours, so we'll see if we can finish by then. We'll see how far we can get.

MR. DAN SLOTCHIVER: And if not, we can finish in the morning. I would just ask that we start a little later tomorrow.

THE COURT: What time do you expect Dr. Freeman?

MR. DAN SLOTCHIVER: Whatever time you tell us. I would certainly like to have it start at 9:30, if that would be something agreeable with the court.

THE COURT: For him to start at 9:30?

MR. DAN SLOTCHIVER: Yes, Your Honor. We'll start back at 9:30 with him.

THE COURT: But if we need to finish up Dr. Cohen --

MR. DAN SLOTCHIVER: Then we'll come earlier for Dr. Cohen, yes.

THE COURT: Okay. Maybe we can do that. So we'll try to be finished tonight by 8:00.

MR. DAVIS: Your Honor, one other thing, we've got other witnesses as well, so I wondered -- I guess at the conclusion of today, we'll talk about witnesses for tomorrow other than Mr. Freeman, how we can arrange that, because we've got schedules to kind of coordinate. We can do it now, or we can do it after we --

THE COURT: Well, let's go forward now, and maybe we can finish with Dr. Cohen this evening. If not, we'll finish him up in the morning. Maybe if we could have Professor Freeman available by 9:30.

MR. DAN SLOTCHIVER: That will be great, Your Honor. Thank you.

THE COURT: And then we'll go from there.

Mr. Davis?

MR. DAVIS: May it please the court?

THE COURT: Yes, sir.

MR. DAVIS: And I will say I'm going to address some things that may have already been addressed, but I think it's important to build a foundation that I need to lay.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Dr. Cohen, would you please state your full name for the record?

A. Paul Cohen.

Q. What is your relationship to Abbie Dorn?

A. I'm her father.

Q. What is your profession?

A. I'm a physician.

Q. And where did you attend undergraduate and medical school?

A. You mean the city, or the name of the college, or what?

Q. Name of the college.

A. Franklin & Marshall College in Lancaster, Pennsylvania.

Q. And where did you attend medical school?

A. Jefferson Medical College in

Philadelphia, Pennsylvania.

Q. What are your professional designations and licenses?

A. I have a license in South Carolina, and I work as a primary care doctor, mostly doing senior citizen medicine, but other people, as well, in Little River Medical Center, in Little River.

Q. Are you an internal medicine doctor, or is there some other kind of specialty?

A. I'm board certified in internal medicine, board certified in pulmonary medicine, critical care.

Q. You're board certified in critical care?

A. Well, strike that. That was only a ten-year -- that lapsed, and I retired it, and I never took any recert, but the pulmonary boards and the internal medicine boards are granted in perpetuity once you take the exam.

Q. Do you have particular previous education in critical care?

A. Well, part of your training, yes.

Q. On occasion, do you medically treat your daughter Abbie?

A. Very rarely, very rarely. I'm not really her doctor.
Q. Is it safe to say that you do, in fact, on occasion, treat Abbie?
A. Well, the only thing I can think of, recently, she had an ear infection. I gave her some prescription ear drops. That's about it.
Q. Can you briefly -- I emphasize briefly, because this court has heard it a number of times, but briefly explain -- and you may not be able to. Briefly explain to the court what happened to your daughter Abbie in her accident.
A. Well, I was not there, and all the stuff that I got was from her husband Dan. Recently reviewed her malpractice lawyer's Website, which is still up, even though he's now a judge, to refresh some of the times involved. And I don't know how far back you want me to go.
Anyway, she delivered triplets. I think the last baby came out about 10:00 at night, and there was a problem and required extra delivery efforts. I think they used forceps. They used a suction device on the top of his head, and finally came out. The shoulder got stuck, apparently -- it's called shoulder dystocia -- and

finally got him out.
And I believe that she went to -- they recovered her in the delivery suite 'til about midnight, and then she went to postpartum floor, and then she subsequently -- I don't know how much detail you want me to go into.
Q. A little less detail than that, Dr. Cohen.
A. Well, she was attended by a part-time nurse who wasn't a hospital employee, which is important to the malpractice case, because she obviously didn't know what she was doing.
Anyways, Abbie dropped her blood pressure at 2:30 in the morning, very low. She was noted to be -- her skin was cold and clammy, means she was cold and kind of sweaty. Means different things, but most often, biggest complication after delivery, especially after this kind of delivery, would be hemorrhage. Blood pressure was really low. Nurse called the intern, first-year resident, same thing, and I think two of them may have come.
MR. DAN SLOTCHIVER: Your Honor, I want to allow Dr. Cohen to continue with the testimony, and I don't want to object to it, but I

want to make sure that by not objecting to him testifying as to some hearsay evidence, that I'm not, by any manner, waiving that right to object to it in the future.
At other points in the trial, I've been told that my failure should be an excuse, and I want to make sure I'm not waiving it. If I am waiving that in some capacity, then I would place an objection on the record, but if not, I think the purposes of talking about his understanding of it, I certainly have no objection.
THE COURT: Thank you.
MR. DAN SLOTCHIVER: Is that fair enough, Judge?
THE COURT: I have no objections to that.
Anyone else have an objection?
MS. MOORE: No.
THE COURT: Thank you.
BY MR. DAVIS:
Q. Dr. Cohen --
A. Anyway, she dropped her blood pressure, and the doctor came to see her, brought her some IV fluids. Blood pressure went up a little bit, and really nothing was done after

that. Doctor never came back. The lab test was ordered. Apparently, the lab tech didn't come, or came very late, even though the order was stat, which means immediate emergency, and she -- about 6:00 in the morning, another doctor came in and found Abbie not breathing, and she rapidly had a cardiac arrest after that. There's more.
Q. I believe that's enough for what I was trying to accomplish, Dr. Cohen.
Where was she located when the accident happened?
A. Cedars-Sinai Hospital, in Beverly Hills, California.
Q. Was there a medical malpractice action that followed?
A. Yes.
Q. And who brought that action?
A. Dan and Abbie.
Q. As a result of that action, was an award obtained?
A. Yes.
Q. Was part of that award given or granted to Dan Dorn individually?
A. Yes.
Q. And do you have an idea of how much of

that award went to Dan Dorn?
A. I think he got around 6- or $700,000, but I'm not exactly sure. It was in that range.
Q. So Dan Dorn personally received 6- or $700,000?
A. I really don't know exactly.
MR. DAN SLOTCHIVER: Your Honor, I don't understand the relevancy as to what amount, if any, my client received from it. I'm not sure how it pertains to this hearing.
MR. DAVIS: Your Honor, I'm trying to lay a foundation of how we got where we are.
MR. DAN SLOTCHIVER: Well, your Honor, the foundation as far as how Abbie received -- how the monies were received on behalf of Abbie and flowed into the trust, I have no objection to that, but the foundation to where else other monies would have gone, it's not relevant. It's not any more relevant how much money he would have received, how much money his children received, how much money the lawyers would have received. What's relevant is that money came into the trust, and I would object to any other testimony separate from that.
MR. DAVIS: Thank you, Your Honor.

And I will again remind the court this is a terrible case. The thing with -- the situation with Abbie has been very litigious. We've got all kind of actions in California and all kind of actions here. Part of our argument is that Dan Dorn has some ulterior motives.
MR. DAN SLOTCHIVER: Your Honor, this is not -- I object to this. It has not been affirmatively pled that we have any kind of ulterior motive involved, and I don't believe it's proper for them at this point to assert this, especially to assert it through counsel, who is now testifying that he has some outside theory. It's not before the court.
MR. DAVIS: Your Honor, again, I would like to lay a foundation for how we got where we are, and I think the med mal action has been discussed in detail, a little bit more detail about the actual award, who received it, how much went in a trust, how much went to an annuity, is all within the purview of what we've been discussing the whole -- the last two weeks.
THE COURT: I'll allow those questions with respect to the medical malpractice action and what happened as far as that action.

MR. DAN SLOTCHIVER: Thank you, Your Honor.
BY MR. DAVIS:
Q. Dr. Cohen, again, are you saying that Dan Dorn personally received 6- or $700,000?
A. Something like that. I really can't be sure, but it was well into the six-figure region.
Q. Did the children, who we all -- in this courtroom, who we all love, of course, did the children receive part of the award also?
A. I believe they got some sort of an annuity, but I can't -- I can't be sure exactly how much it is.
Q. But they did receive a portion of the award also?
A. Yes.
Q. And then Abbie received a portion of the award?
A. Yes.
Q. Part in cash to go into the Abbie Dorn Special Needs Trust?
A. Yes.
Q. And part to purchase an annuity for her life?

A. Yes.
Q. And when she passes away when God calls her, does the annuity stop?
A. Yes.
Q. Thank you, Dr. Cohen.
Let's explain for a moment the marital action between Dan Dorn and Abbie Dorn. Can you explain how that marital action began, the genesis? When did it -- when did the idea of the marital action begin?
A. Dan called us on the anniversary of the children's birthday, also the -- actually, I take that back. He called us on the day of Abbie's accident, which is a few hours after the kids were born. So technically, it would have happened the next day. I think it was June 21st.
And he called Susan and he called me independently. I don't know where Susan was. She took the call. We were staying in Bakersfield at the time. I was on the freeway, going over the mountains north of LA County, an area called The Grapevine, which is a really curvy road on Interstate 5.
Q. Let me streamline, if I can, Dr. Cohen. What I'm looking for is when did the

idea for the marital action take place with regard to how long after the accident?

A. I said he called us that he wanted -- he wanted to -- he wanted a -- I don't know how he phrased it. It's been years. But he said he wanted to move on, he wanted to get married again, or words to that effect -- I was driving the car, so I couldn't take this down verbatim -- and he wanted a divorce.

Q. When was that time-wise?

A. June 21st, 2007. It was a Thursday afternoon around 5:00 PM.

Q. Was it one year from the date of the accident?

A. Yes.

Q. Was it one year to the day?

A. Yes.

Q. Is there a particular correlation with any kind of religious law for waiting one year from the day of something to obtain a divorce?

A. I don't believe so.

Q. It just happened to be one year?

A. You'll have to ask him why he did it. I have no idea.

Q. So is it fair to say that it was Dan

Dorn's idea to dissolve the marriage?

A. He brought it up.

Q. Did you believe that as -- let me ask you this: Were you appointed -- why were you appointed as conservator or co-conservator in California?

A. Well, at that point, Dan wasn't visiting very often with the kids, and we were paying for everything at the Centre for Neuro Skills. And several weeks after the phone call, Susan said: We have to go home. We have to go back to Myrtle Beach.

And so at that point, we -- I know she contacted a lawyer in Bakersfield who was -- he seemed nice, but he didn't want to do anything, and then she contacted Mr. Michelson, who is an attorney in LA.

MR. DAN SLOTCHIVER: Your Honor, I would object to his testimony as to what his wife did. I believe he can testify as to what he did.

MR. DAVIS: That's fine, Your Honor. I want to streamline it as well, so no problem.

BY MR. DAVIS:

Q. What I was getting at, Dr. Cohen, were you appointed as conservator with your wife with

an intended purpose to pursue the dissolution of marriage action?

A. No. We brought it to bring her back to -- initially to bring her back to South Carolina. That was our first intention. We had to do that. We couldn't take her back without anything. And we were also asked to delay it for a little bit as well.

Q. Let me move into the -- you were appointed in -- first let me ask you: You were appointed in California as a co-conservator, correct?

A. Yes.

Q. And there was an order by the California court that's been entered into evidence as Petitioner's No. 101.

MR. DAVIS: Your Honor, may I approach?

THE COURT: Yes, sir.

BY MR. DAVIS:

Q. Dr. Cohen, I'm going to hand you Petitioner's Exhibit -- Plaintiff's Exhibit 101. For the record, are you on Attachment 3-D, which on the bottom references Page 2?

A. Page 2.

Q. Dr. Cohen, as you know, there is a -- there was a marital action in California brought which is the subject of this action here. There have been two questions: One, whether you had authority on behalf of Abbie to bring that action and then also whether you acted reasonably in hiring and paying attorneys in California to handle that action for you, or for Abbie.

Please read for the court the first paragraph under Attachment 3-D.

A. Is this on Page 2 on this particular thing?

Q. Right.

A. The first paragraph says --

Q. Where it says: The conservators are granted.

A. The conservators are granted the independent power under Probate Court Section 2591(a) to settle the pending personal injury claim brought on behalf of the proposed conservatee and to compromise or settle any dissolution action between the proposed conservatee and her husband Daniel Bernard Dorn.

Q. Let's go back over that last part of that sentence there where it starts with:

Compromise or settle. Can you read that slowly, please?
MR. DAN SLOTCHIVER: Your Honor, it's been asked and answered. He's read it. There's no reason to read it a second time.
MR. DAVIS: Your Honor, I want to emphasize a certain part of this paragraph, and I'd like to do it by pointing out to the court -- I realize it may be damaging to his case, but I think we're entitled to the opportunity to do that for this court.
MR. DAN SLOTCHIVER: It's asked and answered.
THE COURT: Do it briefly, Mr. Davis. I'll allow it.
MR. DAVIS: Thank you, Judge.
BY MR. DAVIS:
Q. Dr. Cohen, please read that sentence slowly, because it is such a critical paragraph.
A. Well, it's all one sentence.
Q. That sentence, yes.
A. The whole sentence again?
Q. Where it says: Compromise or settle.
A. And to compromise or settle any --
Q. Stop right there. It says: Any

dissolution action, correct?
A. Well, I was just about to read: Any dissolution action, yes.
Q. Do you believe that that included everything related to the action in California between your daughter Abbie and Dan Dorn?
A. Yes.
Q. Is there any confusion in your mind whatsoever that it included every part of that action, including the severance of the union, the child custody, child support, property settlement? Did that include every bit of the action in California?
A. Yes.
Q. Do you believe from that, along with other documents, that you had authority to hire and pay attorneys to handle that action for Abbie?
A. Yes.
MR. DAN SLOTCHIVER: And Your Honor, what document was that again, what exhibit number?
MR. DAVIS: Plaintiff's 101.
BY MR. DAVIS:
Q. Next, Dr. Cohen, I'd like for you to look at Plaintiff's No. 87.
MR. DAVIS: Your Honor, may I

approach?
THE COURT: Yes, sir.
MR. DAVIS: And if I exercise too many liberties, I apologize. I want to make sure I follow the correct protocols.
THE WITNESS: Why can't you approach?
MR. DAVIS: I can. I just need to check with the judge.
BY MR. DAVIS:
Q. Let's start here, Dr. Cohen, on Paragraph 7. I'm reading Page 3, Paragraph 7.
A. Ready.
MR. DAN SLOTCHIVER: Your Honor, I'm going to place an objection. He's having the witness read the documents without asking a question for which they'd be responsive, was there language for which you based your opinion, or in the case that we had asserted earlier, we impeached and, therefore, would have him read the documents, but just to hand him the documents and say: Please read the paragraph, I don't think is an appropriate question. I don't even think it's a question.
MR. DAVIS: Your Honor, it's laying the foundation for a question. Again, the overall

claim from Mr. Slotchiver and Mr. Kachmarsky is one that the trustees were not authorized to do what they did, and even if they were authored, what they did was unreasonable.
He is a co-trustee and a co-conservator, and I believe we're entitled to perfect the record and show where he believes, specifically, from the letters of these documents, the language in these documents, that he had authority, as trustee of that trust, to do what was done, which they're claiming that he did wrongfully.
MR. DAN SLOTCHIVER: I'm familiar with the claim that we filed, Your Honor, but there's been no question asked of the witness, other than to read this portion of a document. There was no question leading up to did you have a basis, did you have authority, what was your reason to believe that, but not would you read Paragraph 6.
THE COURT: I'm going to give him a little bit of leeway here.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
MR. DAVIS: Thank you, Judge.
BY MR. DAVIS:

Q. Dr. Cohen, for the court's, for our purposes, would you please read Paragraph 7, where it starts: By further order?

A. By further order of the Superior Court of California, County of Kern, Metropolitan Division, the co-conservators were authorized and granted independent power to employ attorneys to file an action for dissolution of the marriage between the ward and her husband, Daniel Bernard Dorn. On January 8th, 2008, the co-conservators commenced an action for dissolution of the marriage pursuant to the California court order.

Q. Is it your understanding from this language that the South Carolina court understood what was going on and what had taken place in California?

MR. DAN SLOTCHIVER: Objection, Your Honor. I don't believe there's a foundation for him to give an opinion as to what he believes the South Carolina court believed at a given time.

THE COURT: Mr. Davis?

MR. DAVIS: I'll rephrase it differently, if you'd like, Your Honor. I mean --

THE COURT: Would you rephrase it, please?

BY MR. DAVIS:

Q. Is it clear in your mind that the court order references a previous order from California?

MR. DAN SLOTCHIVER: Your Honor, once again --

MR. DAVIS: That's his understanding, Your Honor.

MR. DAN SLOTCHIVER: He didn't ask him his -- what is your understanding is different than is it clear in your mind what the California court -- what the court contemplated. I believe he's trying to get Dr. Cohen to tell what the court contemplated, as opposed to what Dr. Cohen understood, and there is a distinction.

THE COURT: Rephrase that again, Mr. Davis.

MR. DAVIS: Sure, Your Honor. I'll be happy to.

BY MR. DAVIS:

Q. Dr. Cohen, do you understand --

MR. DAVIS: Is that what you're looking for? I'm not being cute. I'm serious. And I will make one quick comment, not disparaging to him at all, but I'm not trying to establish

anything that's really that -- the earth's not changing, or it's not moving off its axis. We've already done this. I just want to perfect the record that they believe they had authority and why they want to have authority. I don't really understand, quite frankly, why he continues to object, but he's entitled to, so we'll move forward.

MR. DAN SLOTCHIVER: I wouldn't object if you ask him why do you believe he had authority. I think that's the proper question.

BY MR. DAVIS:

Q. Did the South Carolina transfer of jurisdiction order reference the California order that we just talked about for granting the co-conservators authority to hire and pay attorneys to handle the dissolution action on behalf of Abbie?

MR. DAN SLOTCHIVER: Once again, Your Honor --

THE COURT: He asked him did the South Carolina order reference the California order. I think he can answer that.

MR. DAN SLOTCHIVER: I agree with that part of it, but what I would object to is the part

that alludes to it granted certain authorities. It may have referenced it, but I don't believe that he can testify as to what that order granted.

THE COURT: I will allow it.

MR. DAVIS: Thank you.

THE WITNESS: What was the question again?

MR. DAVIS: I have to applaud Mr. Slotchiver, because he definitely runs interference, and he's good at that.

MR. DAN SLOTCHIVER: Your Honor, I'm not trying to run interference. I'm just trying to follow the rules and make necessary and appropriate objections as they come along.

THE COURT: Thank you.

BY MR. DAVIS:

Q. The question was: Did the South Carolina order reference the California order granting you and your wife, as co-conservators, the authority to hire and pay attorneys to handle the dissolution action in California between Abbie Dorn and Dan Dorn?

A. Yes.

Q. Dr. Cohen, can you turn with me to Page 8, Paragraph 9? And I won't ask you to read

the whole paragraph, out of deference to Mr. Slotchiver. I don't think you necessarily have to. On Paragraph 9, the third sentence down, starting with: Conclusion. It's actually in the middle of the sentence, but could you start there and read from: Conclusion?

MR. DAN SLOTCHIVER: Your Honor, once again, I would object. I'm not sure of the purpose as to reading a document. If the question is do you have a basis, do you have an opinion, what is the opinion based on, looking at this document, what does it do for you, but just to read a document blankly without saying why you're reading it or having him explain what the basis is or what he understood from it, I don't believe that's appropriate.

MR. DAVIS: Your Honor, let me tell you a little anecdotal story that I think you'll get a kick out of. When we get a little toy for the kids from the store and bring it home, and I'm trying to put it together without the instructions, and I get that nice little famous question from my wife: Bret, did you look at the instructions? Did you read the instructions? And my answer, most often, is going to be: Well,

Honey, I didn't need to read the instructions. No, I didn't read the instructions.

Well, Your Honor, these are the court's instructions to the co-trustees and co-conservators. They read this. The court told them what to do. And I certainly can ask them did they rely on this, and what is their understanding of the court's instructions to them, and I have no idea how that could be objectionable.

MR. DAN SLOTCHIVER: Well, if he wants to ask him what did you rely on, I don't object to it, but I don't think it appropriate to tell somebody: Read this paragraph, understand that this is the answer, this is your instruction, and then I will ask you a question that you can respond to.

THE COURT: Mr. Davis, if you could move this along. Maybe rephrase your questions without asking him directly to read from the order.

MR. DAVIS: I have a question about this conclusion of these matters and what did that mean to him is what I was asking him.

THE COURT: I think you may ask him that.

BY MR. DAVIS:

Q. Dr. Cohen, in that paragraph where I was asking you to read: Conclusion of these matters -- actually, just before that, it says: To be paid at the conclusion of these matters through the attorney for Petitioners Cohen are approved and constitute a proper disbursement from the estate and funds of the Abbie Dorn Special Needs Trust.

Did you understand, in your instructions from the court, that these matters included Paragraph 7 that you read to me just a moment ago?

A. This Paragraph 7 or a different Paragraph 7?

Q. Paragraph 7 is the one you read a moment ago.

A. There are a couple different Paragraph 7's.

Q. It's referenced on Page 3.

A. Oh, that Paragraph 7.

Q. Paragraph 7 referenced the California order, or letters of conservatorship.

A. Yes.

Q. And in that paragraph, as well, it

says: Those to be paid. In your mind, does that appear to be prospective, including fees to be paid in the future?

A. That would be future tense, I guess, so something or other.

Q. And where it says: Conclusion of these matters, would that involve every matter related to the dissolution action?

A. Yes.

Q. Again, referencing the previous document, where we said any, and the first paragraph of Attachment 3-D, based on that language, the word any, and also based on this language in Paragraph 9, where it says: To be paid at the conclusion of these matters, was there any --

A. 3-D, what is that? Is that the previous one?

Q. Yes, what you read a minute ago.

Was there any question in your mind whatsoever that you had authority --

A. No question.

Q. -- to hire and pay attorneys to handle a marital action on behalf of Abbie?

A. No question.

Q. All right, Dr. Cohen. That is assuming that you had to have prior court approval.

Let's go back and look at the Abbie Dorn Special Needs Trust, and that's Petitioner's No. -- Plaintiff's No. 1. Paragraph 12, Page 10, that paragraph has been the topic of a lot of discussion. Based on that paragraph, do you believe there to be a difference between the attorney hired to represent Abbie and an attorney hired to represent you and the other trustee for, say, a breach of fiduciary duty?

A. Yes, I believe it is. There is a difference between -- it's all in the last sentence.

Q. Do you believe that you actually had approval to hire attorneys for Abbie's dissolution of marriage action without prior court approval?

A. Yes.

Q. But you went and -- but you had prior court approval anyway?

A. Yes.

Q. So what you're saying is you don't believe, under the terms of the document, that you actually had to have approval to begin with, but

even if you did, you did have prior court approval?

MR. DAN SLOTCHIVER: Your Honor, I object. I can't follow that question. I'm usually pretty good at them. It sounds like it's very compound. He can lead him. It's his choice. I can't follow the question.

MR. DAVIS: It's just a dependent clause.

MR. DAN SLOTCHIVER: I don't object to the leading. I just don't understand the question.

THE COURT: Mr. Davis, if you might could ask that again, or we could have the court reporter read it back.

MR. DAVIS: I'll ask it again, Your Honor. No problem.

BY MR. DAVIS:

Q. Do you believe there's grounds to show that you actually did not need prior court approval to hire and pay attorneys to have a marital action in California for Abbie?

A. Yes.

Q. If it is established that you actually did have to have prior court approval, do you

believe that you did have prior court approval?

A. Yes.

Q. Dr. Cohen, turn with me to Paragraph 17. As you know, there's been a lot of discussion about preserving assets for the benefit of Abbie's three children --

A. Yes.

Q. -- from the trust?

A. Yes.

Q. Do you believe that that is your charge as trustee, to preserve assets for the benefit of the three minor children of Dan and Abbie Dorn?

A. No.

Q. And do you believe that Paragraph 17 helps justify your understanding and belief in that regard?

A. That's what it says, the trustees have to consider solely the interest of the beneficiary, Abbie Dorn.

Q. In your mind, the term solely pertains only to Abbie. Is that correct?

A. That's, I guess, how the English language reads.

Q. Back to Plaintiff's Exhibit 87. I

left out a point that I want to make. I want to go back to it. Paragraph 16, please tell me your understanding, Dr. Cohen, of the language in Paragraph 16, Page 9.

A. Do you want me to read it out loud or --

Q. Just read it and give me your understanding of whether it was required to come back to the court to get additional authority or whether you believe the court gave you authority and said you don't have to come back to me and get authority.

MR. DAN SLOTCHIVER: Your Honor, I think this has been asked and answered repeatedly.

MR. DAVIS: Your Honor, again, I'm entitled to establish a record for a trustee. There's two separate co-trustees. He's on the stand, and these questions have not been asked of him. I believe I can --

MR. DAN SLOTCHIVER: I believe they have been asked of him, the same question repeatedly.

THE COURT: I'm not sure he's referring to Paragraph 16 on Page 9. I don't know that he -- are you saying, Mr. Davis, you didn't

cover that in your initial questioning regarding --

MR. DAVIS: Right, I did not.

MR. DAN SLOTCHIVER: So perhaps it's the same question, but this time with reference to Paragraph 16, as opposed to Paragraph 12 as opposed to the other documents.

MR. DAVIS: I don't interrupt him. It's a different question, Your Honor. This is regarding ongoing supervision of the court. I have not asked him any question about that.

THE COURT: I'll allow it.

MS. MOORE: Bret, I'm sorry. Which document are we talking about?

MR. DAVIS: Talking about the order of transfer of jurisdiction, Paragraph 16, Page 9.

BY MR. DAVIS:

Q. If you want to take a minute and read that, Dr. Cohen.

A. Okay. I've read it.

Q. Do you believe the court is telling you there that you've got authority to handle the dissolution action, and you do not have to come back to us for any additional authority?

A. That's what it looks like, sir.

MR. DAVIS: Your Honor, I'd like to ask the court a question, if I may. I can't recall exactly where we are on this argument of reliance on counsel. I think that we are waiting an order from this court regarding something regarding the -- maybe refresh my memory. We've got affirmative defenses waiting for a later order of this court. We're waiting --

THE COURT: Why don't you refresh my memory, Mr. Davis. Are you talking about the motions that were argued yesterday?

MR. DAVIS: The motions that -- what's today, Tuesday? Yesterday. You reserved judgment, and you were going to hear -- have some memorandums provided to you, and there was going to be a later ruling, and I'm trying to recall exactly what issues were going to be ruled on later. Maybe Dan can remind me.

MR. DAN SLOTCHIVER: Sure. Your Honor, the issues before the court were we objected to any testimony which related to an affirmative defense, as one was not pled, and Your Honor said that you would withhold making a decision on that, and you would allow testimony to go forward, but not allowing testimony that would

be violative of that argument to go forward at this time.

If, in fact, Your Honor decides in the future that no affirmative defenses can be pled or asserted, then there's no harm. If Your Honor decides in the future that affirmative defenses can be introduced or if Your Honor decides to grant the motion made by Cohens' counsel or by Lynette Hedgepath allowing the -- or amending the pleadings to conform with the evidence under that same argument, then you'll allow new testimony to be brought at some point in the future relative to that issue.

But at this juncture, you have -- your order was that for right now, for these purposes, it cannot be testified to in court. That is my recollection of what happened yesterday.

MR. DAVIS: Of course, Your Honor, we've got a defense that -- whether they relied on counsel or not, so I think what we're saying is we're going to brief it and then get back and -- is that correct?

THE COURT: I believe so, yes, sir.

BY MR. DAVIS:

Q. Dr. Cohen, do you believe that there

was -- is there any reason in your mind that you would not have complete and full authority to hire and pay attorneys to handle the complete marital action in California? Is there anything from a court that would interrupt that authority?

A. Not that we -- I could foresee.

Q. Was the marital action in California all handled under one case number?

A. Yes.

Q. Was it continuous?

A. Well, it was -- yes, it was continuous. I mean, it wasn't like every day, but it was continuous. It wasn't stopped and restarted again.

Q. And what is your understanding of the -- all the matters involved in the California dissolution action?

A. Could you clarify all the matters involved? What do you mean by that?

Q. Property settlement, child custody, those types of things. What did it include?

A. Well, it included the termination of the marriage bond.

MR. DAN SLOTCHIVER: Your Honor, I don't believe that he is qualified to testify as

to the law in California as it applies. The record speaks for itself. The documents speak for themselves. They certainly put up testimony from Ms. Lisa Meyer talking about it, but in his capacity as a physician, I don't believe he could testify as to what is contemplated within the California laws pertaining to marital dissolution.

MR. DAVIS: I appreciate the position. He referred to him as a physician, which he is, Your Honor, but he's being questioned as a pure trustee and co-conservator. And he hired the MOLM firm to handle a marital action, and I was asking what they were hired to handle, what all did that include.

MR. DAN SLOTCHIVER: So are we to understand, then, Your Honor, that he can ask him what -- we can lay a foundation as to how he got this information?

MR. DAVIS: No.

MR. DAN SLOTCHIVER: And then at the next juncture, I'll be able to examine Dr. Cohen about communications he had with counsel, assuming that's where he got it from?

MR. DAVIS: We didn't say communications with counsel, why did he retain

counsel. I'm not talking about any communications he had with counsel. We're not opening the door, Your Honor. I just simply asked what did the marital action in California include.

THE COURT: I will allow that.

MR. DAVIS: That's all I was asking.

THE WITNESS: Well, when we hired the MOLM firm, the divorce -- the separation of the marital bond, or whatever you call it, had already been done already, but all those other items, such as custody, child support, visitation, division of assets, or whatever name you call it by, had not been done yet.

BY MR. DAVIS:

Q. So it's safe to say the marital dissolution action in California included all those items?

MR. DAN SLOTCHIVER: Objection, Your Honor. He's being asked to form an opinion about whether or not it included all those items, and that certainly is a bone of contention in this court.

MR. DAVIS: He used his discretion as trustee to make that decision, Your Honor.

MR. DAN SLOTCHIVER: I'm not sure

there's any foundation with which he can make that decision. I believe the document -- if you want to use Dr. Cohen's words, the document speaks for itself, and I believe the document does speak for itself, but not in the line of the question that was presented to him.

THE COURT: Any response, Mr. Davis?

MR. DAVIS: Just reminded of a few Grateful Dead songs, Your Honor. It's the same question. It's a simple question, what items were included in the marital dissolution action, what is his understanding of the items or matters that were included. It's a pretty simple question.

THE COURT: Did he not just answer that question?

MR. DAVIS: Okay. Well, then I think -- all right.

BY MR. DAVIS:

Q. Dr. Cohen, do you understand that the attorneys in California were working for Abbie and not for you as trustee or conservator?

A. Yes.

Q. Dr. Cohen, I want to talk to you about the action that was filed on you and Mrs. Cohen's behalf in South Carolina. Plaintiff's

Exhibit 100. Dr. Cohen, when this action was filed, did you know that you had authority to hire and pay attorneys in California to handle the marital action on behalf of Abbie?

A. Yes.

MR. DAN SLOTCHIVER: Objection, Your Honor. I believe the question was did you know that you had authority, as if he's referring to him that you had authority, as opposed to what did you know or what was your opinion about it.

MR. DAVIS: I believe it's a fair question, Your Honor. If you'd like me to restate it, I'll be happy to.

THE COURT: Please restate that.

BY MR. DAVIS:

Q. Did you understand that you had authority to bring -- or to hire attorneys to handle a marital action in California for Abbie?

A. We understood that.

Q. In fact, Dr. Cohen, it's actually stated in this petition, correct?

A. You'll have to show me where it says that.

Q. Paragraph 11, if you take a look at that paragraph.

THE COURT: What document is that, Mr. Davis? I know it's 100, but --
MR. DAVIS: It is the amended petition to affirm payment of fees and to reform a trust. As you recall, Your Honor, I filed an initial petition, and then you, this court, instructed me to amend it to include the South Carolina Department of Health and Human Services.
THE COURT: Thank you.
MR. DAVIS: So it should be the same petition with just the addition of DHHS.
BY MR. DAVIS:
Q. Paragraph 11, does it state that you believed, as petitioner, that you already had authority?
A. May I read this, please?
Q. Yes.
A. And what was the question again?
Q. When this petition was filed by you and Mrs. Cohen, did you believe or understand that you already had authority to do what was being done in California on behalf of Abbie?
A. Yes.
Q. Does it clearly state that in the petition?

A. Yes.
MR. DAN SLOTCHIVER: Objection to the relevancy, Your Honor. The petition is one that they created for him, so relying on a petition that you created, I'm not sure how that shows any relevant evidence to the court.
MR. DAVIS: Thank you, Mr. Slotchiver.
Your Honor, a lot of weight from Mr. Dorn's side has been put in an email that I sent to this court, to you, Your Honor, which is a little unusual in its context to be talking about it in this context, but they have proffered the argument that they didn't believe that they had authority to do what they did because of the language in the email that I sent to you, Your Honor, and I want to point out through this --
MR. DAN SLOTCHIVER: And I'm sorry. I don't know if this is a question. I don't believe this is -- this is a dissertation at this point. There's no question before the court.
MR. DAVIS: I'm explaining my questioning, why I'm questioning it, to the court.
THE COURT: Thank you.
MR. DAVIS: The point that we're making through these questions, Your Honor, is

that this petition, the original petition, which is virtually identical to this one, was filed very shortly after that email, so they clearly understood --
MR. DAN SLOTCHIVER: Your Honor, I object. Now counsel is testifying as to what his counsel -- as to what his client understood. I don't believe counsel is able to testify as to what his client understood. He can argue that at the appropriate time in the proceedings, which I believe would be in the closing arguments, but I don't believe he can testify.
MR. DAVIS: He's exactly right, Your Honor. The only problem is he just testified to that, so I'm not testifying to that. He just said it on the record.
THE COURT: I believe Mr. Davis is trying to answer your objection that it's not relevant. Wasn't that the objection you made? Because if this was their pleading, they could put anything in it they wanted to.
MR. DAN SLOTCHIVER: They could put in anything they wanted to, and my objection was you shouldn't be able to rely on a document you pled as evidence. You can say I pled it because I

thought, that's certainly appropriate, and I believe Dr. Cohen's done that about three questions ago, but I objected to him testifying that he's relying on a petition that he filed.
MR. DAVIS: I'm not relying on it, Your Honor. I guess I am relying on it because I'm the attorney of record.
MR. KACHMARSKY: Your Honor, I wanted to note for the record that the petition was also amended to include the three minor children, who are not included in it in the first one, in addition to the South Carolina Department of Health and Human Services.
THE COURT: Thank you.
MR. DAVIS: No problem. I'm not disputing that. Appreciate that, Mr. Kachmarsky.
THE COURT: Mr. Davis, I believe you can argue that position in your closing as to --
MR. DAVIS: Okay. And I don't intend to argue it right now, Your Honor. I'm just trying to explain to the court why I'm questioning the witness in this regard.
Your Honor, one second. I just need to grab one document.
THE COURT: Sure.

MR. DAN SLOTCHIVER: May I approach to see a document?
THE COURT: Sure.
MR. DAVIS: Your Honor, I would ask the court to take judicial notice of one item that the original summons in this matter -- or actually, I may have an earlier document, as far as a date that something was filed in your court is all I'm asking, but let me get that document.
May I approach, Your Honor?
THE COURT: Yes, sir.
MR. DAVIS: I would simply ask the court to take judicial notice that --
THE COURT: I'm sorry. You might want to do that from the podium.
MR. DAVIS: No problem.
THE COURT: Thank you.
MR. DAVIS: I wanted to show you that, Your Honor. I just ask this court to take judicial notice that the original petition to affirm payment of fees from special needs trust to reform trust was filed on November 24th, 2010. I've got a copy here.
MR. DAN SLOTCHIVER: The filing speaks for itself, Your Honor.

THE COURT: Thank you. Court will note that for the record.
BY MR. DAVIS:
Q. Dr. Cohen, back to the amended petition that you've got in front of you. Please look at Page 5 of 7 under the prayer for relief, Paragraph E, and can you tell me your understanding of what that paragraph is asking this court to do?
A. Directs that no child support or fees or costs incurred by Daniel Bernard Dorn be paid from the trust estate.
Q. So it's obvious, then -- is it your understanding that one of the reasons this petition was filed with this court was to get a ruling that child support could not be paid from the Abbie Dorn Special Needs Trust?
A. Yes.
Q. Was there another reason why this petition was filed with regard to, say, the language regarding prior court approval of trustees' attorneys?
A. Well, the only reason I know, which would head off any potential litigation from California.

Q. And was it also filed to clean up some language?
MR. DAN SLOTCHIVER: Your Honor, I object. The witness has testified as to the only other reason I know was to head off litigation with California. The question's been asked and answered. For him to now ask him another question, was it also filed to do this, would be inappropriate.
MR. DAVIS: I certainly can ask him a leading question.
MR. DAN SLOTCHIVER: It's been asked and answered. He asked him. He got an answer.
MR. DAVIS: Your Honor, if you can recall his response, he was assuming in his response what was done.
MR. DAN SLOTCHIVER: I don't believe Mr. Davis can testify as to what his client was assuming in his response. I believe he asked the question, he got an answer. He doesn't like the answer, but he got the answer, and to ask it again would be objectionable. It has been asked and answered.
MR. DAVIS: Your Honor, I mean, we're kind of getting a little -- he's already

testified, when Mr. Slotchiver questioned him, that he wanted to shore up some language and clean up some language, and it's been also offered by --
MR. DAN SLOTCHIVER: It's been asked and answered, Your Honor.
THE COURT: Sustained. You need to move on, Mr. Davis.
MR. DAVIS: I wasn't done with my questions on this petition. It hasn't been asked and answered, Your Honor. I've still got other questions that I need to ask here on cross-examination.
THE COURT: I understand, but that particular question I think he did answer.
BY MR. DAVIS:
Q. Dr. Cohen, were you trying to shore up language in the trust document when you filed this petition?
A. Yes.
Q. Did anything in this petition give you -- anything in this petition give you reason to believe that you did not have authority to hire or pay attorneys in California to handle the marital action on behalf of Abbie?
A. No. I believe we still had all of

that authority, as previously granted.
Q. Thank you. And Dr. Cohen, did you believe when you filed this petition that if Dan Dorn -- rather, excuse me, if child support was paid from the trust, that it could disqualify Abbie from Medicaid benefits?
A. That's what we believed.
Q. Dr. Cohen, from your understanding, and you were there for the whole ride, did Dan Dorn's attorney in California exhibit a pattern of aggressive litigation?
MR. DAN SLOTCHIVER: Objection, Your Honor. I don't believe that this witness is qualified to talk about what is a pattern of aggressive litigation. I don't believe it's appropriate to say you've been there for the whole ride. I believe the entire question is objectionable.
MR. DAVIS: Your Honor, he certainly can formulate his own opinion. He's here in person testifying about what's in his own mind. There's nothing inappropriate about that at all, Your Honor. That's what he believes. The court can take that information and give it how much credibility it wants to give it or how much weight

it wants to give it, but he's entitled to answer the question, Your Honor. His opinion and his thought and his understanding, there's nothing objectionable about that at all.
THE COURT: It's an interesting point, Your Honor, but I'm not familiar with any other interaction Dr. Cohen's had with other counsel in litigation. I'm not familiar with the fact that he's had the experience to be able to tell the difference between an aggressive lawyer and a nonaggressive lawyer. I've heard the testimony from Lisa Meyer today that the amount of expenses that were incurred, were commenced, were pretty usual in a divorce over there, nothing different, so I'm not really sure how he can testify about a lawyer who practices in another state being aggressive.
MR. DAVIS: Your Honor, he's beginning to testify differently than what Ms. Meyer did.
MR. DAN SLOTCHIVER: I'm not testifying at all.
MR. DAVIS: She certainly said there was a filing of a standing issue and a refiling of the same one when another judge came. It's not fair to say that it's no different than any other

marital action in California. That's not what she testified to, so he mischaracterized the testimony.
THE COURT: I'll allow it regarding his opinion.
THE WITNESS: Well, just to put an analogy, it felt like she was constantly throwing legal money against the wall, and our attorneys were constantly -- in voluminous amounts, and our attorneys were basically trying to wash it off all the time. It just went on and on and on and on.
BY MR. DAVIS:
Q. Can you give some specific examples of things that Vicki Greene did, Dan Dorn's attorney?
MR. DAN SLOTCHIVER: Objection, Your Honor, hearsay, relevancy. Whatever she did, it's -- he is now testifying as to examples of what he thinks another lawyer -- a lawyer did that exacerbated the expense of an estate without having any basis with which to give that opinion.
MR. DAVIS: Your Honor, you can attribute whatever weight that you want. We're not saying he's an expert witness. He's a witness. He's giving information about -- testimony about his own mind. It's up to this

court, the trier of fact, to see what weight you want to apply to it. It doesn't mean -- if you give it a little bit of weight or a lot of weight, that doesn't mean he can't testify. He certainly can testify about what's in his own mind. It's his testimony.
MR. DAN SLOTCHIVER: He's got no basis to judge attorneys.
MR. DAVIS: Well, the court can consider that.
MR. DAN SLOTCHIVER: He repeatedly told us in direct examination, what he called: I'm not, I think the word was, a legal eagle. He repeatedly told us that: I can't tell you what legal eagles would do. And now he's being asked to give an opinion judging attorneys. I believe it's entirely inappropriate.
MR. DAVIS: Again, Your Honor, if I were offering that as expert testimony, I would completely agree with Mr. Slotchiver. I'm simply asking the witness to testify about his own understanding, and there's absolutely nothing objectionable about that.
MR. DAN SLOTCHIVER: And it has no relevance to --

MR. DAVIS: You can attribute whatever weight you want to attribute to it, but he's certainly entitled to state his opinion. That's his own opinion, his own understanding, nobody else's. He's not talking about what somebody told him or whatever; he's talking about what's in his own mind.

THE COURT: I'm going to give him a little bit of leeway here to go into this.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE WITNESS: Well, for example, in order to show how things operated, I think the first time Dan did a deposition, they walked out, even though the deposition wasn't finished, necessitating the expense of getting a retired judge, Cohen, who's no relation to me -- it's a married name, and her husband is no relation to me either -- to be hired.

MR. DAN SLOTCHIVER: Your Honor, now we're hearing testimony about what somebody else did as a result of an action that Dan Dorn did in order to substantiate his belief that this was litigious and that the lawyer was aggressive. I think we've gone far awry from the question that

was asked.

MR. DAVIS: Your Honor, you know, we have to step back and say, okay, what we're trying to do is to get truth and information to this court, because it's critical that the court have the information that it needs to make an informed and complete decision in this matter. It's a very difficult matter, and we certainly would ask for latitude, and him providing information about the context of what happened and recall that this action in South Carolina is about what they did in California, that they spent too much in legal fees, and what we're attempting to show is that the reason the fees --

First of all, the fees were the same -- similar for both sides, based on Ms. Meyer's testimony, and that the reason that they were as high as they were is because it was driven by Dan Dorn, and we've got proof and evidence of that, Your Honor. And I know it's damaging to his case, but it's important to get it into this court because the court needs to know that to make its decision.

MR. DAN SLOTCHIVER: Your Honor, I think the court's entitled to hear credible

evidence. I don't believe this evidence said it was driven by Dan Dorn. In fact, Lisa Meyer testified that the costs associated with this were no different than typically are involved in a visitation action.

THE COURT: I'm going to allow the testimony. I believe he can testify based upon his understanding and his knowledge of what happened in the California case.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

MR. DAVIS: Thank you, Your Honor.

BY MR. DAVIS:

Q. Dr. Cohen, again, some examples of what Vicki Greene, Dan Dorn's attorney, did in California to drive the costs up?

A. Well, after they got the judge, I believe that Ms. Greene showed up -- did not show up for a deposition, one of her assistants showed up, and Ms. Greene I think was there by telephone, and again, she walked out on the judge who was supervising -- who was mediator. I don't know what you call it, being a moderator. I don't know the proper word. Everybody here knows what the proper word is, but I don't. And it took -- for

one deposition, I think it took three different tries to get through one whole deposition.

Another time, the LA Times was interested in the case, and it turned out to be a First Amendment issue which necessitated more money, and ex partes in California are very expensive.

I don't think -- with the exception of Dan and Susan, none of us have been here, but you go, and you wait in court, and you wait -- you sit on the -- outside on wooden benches and wait to be called. One of the other -- the courts are packed, and all your attorneys are on -- I don't know how -- they're billing you for all their hours sitting, and all that stuff gets real expensive, and they're going to court with multiple visits, and it just runs up the bill.

BY MR. DAVIS:

Q. Let me ask you this, Dr. Cohen, and I have to -- and I want to be mindful of Mr. Slotchiver's objections. While I disagree, I think he does have some points that I need to consider.

What actions did Vicki Greene take that caused increasing costs that were ultimately

ruled on against her?
MR. DAN SLOTCHIVER: Your Honor, once again, same objection. He's now testifying what Vicki Greene did. I think it's inappropriate.
THE COURT: I'm not going to allow that.
MR. DAVIS: I was going to corroborate the information from Ms. Meyer. I don't think there was anything new. Simply, Your Honor, what I was looking to ask Dr. Cohen about was the First Amendment argument that Ms. Meyer brought, the standing that was brought by two different judges, and did that contribute to the escalation of costs was where I was going.
THE COURT: Thank you.
BY MR. DAVIS:
Q. Dr. Cohen, did you seek to resolve the matters in California?
A. Me personally?
Q. You and -- did you -- were you aware -- from your side, I may say, did you attempt, as a co-trustee or co-conservator, to resolve this matter long before it finally resolved?
A. I believe Susan had emailed Dan and --

MR. DAN SLOTCHIVER: Your Honor, I would object to his testimony about actions that Susan Cohen did. I believe he could testify as to what he did.
MR. DAVIS: I agree, Your Honor.
BY MR. DAVIS:
Q. Dr. Cohen, I'm looking for your behavior, your activity.
A. I never did anything personally.
Q. Were you aware that there were a number of attempts to resolve this matter?
A. Yes.
Q. Were those attempts rebuffed, or were they received with any form of welcome?
A. What was that last --
Q. Were they rebuffed or received with any form of welcome?
MR. DAN SLOTCHIVER: Your Honor, I'd object to the hearsay. Any settlement negotiations, it would not be appropriate to go into them. Obviously, they weren't accepted because the case wasn't resolved.
MR. DAVIS: Your Honor, I believe you already have testimony on this, and again, one of our positions is, and it's already been testified

to by more than one witness, is that they tried to reduce the costs. They're claiming they spent too much money. The conservators and trustees made attempts to reduce that, and it was rebuffed.
MR. DAN SLOTCHIVER: I'm sorry, Your Honor. Now he's making a closing argument.
MR. DAVIS: And I'm trying to establish that through this witness, Your Honor. I'm not making a closing argument. I'm trying to establish those points through this witness, and that's a very important part of our case, Your Honor, and it's already been discussed on testimony from other people.
THE COURT: I think your client can testify as to his direct knowledge regarding that.
BY MR. DAVIS:
Q. Dr. Cohen, do you have direct knowledge that the attempts to resolve this on behalf of the conservators was rebuffed and not welcomed?
A. How do you mean rebuffed?
Q. Not accepted.
A. Could that be not responded to either?
Q. It can mean that too.
A. Yes.

Q. One quick question: Was Dan Dorn's claim for child support ever removed prior to the conclusion of the California marital action?
A. No.
Q. Did you attempt to have it removed?
A. I'm really not sure what our attorneys did in that regard, I can't tell you, but it was always the 800-pound gorilla sitting in the corner of the room.
Q. Dr. Cohen, let's talk about Abbie's condition for a few minutes, her physical and mental condition. Was Abbie's condition three months after the accident different than her condition today?
MR. DAN SLOTCHIVER: Your Honor, I would object to it in so much as it is expert testimony. Is this limited to his opinion?
MR. DAVIS: Your Honor, certainly, it's limited to his own understanding. That's what I've been saying all afternoon, Your Honor.
And again, I want to remind the court that their argument is that Abbie is incapable of receiving a benefit from visitation with her children, and our job is to show this court that she absolutely can receive a benefit and does, in

fact, receive a benefit from visitation with her children, and I've got to be able to establish that in direct testimony.

And I've got a person that's with her virtually every single day, who's also the father, the co-conservator, co-trustee, and is also a physician. So how else can we establish that, and how can this court obtain the information it needs to make a decision unless I'm allowed to establish that?

MR. DAN SLOTCHIVER: We believe, Your Honor, this is res judicata. Not only has the court ruled on this already, but the Cohens agreed to it. And now to come into this court and to argue that she's receiving a benefit, despite the fact that the evidence and the order from the California proceeding have already determined that there was no benefit would be inappropriate.

Any benefit that took place after the California order, we're not aware of, we don't have documents to support, we're not aware of, and it wouldn't be relevant to the money spent in litigating the California case.

And Your Honor, this case that I brought on behalf of my client deals with the

funds used to spend in litigation in the California case, so I don't know how it's relevant, and I'm worried that -- and I'm arguing it now because I don't know how far counsel intends to go with this, but to bring in witnesses and to bring in testimony to talk about how her condition got better, even though the California court not only ruled -- oftentimes, we have a ruling by a court, and you lose, people win, people lose, but here, they agreed to it. There was no dispute. It is absolute res judicata. They should be barred from going into this matter.

MR. DAVIS: Your Honor, I appreciate his argument, but it is completely and utterly without merit. There's zero grounds for his argument. There's absolutely no res judicata, and there's actually conflicting information in the California order about this issue. There's absolutely positively nothing in California that precludes us from establishing that she's made improvement.

We've got information in Dr. Mamelak's deposition, and we've got information from Dr. Hays, who was the court-appointed doctor, neurologist, in California who was recommended by

Dan Dorn's attorney, Vicki Greene. So it absolutely, positively, unequivocally has not been established res judicata that she does not receive a benefit from visitation with her children. There's been some dicta, there's been some language in a statement of a case which is not even actually the final judgment of the case.

I mean, I applaud his efforts, Your Honor, because then that would help his case tremendously, and I understand why he doesn't like my comments and my arguments, because it's very damaging to his case, but the truth has to come out and that there is absolutely no res judicata effect whatsoever.

MR. DAN SLOTCHIVER: Your Honor, the court has relied on the testimony of Dr. Hays in its order. And it's not that I don't like his argument because they're damaging to my case; I don't like his argument because the court has already ruled on these issues.

The matter before the court, Your Honor, is whether or not they were authorized to make the expenditures, whether or not it was reasonable to make the expenditures. The rulings in California and agreed upon by the Cohens, as

testified not only by Susan Cohen and Paul Cohen, but also as testified by Lisa Meyer, is that the court made these findings. They agreed to the findings. They determined that there was no compelling evidence to show that Abbie had any benefit, and therefore, they did not get visitation.

THE COURT: I don't think he's testified today that they agreed to those findings.

MR. DAN SLOTCHIVER: That they consented, and this was an agreement. They ended it. There was no trial to conclusion. Everybody agreed to the resolution.

THE COURT: Her testimony was that there was another order ending the action.

MR. DAN SLOTCHIVER: She testified to that, but the Cohens testified this is the order. Mrs. Cohen testified this is the order they relied on. And we asked her wasn't this order submitted as part of the order, and she said yes. Mrs. Cohen testified this is the order. Yes, it says these things. We talked about it in evidence.

MR. DAVIS: Your Honor, Ms. Meyer sat

right here this morning and said that she did not agree with those -- some of the findings. It's simply not accurate to say that the court order, the statement of the case, is something that they have agreed to, and we have res judicata effect. From his side, I think it's a wonderful argument. It's just not based in law or in fact.

As a matter of fact, it actually goes to show prudence on behalf of the trustees, Your Honor. Let me tell you why, because this matter was going on and on and on and on, and they wanted to get rid of this thing and resolve it, and they said although we completely disagree with those, and we have conflicting medical reports, let's end this doggone thing, and they did. So it actually shows that the trustees exercised great discretion and said let's finish this thing. Please, God, let's finish it. Let's get off this merry-go-round. But that does not establish any res judicata fact from dicta in California on what we're doing here.

MR. DAN SLOTCHIVER: Your Honor, they were out of money. They consented to this. They accepted it. They agreed to it. That was it.

Mr. Davis expressed it himself. He

said we don't like it -- they didn't like it, but they agreed with it, and that is the law. That is the ruling of the court. You can't now come in and say, well, you know, let's relitigate the whole case, and let's bring all these issues back in to show she's better when the court -- when they allowed a court order to be entered in California agreeing to end this thing, agreeing to the rulings. It would be improper, and I do believe it is res judicata.

MR. DAVIS: Your Honor, I believe that is absolutely -- and I believe when you have a chance to read through this, you'll agree that's completely and utterly without merit. I understand why he's making that argument, it would really help his case, but it's completely without merit.

If you look at the statement of case that we're talking about, there's conflicting information in there about what she can appreciate, what she can't appreciate. And at the end of the day, Your Honor, they go into this great thing of detail about we can't discount a disabled person, and they rely on cases that refer to a disabled person, and at the end of the day,

it says: Abbie, by and through her conservators, is granted visitation.

Now, why in the world would a court stand up and say this person has completely -- cannot appreciate visitation whatsoever, but we're going to grant Abbie visitation? Why would a court do that?

MR. DAN SLOTCHIVER: I believe Your Honor could read the order. What it says is we do not agree that being disabled alone would put you in a position where you could not have visitation. They said, however, in this case, it goes beyond that, and they said they've reviewed the evidence, they've reviewed the videotapes, they've reviewed the doctors' reports, they put particular findings in the record from Dr. Hays about his decisions about the fact that she does not have the cognitive ability to understand or appreciate or know people are there, that that part of the brain isn't there, and they say that they cannot find any compelling evidence to show that Abbie would benefit from the children; however, they believe the children would benefit from seeing Abbie, and therefore, with reference to this action, they granted limited visitation.

Then they go through the parameters of that limited visitation with reference to the restrictions on Susan Cohen with reference to the limited amount of visitation through Skype of Dr. Cohen with reference to the requirement that Dan Dorn bring the children to Myrtle Beach. It even goes further into the evidence that when he brings them to Myrtle Beach, what the guards are, what can be done, what can be said.

But Your Honor, this is -- the difference in the case today and when it was filed is that when it was filed, there were two separate actions. Neither had been resolved. If the action had been tried to conclusion, and they lost, and it was appealed, and it went to the supreme court, and they finalized the decision, that's the decision. But when they settle it, they've agreed to it.

And not only did they settle it, Mrs. Cohen testified: I'm not going after the Meyer firm. We're happy with the work they've done. And I don't know how we're going to go into all that evidence again in this case when they, by their own action, agreed to it.

MR. DAVIS: Your Honor, again, that is

completely and utterly without merit. As a matter of fact, the language in here, in this thing, says there's no compelling evidence. It does not lay down a gauntlet. It does not say there's no way that you can receive a benefit. It granted visitation to Abbie.

Their primary argument, which we've heard through Mr. Kachmarsky and Mr. Slotchiver, is that she's essentially dead, and she cannot receive any benefit from her children. Your Honor, we have a multitude of witnesses and ample tons of evidence that's going to come in to prove that she knows she's visiting her kids and that she absolutely benefits, and we've got to get that before the court, Your Honor.

THE COURT: Thank you, Mr. Davis.

MR. DAN SLOTCHIVER: I would ask the court to take a few minutes, then, to review the statement, because I think it would put it in perspective, and it would probably help us, because if we go down this road, it's going to extend the trial greatly. If we don't go down this road, it'll be a decision made -- either way, I think the court, if you'll take a few minutes and review this document that's submitted into

evidence, I think it would be helpful in your rendering a decision.

MR. DAVIS: It's already into evidence, Your Honor.

MR. DAN SLOTCHIVER: I know. That's what I said, it's already in evidence.

THE COURT: I have reviewed the statement previously when it was submitted I believe by Mr. Kachmarsky --

MR. KACHMARSKY: Correct.

THE COURT: -- when he filed maybe his motion to remove the trustees or maybe his motion for attorneys fees.

MR. KACHMARSKY: I've given it to you twice, actually.

THE COURT: Okay. And he asked me -- he implored me to review it before I ruled on whatever was pending, and I did, and I've reviewed it several times.

I think Mr. Slotchiver -- I'm sorry. My mind just went blank. I apologize. I guess it's late in the day. I'm sorry. Could not pull it out.

I think you have an opportunity to argue in closing that it's res judicata, but I

think until then, I'm going to let them go down this road and present this testimony to the court.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

MR. DAVIS: All right, Your Honor. I'll see if I can get back on track here.

THE COURT: Thank you. Might we have the -- I don't know if you have that last question that prompted all this.

THE REPORTER: That was about 40 pages ago.

THE COURT: I'm sorry. That will take too much for you to go back.

Are you good, Mr. Davis?

MR. DAVIS: Yes, I believe.

THE COURT: You go ahead, then.

MR. DAVIS: The question, I believe, if I'm not mistaken, was has Abbie made improvement since Dr. Mamelak last examined her.

MR. DAN SLOTCHIVER: And Your Honor, I would just ask that there be a time frame set. That's a wide-open time period, from many years ago to the present. If he can give a time frame.

MR. DAVIS: From the date of -- and I'm not trying to be cute, Your Honor, but again,

all of it's relevant, Your Honor, from the whole time period, because they're relying on a deposition from an examination in 2006, so we clearly need to know from 2006 to present whether there's been any improvement. All of it's relevant.

BY MR. DAVIS:

Q. Dr. Cohen, has there been improvement in Abbie since Dr. Mamelak's examination in 2006?

A. Well, I can go by what Dr. Hays discovered 2010.

Q. Let me get into that in just a moment, but let me go first as far as personally, what have you -- what are you aware of?

A. What am I aware of?

Q. Are you with her on a daily basis, regular basis?

A. Yes.

Q. What improvement have you personally witnessed?

A. Well, first of all, she has -- and I know this is going to be objected to, but her capacity to communicate with us by blinking has improved.

MR. DAN SLOTCHIVER: Your Honor, I

object. There's no basis to give this opinion.
MR. DAVIS: Again, Your Honor, back to the same thing that we said before. I'm not asking him to give an expert opinion on that. Bear in mind, he's with her every day, just like the mother. This is in his brain, has she made improvement, can he communicate with her. He and Mrs. Cohen are the only people that can give -- are the people that can -- not the only people, but the people that can give the most complete answer to that because they're with her so often.
And this court needs to know has she made improvement and does she receive a benefit from visitation, because the trust says -- everything goes back to the trust, and the trust says it's for the sole benefit of Abbie. And they have attacked the fact that they don't think that she can receive a benefit, so we have to have an opportunity to show this court that she does, in fact, receive a benefit.
And he's testifying as to what's in his mind. The court can take that into consideration how it weighs his testimony, but he's certainly entitled, like he was before, to give his opinion about what's in his mind.

MR. DAN SLOTCHIVER: Your Honor, he's giving expert opinion on the benefits that she's receiving or, alternatively, at the same time perhaps, or what she herself perceives. He is not an expert in this case. They had the opportunity to call an expert in this case to give that testimony. They have not done that. Once we open the door to allow them to do it, they can ask him anything they could ever think of and cover it by saying, well, Your Honor, this is what's in his mind --
MR. DAVIS: Exactly.
MR. DAN SLOTCHIVER: -- and with reference to his fiduciary actions. That's what's before the court. There's a distinction between that and tell me about Abbie with this, tell me about Abbie with this, what is your opinion about this. I don't think they're the same.
MR. DAVIS: Your Honor, we have to establish he's with her every day. The court has the discretion to hear the information, and I'm certain the court wants to have the information it needs to make a decision. And it is pivotal as far as Abbie's ability to appreciate visitation of the children, and you need to know that. The

court needs to know that.
MR. DAN SLOTCHIVER: I think with the limited weight that can be given to Dr. Cohen's testimony in this regard, it would just as well be accomplished by saying: In my opinion, she gets better. She's gotten better, and she's gotten better since the court date, or she's gotten better since Dr. Mamelak, and she's improved. Now, I think that is within the parameters of what a layperson observes, but to give an opinion about particular issues along the way I don't think would be appropriate.
THE COURT: I'm going to let him give his opinion as to what he's seen, what he's witnessed, what he knows regarding her condition, not as a medical expert, but as her father and one of her caretakers and someone who's with her day in and day out.
MR. DAVIS: Your Honor, I would also ask that he be afforded the opportunity to give you an opinion as a treating physician for her as well, and I will call the court's attention to the Probate Code, Section 627.806. It says: A trustee who has special skills or expertise or is named trustee in reliance upon the trustee's

representation that the trustee has special skills or expertise shall use those special skills or expertise.
And Your Honor, he already testified that he has treated her before. Not only is he -- I'm not finished, Mr. Slotchiver. Not only is he a co-trustee, a co-guardian, and a co-conservator, he's also a parent, and he also has treated her before, and he brought those special skills in as a trustee. And this code, our code, our trust code, says that you have to use those if you bring them in from the beginning as trustee. So he is certainly there. He's got a disabled child. He's a medical professional. That all went into consideration with him serving as trustee, so it's certainly allowable, Your Honor.
MR. DAN SLOTCHIVER: Judge, I had a feeling this is the road Mr. Davis was going down, so I wrote some notes when he asked the questions earlier. First, he's not listed as an expert. Second, and the quote I had, and the court reporter can find it, is that he asked: Did you ever treat her? Rarely, if ever. Well, he said: I do remember one time when I gave her some ear drops recently.

MR. DAVIS: Antibiotics.
MR. DAN SLOTCHIVER: Either way, for ear drops, I believe.
Judge, he's not a treating physician for her. I don't believe it would be appropriate for him to be a treating physician for his daughter. He has testified he's not a treating physician for her. He's testified that he is not a neurosurgeon, it's outside of his expertise, and he's not listed as an expert to testify for them.
THE COURT: Could you review that section again with me, Mr. Davis, special skills of a trustee?
MR. DAVIS: Sure, Your Honor. Do you want me to hand you the book, and you can take a quick look at it?
THE COURT: No. You can read it to me. 627 --
MR. DAVIS: 806, trustee's skills. A trustee who has special skills or expertise or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise shall use those special skills or expertise.
So Your Honor, he clearly -- when

they're appointing trustees, they say, look, just like this court would, assuming this court were in this role, he says: Man, this is a difficult case, you know, but it gives me some comfort because --
MR. DAN SLOTCHIVER: I'm not aware of any testimony to support this, Your Honor.
MR. DAVIS: One of the trustees is a medical professional.
THE COURT: Mr. Davis, thank you.
Let me ask -- I think Mr. Kachmarsky, were you going to voice an objection?
MR. KACHMARSKY: Well, I was just going to say the same thing. He said that he'd only like given her some ear drops or antibiotics. There is some testimony in Dr. Mamelak's deposition about what you would need to do in order to basically verify --
MR. DAVIS: Your Honor, I'd object. That's not appropriate. That's not part of the question. Is he making an objection as far as the question that I've asked? He's not in an opportunity now to testify to the court or argue before the court. This is a questioning session. If he's got an objection, that's fine, Your Honor,

but he's not in a position -- it's not an opportunity for him to argue any kind of case.
MR. KACHMARSKY: This document's in the record, I mean, and we'll get into it. We can get into it on cross. That's fine. But basically, you know, there has to be comprehensive testing for -- comprehensive neurological testing, which would require an exam, MRI, CT scan, and an expert to be able to make that opinion.
THE COURT: Thank you.
MR. KACHMARSKY: So I don't see where he could possibly offer anything that would be of use.
THE COURT: Anything from Ms. Hedgepath or Ms. Moore?
MS. MOORE: Nothing.
MS. HEDGEPATH: No.
MR. DAVIS: Your Honor, I would just remind the court that Mr. Kachmarsky said he didn't think there was any way possible that Dr. Cohen could offer anything that would be of any use, yet this man is living with her virtually every single day, and I would ask the court --
MR. KACHMARSKY: He's not saying that as an expert, Your Honor. I mean, I'm not

discounting --
THE COURT: I'm going to allow Dr. Cohen to testify as to Abbie's condition, what he has witnessed, what he has seen, whatever changes in her condition that he's seen as her father, as someone who has been a caretaker for her.
MR. DAVIS: And the special skills?
THE COURT: I don't think the special skills, Mr. Davis. I don't think his being a physician was necessarily taken into consideration when he was appointed trustee. I don't think it's proper to --
MR. DAVIS: Can I ask him that?
THE COURT: You can ask him that and see if you can present that to the court, but otherwise, I don't think we can rely upon 627.806 for special skills, simply because he's a physician.
MR. DAVIS: I understand, Your Honor. I appreciate that.
BY MR. DAVIS:
Q. Dr. Cohen, do you believe it to be -- do you believe your special skills as a physician were taken into consideration when you were

appointed as a co-trustee for Abbie Dorn's trust?
MR. DAN SLOTCHIVER: Objection, Your Honor. This would call for hearsay testimony, if it existed. I don't believe there's any foundation for him to be able to testify to it without introducing hearsay testimony. I don't even know the answer, but I object to the question as it's been phrased.
MR. DAVIS: Your Honor, you said I could ask the question, and I just asked the question.
MR. DAN SLOTCHIVER: I think I still have the right to object to the question.
THE COURT: Yes, I think he does.
MR. DAVIS: And he can certainly testify whether --
THE COURT: I will allow him to testify if he has any direct knowledge regarding whether that was taken into consideration.
BY MR. DAVIS:
Q. Dr. Cohen, was your being a physician taken into consideration, any consideration, when you were appointed as cotrustee for the Abbie Dorn Special Needs Trust?
A. I really don't know how to answer

that. I would like to think so, but I can't -- in all honesty, I have no idea.
THE COURT: Thank you. So I think we're not going to rely on the special skills. Thank you.
MR. DAVIS: Your Honor, I understand.
BY MR. DAVIS:
Q. Dr. Cohen, the court has allowed you to testify with regard to Abbie's improvement. Can you give us some facts, what you've witnessed about how much better she's gotten and what she can appreciate from your own personal opinion?
A. When she came back from California, which was approximately November -- well, it was November 2007. I'm trying to do the math in my head. Approximately 15 months after her accident, maybe more than that. It was June of '06 to November of '07. She couldn't do anything responsively, but over the years, she has been able to respond.
And it's just not a simple blinking of the eye. It's not a code or anything like that. When she says yes, she gives a long, unnatural blink. I mean, it's obvious. Anybody with one functioning eye can see this is not a normal

blink.
And let me demonstrate it for you. Abbie, do you want to go back to your bed? She's in her chair. Do you want to go back to bed? And she says yes. It takes a while. It takes a while for her to process it. Doesn't do it right away, may not do it. It'll be looking like this. It's obvious. No one blinks that way. It's obvious. And sometimes she does it rapidly, sometimes she won't do it. She is disabled and does not perform like a trained seal or anything like that, but it is obvious. We've been able to get that.
Now, obviously, a no answer, it's a little harder. You get a double blink. I wish she could give two long blinks simultaneously all the time. Doesn't seem to work for me, but --
And also, again, once in a while, she will vocalize unintentional -- it seems not spontaneous, but an unexpected, when you don't expect it, because we do ask her questions. It happened last Friday night. I was reading her a book, I'm under oath, and Susan was with her, and she was bent over, and I said: Isn't that right, Abbie? And she said -- because I heard her voice. She has a much lower-pitched voice than Susan

does. No one -- with the exception of Dan, no one's ever heard Abbie's voice. It's a much lower pitch, so obviously, it's a different voice. She said: Yeah. And I said to Susan: Did Abbie just say yeah? And she said: Yeah, she did. She said: Yeah. It was an appropriate response to a question I was asking her from a book, and I forget what the question was, but -- and it was an appropriate response. And she doesn't do that all the time, but all her caretakers have heard it as well. It's not always there.
May I give another example? Okay. This is, again, kind of off the wall, but Abbie's never tolerated dirty diapers, even when she was a baby. She certainly does not tolerate it now. She does -- I don't know how many diapers they go through a day, but she's always, always clean, and her diapers are taken care of right away. She never had a bed sore or anything like that.
But when she's with her children, and she's sitting in a chair with her -- I know her diapers are wet, and at the end, she's been soaked sometimes when they leave if they change her. She never makes a peep, never, because we've told her: You cannot do this in front of your kids. You

cannot. And she doesn't. I mean, she's soaking wet at the end, but she just -- I wouldn't say holds it in. That's a bad term, because she didn't hold it in, but she's been able to get hold of herself and not vocalize or cry out like she does when her diapers are wet or fuss.

And those are the two examples that I can give you. There are some other things that she is -- behaviors or improvements she has, but we're going to leave that for our medical witnesses.

Q. Based on your -- thank you, Dr. Cohen. Based on your understanding that you just testified to there, do you believe Abbie is fully aware that her children are visiting when they visit?

A. Yes, and based on her behavior, she knows they are there.

MR. DAN SLOTCHIVER: Your Honor, I object. His testimony and his understanding is different than his testimony of her behavior as to what she knows. He said based on her behavior, she knows. I think that's objectionable.

MR. DAVIS: Your Honor, an opinion is based on outward behavior, so his mind -- his

opinion about whether she's made improvement has to be absolutely -- there's no other way, Your Honor. It has to be based on things that Abbie does. There's no other way for him to gauge whether she's made improvement. So he's simply testifying about what his opinion is as a witness of her behavior. There's no other way for him to form an opinion, Your Honor.

MR. DAN SLOTCHIVER: I believe he was testifying as to what she knows, not his opinion.

BY MR. DAVIS:

Q. Dr. Cohen, could you phrase it --

THE COURT: Restrict it. Thank you.

MR. DAVIS: Yes, Your Honor. I apologize for interrupting you.

BY MR. DAVIS:

Q. Phrase it in the form of your understanding or your opinion.

A. It's not a matter of what she knows. It's how she behaves when she is told: You need to not cry out in front of the kids. You need to really tighten up and not say anything. Even if your diaper's wet, you need to not do anything.

Q. Do you believe that she knows who her children are?

A. Yes. And we'll bring that up with our expert witnesses.

Q. Do you believe that she knows when they are visiting?

A. Well, obviously, because that's when she knows she's on a line that she cannot cry out or anything like that.

Q. Do you believe that she can differentiate one child from the other?

A. We will show that from our expert witness that she can.

Q. What is your understanding? Do you believe that she can?

MR. DAN SLOTCHIVER: Your Honor, there's no foundation to show what -- his ability to tell -- if she can tell the difference between one child or the other.

MR. DAVIS: We do have it. We do have it. He's got information in his mind that we're aware of that we're going to present to this court that he's used to formulate an opinion in his mind, so that he can tell the court what he understands and what he believes, Your Honor. You've already given me latitude to ask him that. He's making the same objection. I'm asking him is

it his opinion that she can differentiate the three children.

MR. DAN SLOTCHIVER: How can he give an opinion as to her differentiating the three children? I don't understand how he can possibly do that. There's certainly no foundation. His opinion that she's happy because the children are there by the fact that she doesn't soil herself, that's different. How can he say she can tell the difference in which children are in front of her?

MR. DAVIS: Your Honor, how about if they were to ask Abbie: Where's Esti? And maybe she turns her head and looks at Esti. Where's Reuvi? Well, maybe she turns her head and looks at Reuvi. What if they change the outfits of those children, and they said: Where's Esti? And then she turns her head and looks at Esti. Where's Reuvi, and where's Yosse, and she's able to turn her --

MR. DAN SLOTCHIVER: Your Honor, I don't think there's any evidence to support that.

MR. DAVIS: What if they're able to see that? What if they're able to see that, Your Honor?

THE COURT: If you want to lay -- I

don't know if you can lay that foundation or not, but if you can lay --

MR. DAN SLOTCHIVER: Your Honor, when the children come to visit, my client is -- I'm not aware of any situation where that's ever happened, and now we're just making up hypotheticals to go along with it.

MR. DAVIS: They would be nice hypotheticals, Your Honor, but the good news is they're not made up, and we will certainly show that, and he's said that -- I'm not testifying for my client, but he's claimed that they were, and I'm telling you they're not, and we're going to show the court why they're not, but again --

THE WITNESS: If we could get it in by the end of the trial.

MR. DAVIS: I'm asking Dr. Cohen does he believe that Abbie can differentiate the three children.

THE COURT: I'll allow that. I'll allow that, Mr. Davis.

THE WITNESS: The answer is yes.

BY MR. DAVIS:

Q. And do you have facts to back that up?

A. Yes.

MR. DAN SLOTCHIVER: Your Honor, we haven't been provided with those facts, so if it's part of the defense of the case -- if it's part of the defense of this case, we have not been provided with that information.

MR. DAVIS: The trial is not over, Your Honor.

MR. DAN SLOTCHIVER: Counsel, Your Honor, we have discovery.

MR. DAVIS: These people that are going to testify, they've been provided in discovery.

MR. DAN SLOTCHIVER: Your Honor, actually --

MR. DAVIS: We're on cross-examination from his clients, and Your Honor instructed us to go ahead and cover all our items on direct that we would cover and try to cover it all at one time, so there's no way. It's an impracticality to say: Okay, well, Your Honor, I've got a couple of items I need to hold back because I need to wait until another witness comes in. Your Honor, it is part of the trial, and we have full intentions of showing this court that information. And he's been provided with names of the people that are

going to provide that information.

MR. DAN SLOTCHIVER: Providing those names does not provide evidence. If they have evidence that they have, there's a difference. A name is different than evidence. If they have evidence, we should have seen that through the discovery requests.

THE COURT: And you can make your objection when they decide to call those witnesses.

MR. DAN SLOTCHIVER: I will, Your Honor.

THE COURT: Thank you.

BY MR. DAVIS:

Q. Dr. Cohen, do you believe that Abbie can see and hear?

A. Absolutely. Dr. Hays found it in her examination.

MR. DAN SLOTCHIVER: Objection, your Honor.

MR. DAVIS: I understand. Would you like for me to -- let me ask Dan a quick question: Do you want me to go back to --

MR. DAN SLOTCHIVER: I'm just placing an objection on the record. He's testifying as to

what Dr. Hays said. That would be hearsay.

MR. DAVIS: No problem, Your Honor. Dr. Hays's report is already into evidence.

MR. DAN SLOTCHIVER: Absolutely.

MR. DAVIS: I'll be more than happy to go through that report with him. I've got a few other reports I'm going to go through with him in a moment. I'll just hit his opinion and come back to Dr. Hays's report.

THE COURT: Okay.

BY MR. DAVIS:

Q. Dr. Cohen, have you witnessed that Abbie can see?

MR. DAN SLOTCHIVER: And Your Honor, I object. I don't know how he can witness that somebody could see.

MR. DAVIS: Your Honor, it's clear. If you put something in front of a person, and their eyes move when you're doing that --

THE COURT: How about I let you explore this with him, and then I'll decide whether it's proper.

MR. DAVIS: I'm trying to address these objections, Your Honor.

THE COURT: I understand. Thank you.

BY MR. DAVIS:
Q. Dr. Cohen, can you explain to the court why you believe Abbie can see?
A. Well, I've been reading the reports of her treating physician and treating medical people, and I've never performed an examination myself, because it's not my -- it's not my forte, but other people have, can attest to her hearing. Other people can attest to her vision and other things that she can do.
MR. KACHMARSKY: And I'm going to object to that, Your Honor. There's nothing been put into evidence, any medical report that says what he's saying it says. It's pure hearsay.
THE COURT: Mr. Davis?
MR. DAVIS: Your Honor -- thank you, Mr. Kachmarsky. Rule 803, under Subsection 4, I agree. If he's testifying to what somebody said, then that is hearsay, Your Honor. I agree with that. However, I believe there's a hearsay exception.
If you look on Rule 803, No. 4, statements for purposes of medical diagnosis or treatment. These are statements made to him. He's a caretaker. It's made by the doctor about

treatment of Abbie. It says: Statements -- and I'll read the exception: Statements made for purposes of medical diagnosis or treatment describing medical history or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment, provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion.
She's been under treatment long before these proceedings began, and the statements were certainly made within the parameters of that exclusion, Your Honor, that exception to the hearsay rule.
MR. KACHMARSKY: And they have not been provided to this court through discovery, and now you want to introduce those same statements through his testimony.
MR. DAVIS: Your Honor, Mr. Kachmarsky -- and Reese, I'll have to ask Mr. Boyd -- I don't believe he's requested that information in discovery, if I'm not mistaken.
MR. KACHMARSKY: They have not been

provided based on the discovery that's been sent to you, to anybody.
MR. DAVIS: Your Honor, he's raising an objection based on discovery that separate counsel --
MR. KACHMARSKY: I have the right to do that, Your Honor. I relied on it.
MR. DAVIS: And by the way, Your Honor, it has been provided in discovery. It says: All treating physicians, and these physicians have been treating her for a while, years. So it has been provided in discovery, and these are statements that were made by those people that were treating her and are continuing to treat her. So yes, it was provided in discovery, even though Mr. Kachmarsky does not have grounds to make that objection.
MR. DAN SLOTCHIVER: So, Your Honor, it's my understanding that if you provide the name of somebody without providing the correlating documents, that that is complying with the discovery rules under Mr. Davis's definition?
MR. DAVIS: We don't have documents, Your Honor. We don't have documents, Your Honor.
MR. DAN SLOTCHIVER: Well, if there's

no documents here in the court, then I don't know how they can rely on these statements and profess them to the court at this point. There's nothing to substantiate or corroborate what he is attesting to.
MR. DAVIS: Yes, and he makes a good point, Your Honor; however, our time-settled rules provide that we can do it anyway, because there's an exception to the hearsay rule, because they treat Abbie, they take care of her, and it's a statement made for medical diagnosis or treatment, Your Honor, people that have -- case law and all that stuff established this. It's not something I just made up.
MR. DAN SLOTCHIVER: I believe if they're going to rely on those documents, Your Honor, we should have -- or rely on those documents and statements, we should have been provided the information.
THE COURT: Are you saying, Mr. Davis, there are no documents, no reports?
MR. DAVIS: We don't have any documents that we're relying on. I'm talking about statements that they got from the doctor about how to treat Abbie and about diagnosis, just

like it says in there, and it's certainly allowable, and that's in the parameters of the discovery that we provided.

MR. DAN SLOTCHIVER: Your Honor, plaintiff's interrogatories: For each person delegated to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements.

Now what Mr. Davis is doing is he's saying, well, we gave you the name, but we don't have any of the written documents, but they also, I guess, haven't provided us the important information relative to it. They've given us a name.

MR. DAVIS: Your Honor, the responsible -- I don't want to say that. I don't want to disparage Mr. Slotchiver in any way. I'm not attempting to do that. But I believe it would have been prudent for Mr. Slotchiver, when he received those responses to the interrogatories, to then notice the depositions of the treating physicians. Then he would have been able to gain that information.

Your Honor, we did not -- I'm not giving you anything that we knew ahead of time and just refused to disclose. I'm simply giving you an opinion of a witness based on a statement made by a doctor, and he was provided that information in discovery.

I mean, we can't -- it's not incumbent on a party, Your Honor, it actually would be too burdensome, to spoonfeed someone who is suing you with every little iota of information that could conceivably be used in a trial, because first of all, the rules don't require us to do it, and second of all, there's no way in the world we could ever know every bit of information to spoonfeed him with.

MR. DAN SLOTCHIVER: He seems to know it right now, Your Honor.

MR. DAVIS: Yes, I do, because it came up in the --

MR. DAN SLOTCHIVER: Your Honor, we made the request, and I believe what's prudent, as a lawyer in this state with the set of rules that govern our conduct, is to rely on the fact that in litigation, counsel will follow those rules.

As I understand what counsel,

Mr. Davis, wants to do at this time is to say we gave you the name of an expert. We didn't tell you what he was going to testify to, even though you asked for it, because you should have taken his deposition.

Well, Your Honor, it goes back to the argument we had earlier today or yesterday. When I send discovery, I have the right to rely on the fact that counsel is going to answer it, and I have the right not to be proactive, but to be reactive. And if they don't provide the documentation, and they come into court and they provide the documentation, I believe it needs to be stricken.

And that's exactly what he's doing now. He's trying to rely on testimony of a doctor who has evidence which he believes is relevant to the case, even though he never provided it to us pursuant to the discovery requests that we sent to him quite some time ago, back in maybe 2010 -- January of 2011, over two years ago. Over two years ago, we sent him this request, and he's coming into court and telling me now about this new -- about this witness and what he's going to testify to as his pertinent information without

having provided that information to us.

MR. DAVIS: Your Honor, again, we have to rise up 10,000 and 20- or 30,000 feet and look down and say, okay, a reason has got to abound. It is inconceivable, Your Honor -- and you were a practicing attorney for a number of years, a very good one. How can you possibly think of every -- I mean, there's so many things that have come up during this trial that we, quite frankly, may not have anticipated because some things he did, most of it we did, but how can we possibly know every single thing at such an early stage? Everything is always evolving.

And this came up in the testimony of a witness. I'm not trying to, and neither is Mr. Boyd trying to, withhold any information. It is incumbent upon the party to notice a deposition and to get the information. I realize it is going to be very damaging to his case when we prove that Abbie can see and hear and process information, but just because it's damaging to his case doesn't mean we're not allowed to establish that for the court.

MR. DAN SLOTCHIVER: Your Honor, at the recent deposition that took place, Mr. Davis

made a comment to my co-counsel that they think Abbie is doing better, and the response that he made was: We haven't seen any evidence to support that. Now, it's hard for me to imagine that they came into this case planning to defend it with the theory that they have without having known in advance that they were going to assert that she was better. I'm not sure what we did that elicited that response, especially in light of the fact that it was referenced in the opening statement by counsel when they made it.

It's just -- we've come back to it over and over and over again. The rules of discovery apply, they do apply, and you've got to follow discovery. It's not trial by surprise. You've got to follow discovery, and they haven't done it, and now they want to bring in, as I understand it, a slew of witnesses to talk about all the things that she has done to get better without providing that information to us.

THE COURT: Did they provide the name of the witness?

MR. DAN SLOTCHIVER: They provided the name of the witness only, yes, Your Honor.

MR. DAVIS: Your Honor, you know he --

MR. DAN SLOTCHIVER: I don't know which one they're talking about, first, but I'm assuming that -- which witness are we talking about?

MR. DAVIS: I'll get to that in one second.

He's exhibited himself to be a very fine attorney. He really has. He's brought up all kind of issues, and we've argued about them for days. He certainly is capable, Your Honor, of noticing a deposition. They have, in my opinion, attempted to leave no stone unturned; however, we have discovered that apparently, there are a couple stones that were left unturned.

And as he stood there, Your Honor, the other day, was it Tuesday or Wednesday, and he said: You know what, Your Honor, I'll be happy to tell them who my expert witness is, but the rule provides that I don't have to, and yesterday in court he says there's these litigation games, so he plays these litigation games, but Your Honor --

MR. DAN SLOTCHIVER: He's quoted me more about the litigation games.

MR. DAVIS: But Your Honor, we are certainly within the rules. He can stand up one

day and say: We're going to play this cat and mouse game and not give you the identity of an expert witness, because I've got this time period plus five days, and then also stand up in court and say: I play litigation games. So he's clearly competent to do what he's supposed to do.

And then he comes back another day, when he doesn't like that argument, and says: Wait a minute. So you did it under the rules, but you really didn't do it under the rules, so he can make -- he's making opposite sides of an argument, depending on what best serves him, Your Honor.

THE COURT: Mr. Slotchiver, what was your discovery request?

MR. DAN SLOTCHIVER: I'm going to find it right now for Your Honor. I had it just a moment ago. I apologize, Your Honor.

MR. STEVE SLOTCHIVER: Your Honor, for my clarity, can I just get the name of the witness that Bret is referring to that he's going to be bringing in, so I can make sure it's in accordance with what he provided to us as being his expert witnesses?

MR. DAVIS: Your Honor, at the end of the day, I think we're going to --

THE COURT: I'm not going to make him tell you right now.

MR. DAN SLOTCHIVER: Your Honor, the question you asked, No. 3: For each person known to you to be a witness concerning the facts of this case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statement taken from that person.

THE COURT: And they listed --

MR. DAVIS: We've listed them, and, of course, they -- their medical records and all their summaries and discussions with them is subject to Mr. Slotchiver simply requesting it. He chose not to do that.

MR. DAN SLOTCHIVER: Your Honor, the rules of discovery don't require me to ask you to comply with it. We've addressed this two times on motions for sanctions for failure to comply with discovery rules, and we've rehashed it over and over that when I ask a question for discovery, they have a duty to respond to it. The laws say it's an ongoing duty to respond to it, not just once at that moment. It's an ongoing duty to

respond to it.
And it's not -- you cannot defend it by saying you should have taken his deposition, because that's a tactical decision that lawyers make in every case that we ever get involved with, whose depositions are we going to take and whose do we need to take and whose do we want to take. And those are decisions I make in any case I've done for almost 23 years. But to say that I'm required to take a deposition in order to get the full benefit of the discovery requests is absolutely inconsistent with the rules.
Mr. Davis says that I'm not -- that I'm choosing battles when they're convenient. In reality, Your Honor, my arguments have all been about discovery. Almost every argument we've had in this court has been about discovery.
THE COURT: And how did they respond to that discovery request?
MR. DAVIS: Do you want me to read this, Your Honor?
THE COURT: Is that your response?
MR. DAVIS: Response.
THE COURT: Yes, sir.
MR. DAVIS: In further answering this

interrogatory which relates to who -- the one he referenced a minute ago, respondents would also incorporate any and all medical professionals who may be referenced in the various medical and other records, which have previously been provided petitioner in this case or which are herewith produced or may be hereafter produced by respondent to the petitioner.
MR. DAN SLOTCHIVER: So, Your Honor, my understanding of that is that I'm to take the deposition of any and every medical provider listed in any and every document provided to me?
THE COURT: Mr. Davis, can I see that for a second, please?
MR. DAVIS: Sure, Your Honor.
MS. HEDGEPATH: Your Honor, for my edification -- I've been listening to this -- were they asked who they anticipate calling as witnesses and were they asked to produce medical records?
THE COURT: You'll have to ask Mr. Slotchiver that directly.
THE WITNESS: Your Honor, may I take a quick bathroom break? I don't think they're going to be asking me any questions in the next three

minutes.
THE COURT: You may. Let's take a brief five-minute break.
(A recess transpired from 6:59 PM to 7:03 PM.)
THE COURT: It appears that in response to the interrogatory, names, addresses, and telephone numbers of persons known to the parties to be witnesses concerning the facts of this case --
MR. DAVIS: Your Honor, if it helps, the medical professionals were disclosed in the accountings as well, which are referenced there. The payments were made to the medical professionals on the accountings which were provided to them, so they knew who the medical professionals were.
THE COURT: In further answering this interrogatory, respondents also incorporate any and all medical professionals who may be referenced in the various medical and other records which have previously been produced to the petitioner in this case or which are herewith produced or may be hereafter produced by respondents to the petitioner.

MR. DAN SLOTCHIVER: Yes, Your Honor. So it's not responsive to the discovery that we sent, what has been phrased as a dump truck of documents. Look at these thousands of doctors, and we may call any of these people. We're not going to answer your request as to what they're going to testify to, but look them up. And in fact, maybe you should go take everybody's deposition to see what they're going to say.
THE COURT: Well, that's what he's saying now, but it seems to me, Mr. Slotchiver, that they can rely on this to saying that they provided notice that medical professionals might be called to testify.
MR. DAN SLOTCHIVER: They provided the names of medical professionals who may be called to testify. The distinction, though, is we asked what they would testify to. Please present the information to us as to what they would testify to, which they have not done.
So at this point, Your Honor, under their theory, they can call anybody who's been listed or anybody who ever had any interaction whatsoever with Abbie as a witness to testify about whatever they want to, even though the

document requests that they provide us more information than what they have.

Selectively, Your Honor, to allow them -- I know you're nodding your head, but to allow them to do this would preclude us from the right of knowing what they were going to say in advance.

In the same manner, Judge, that we elected not to take the deposition of Robin Morris, because they asserted an attorney-client privilege, and based on that, we relied on the fact that she's not coming to testify. In the same vein, they have listed a dump truck of people. Look at everybody that's ever -- we reserve the right to call anybody that's ever interacted with her, but we're not going to tell you what we're going to call them for.

And although I would -- I could understand a little more in argument that we didn't know, that we would provide it to you when we decided. We were just covering our bases to preserve the record. They've never provided that information to us. They've never given us any of the information as to who they were going to call along the lines, and they haven't complied with

the discovery requests that we sent out. And these are standard discovery requests.

Other than sending out the standard discovery requests, what more could I do? Am I required to take the deposition of each and every person that ever interacted with Abbie? I don't think that would be reasonable. I don't think that's what the rules call for. That's why the rules call for a disclosure of the witnesses in advance.

MR. DAVIS: Your Honor, we subpoenaed witnesses, and we provided that. The court needs some additional information it doesn't have.

Your Honor, we -- as I mentioned, there were certain -- in any trial, things come up that you don't anticipate. In our wildest dreams, we did not -- I don't know about -- wildest dreams may be an exaggeration, but we did not anticipate an attack on the ability of Abbie to appreciate visitation.

When we first came to court, Mr. Kachmarsky -- and this is as truthful as I can be. Mr. Kachmarsky stood up and said there was some treatment for electrocardiogram thing. I can't remember the exact term. He says he looked

at Wikipedia or whatever, and it appeared to be quackery and whatever, and there was some additional testimony. And we went, oh, my God. We were aghast, and we had to, to some extent, console Mrs. Cohen.

And so we realized they are actually going to take the argument that Abbie receives no benefit from her children visiting, which we did not anticipate, so we started scrambling. We're like are they really going to go down that road? We're like: Okay. Well, we're going to have to defend it.

And that was not something that we fully intended to bring to this court, so we put these things in our discovery responses so that we've got our bases covered, and we can deal with whatever comes up in trial the best we can, and that's what we're doing, Your Honor.

And we have perfected the record and perfected the discovery responses to an extent that we are allowed to do this, and that's why we do it, because you don't know what's going to come up. And we did not fully intend to delve into this to the extent that we're doing now, but if they're going to attack that and say that she does

not receive a benefit, then, by golly, we are going to put up a defense, and we've got it preserved to an extent which will allow us to do that, Your Honor, and that's what we're doing now.

THE COURT: Anything else?

MR. DAN SLOTCHIVER: Can I have about five minutes, Your Honor, to look at a document?

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Could I again look at that discovery response, please?

(A recess transpired from 7:08 PM to 7:12 PM.)

MR. DAN SLOTCHIVER: May it please the court?

MR. DAVIS: Your Honor, I would like to make one --

MR. DAN SLOTCHIVER: I believe it's my turn.

THE COURT: Yes, sir, Mr. Slotchiver.

MR. DAN SLOTCHIVER: Thank you, Your Honor. Your Honor, the interrogatories that I have provided or I have served upon counsel for the Cohens are what are considered to be standard interrogatories that are approved by the Supreme

Court of South Carolina. Among the questions contained within these standard interrogatories is provide -- set forth either a summary sufficient to inform the other party of the important facts known to or observed by the witness or provide a written or recorded statement.

Your Honor, according to Mr. Davis's own argument that he asserted just now, he said: These items are very damaging to your case. They don't want it to come in because they're very damaging to your case. How can he assert that they're damaging to our case, but he should get them in, even though they clearly -- we've asked for them. If they're important issues, and he believes they're damaging to our case, we should have had an opportunity to have been provided the appropriate responses in advance.

These aren't documents that I created on my own. These aren't requests that I tailored which are objectionable. These are the standard interrogatories. This is what every lawyer throughout the state generally uses in setting forth the standard interrogatories, and it's got provisional language that we all have the right to rely on.

And I remind the court and refer once again to the language set forth: The important facts known to or observed by such witness. And the fact that Mr. Davis wants to rely on the fact that he had subpoenas sent to witnesses, well, as Your Honor may recall, when we first came into court last Monday, I referenced that there were subpoenas sent to people, and I don't know how they're going to testify, because we don't agree to it. Just because you send a subpoena to somebody doesn't mean they get to testify. Just because you -- it's the same argument redundantly over and over. That doesn't mean they're okay. Just because you tell us: I'm going to call them doesn't mean that I have to accept them, but I certainly have the right, under the South Carolina Rules, to know the important facts that they plan to testify to, and he certainly has an obligation and a duty under the discovery rules to provide these to me, and his failure to do that should strike them from the record. They should not be able to testify.

MR. DAVIS: Your Honor, may I make a point?

THE COURT: Yes, sir.

MR. DAVIS: As you recall, we've had discussion from Mr. Boyd that we've made numerous attempts to find out who their witnesses were, and Mr. Slotchiver said he wants to play a litigation game and not disclose that information. Well, based on that and based on other discussions that were made in this court and comments by Mr. Kachmarsky, we put two and two together that it was going to be a medical expert.

Your Honor, that information was requested. I actually stood up and requested it in court and asked them to provide it. I went home after we --

MR. DAN SLOTCHIVER: Your Honor, you've ruled on this issue.

MR. DAVIS: I'm explaining why we are where we are, Your Honor.

MR. DAN SLOTCHIVER: I was playing games.

MR. DAVIS: I didn't interrupt him, Your Honor.

THE COURT: Go ahead.

MR. DAVIS: I went home and said you know what, I need to refresh my memory on the spirit of discovery, and I read some articles,

California, New York. There was a supreme court case. There was some other stuff that I looked at, Your Honor. And the spirit of discovery was to avoid trial by ambush, and I mentioned that he was proffering a position that would create ambush, and it absolutely did, Your Honor. We were ambushed on this medical expert, and he hid behind the rules, Your Honor. There's two parts of a rule.

MR. DAN SLOTCHIVER: Your Honor, I object to the characterization I hid behind any rules whatsoever. I followed the rules. Your Honor heard this argument last week. She's already discussed with counsel. You've looked at the rules, and I complied with the rules. They had an opportunity to send to me discovery in a timely manner, in which case I would respond according to the rules of discovery. They chose not to exercise that. I object to this whole line of testimony as it relates to this issue that's before the court.

MR. DAVIS: It absolutely weighs, Your Honor, because we're proffering medical testimony to counteract their argument based on medical testimony. Well, in my research, it became

abundantly clear that the courts hate surprise and hate trial by ambush, and the spirit of the law, it just shines through like a bright neon light. Doggone it, you litigants disclose your information through -- the stuff. It was like loud and clear, Your Honor. That is the spirit of this rule.

So we've got the law -- we've got the letter of that rule and the spirit of that rule. I'm absolutely convinced that while he may have complied with the letter of the rule, he absolutely violated the spirit of the rule, and it created an ambush and surprise on our part that we now have to deal with at trial, so I believe we deserve some latitude, Your Honor.

He was asked to provide the witnesses. Mr. Boyd had conversations with him and said: Let's provide a witness list as to avoid surprise, to comply with the spirit of the discovery rules, but yet he was not -- Mr. Slotchiver refused to provide that information. That would have avoided surprise on our part, and it would have avoided surprise on his part, Your Honor.

MR. DAN SLOTCHIVER: Your Honor, I offered to provide anything that you asked me to

do, if you recall. If you want me to give it, I'll give it now. But what I'm hearing is you think you didn't comply with the spirit of it, so we didn't, and we should get away with it, and we should bring in a slew of witnesses, all in violation of the discovery, because you didn't give us your discovery responses in advance, even though the court said it's okay.

Your Honor, clearly, the South Carolina Supreme Court says that standard interrogatories and that standard language, there's a reason it's here. We did send it in a timely manner. We should have the right to rely on getting responses appropriately, and if they're not given, they shouldn't be able to testify.

MR. DAVIS: We provided it in discovery, Your Honor.

MR. DAN SLOTCHIVER: And if we want, Your Honor, we can hold this thing off, and why don't we -- tomorrow we'll call Professor Freeman to come testify about it. I think he'd be happy to do it.

MR. DAVIS: I'm not done with my witness, and I'm ready to roll, Your Honor.

MR. DAN SLOTCHIVER: I'm talking about

the medical situation. I think he's qualified to opine on that, and he'll be here tomorrow.

MR. DAVIS: We provided it to them in discovery. You've already ruled from the bench there that you believe they've gotten notice. That was a ruling that I believe that you made or a comment that you made earlier. We've got a witness here who talked to the doctors and is ready to testify, and we're ready to go, Your Honor.

THE COURT: Let me hear from Ms. Moore, please.

MS. MOORE: Your Honor, I was sitting back and waiting for an opportune moment. As I indicated at the very beginning of this trial when it became an issue of whether or not the parties were going to provide witness lists to each other, I made it very clear that I would wait and see who called what witnesses to the stand before I actually made a determination of what witnesses I might need or what witnesses Ms. Hedgepath might need. And at this point, there's been no discovery served upon either of us, either from Mr. Slotchiver, Mr. Kachmarsky, either Reese or from Bret, so at this point, we're under no

obligation to provide such a list.

And this whole issue may be moot, because, for example, if, for some reason, the court were to preclude Mr. Davis from being allowed to ask questions of this witness as to certain witnesses that they may intend to call, if they are ultimately not allowed to call them in their case-in-chief because you may rule on a discovery issue, there's nothing to prevent either Ms. Hedgepath or I from calling the same witness in our case-in-chief, and thereby, we would be the ones that would be cross-examining the witness as to information that we intend to solicit from such witnesses.

At this point, I don't know what witnesses it may be, because I don't know which ones they intend to finally call in their case-in-chief. It may be that all the witnesses that we ultimately would want to call is taken care of. If not, then we would be calling the witnesses.

MR. DAN SLOTCHIVER: And actually, Your Honor -- I'm sorry.

MS. MOORE: So I just want to point that out to the court --

THE COURT: Thank you.
MS. MOORE: -- that some of this argument may be moot because we may ourselves be the ones that call the witnesses.
MR. DAN SLOTCHIVER: And I would take certainly a different position. If the Cohens had information that they were obligated to provide us, and they did not, then they should not be allowed to have those witnesses called through other parties. Those witnesses and the testimony from those witnesses should be stricken. You can't have it both ways. They had an obligation to provide it to us, they didn't, and now to say, well, we didn't, so I'm going to tell you the person you call, and you can bring in the evidence that we were supposed to have told you about, but we didn't, but we can try to get it in differently.
Everything flies to the Cohens in this case. They're the fiduciaries. Any knowledge that I've heard of, at least with reference to the argument that Ms. Moore made at this point, is if I think there's a witness that Dr. Cohen knows that would be beneficial to me to call, then I'll call them, even though he knew about it.

MS. MOORE: That's not correct.
MR. DAN SLOTCHIVER: Well, if it's not correct, then we can take it up at the time, but that's what I understood.
MS. MOORE: My whole point was any witness that either of the parties, whether it's Mr. Slotchiver or his party, Dan Dorn, whatever witnesses he may call, or if it's Bret Davis on behalf of his clients. I didn't mean to make it an intimation that it's simply Dr. Cohen.
MR. DAN SLOTCHIVER: My understanding is that if Dr. Cohen has information relevant to this case, and he has witnesses who are relevant to the case, and the witnesses and their -- first of all, they have an obligation to notify us of the witnesses. Secondly, they have an obligation to tell us about the important facts those witnesses have, and they can't hide behind it. They can't say: Well, we didn't tell you about it, so I'm going to let somebody else call that witness and get it, because the whole point of the discovery process is to preclude the abuses, which I fear is being attempted right now with reference to getting in witnesses to testify that have not been provided to us.

THE COURT: Mr. Kachmarsky?
MR. KACHMARSKY: Yeah. I'm basically in the same place as Ms. Hedgepath and Moore. I have not served discovery on anybody, and no one has served it on me as well. Mr. Slotchiver and I had a conversation about whether or not I should serve discovery, and I would like to remind the court that I was arguably admonished for being a little too active in this litigation, so to go and serve discovery seemed to be a little out of line, particularly when it was already done by him.
I have come in this court last week. I had no intention of bringing any witness, any document that has not already been disclosed properly, in a timely fashion, through the discovery, which has never been served by me, but has been served by Mr. Slotchiver and which is due five days after the fact.
I'm a little bit confused as to the court's reluctance to rule on this matter. I mean, I've come in here in the best of spirits. I don't see how anybody could challenge that.
Mr. Slotchiver said he's going to comply with the discovery requests. They didn't timely serve them, I mean, that's the problem, and

now it's being -- the finger is being pointed at us as if we've done something wrong. We haven't done that.
MR. DAVIS: Your Honor, he claimed that we didn't timely submit a request for the witnesses, and Your Honor, we're claiming that he did not avail himself of the discovery rules and notice the deposition. I mean, he had an opportunity to do that, and he did not do that.
MR. KACHMARSKY: They're two different things.
MR. DAN SLOTCHIVER: I did avail myself of the discovery rules by sending the standard discovery, Your Honor.
MR. DAVIS: We responded.
THE COURT: Thank you.
Ms. Hedgepath?
MS. HEDGEPATH: Your Honor, it needs to be kept in mind that I don't represent the Cohens in any capacity, individually, trustees, or conservators. I represent Abbie, and Abbie alone, and nothing has been served on Abbie, by and through me, so I had no obligation to go to the Cohens to get anything.
If I had received discovery responses,

yes, ma'am, I would have responded to them, but I have received none, so now -- in fact, on Day 1, if you'll remember, I wanted us to disclose witnesses. Let's do this. No, they didn't want to do it. So don't come back now and fuss at me because of some things that had been said, and we now realize that we --

MR. DAN SLOTCHIVER: I'm not fussing with Ms. Hedgepath or Ms. Moore.

MS. HEDGEPATH: And if it's imperative for Abbie and for Abbie's benefit that we call a couple witnesses in response to what has been presented, then I'm bound to do that, and they certainly had the right to serve him with all the discovery that they deemed appropriate, and I have gotten that.

MR. DAN SLOTCHIVER: I'm not aware how either witness or either guardian or the guardian ad litem -- well, maybe we should address that later on. Why don't we address this right now.

THE COURT: I would like to go ahead and rule on this. I did note in the interrogatory that the Cohens responded by incorporating any and all medical professionals who may be referenced in the various medical or other records which have

been produced to petitioner or which may be produced, so I do think that they responded as to who might be witnesses in that respect, but I'm not sure if they've been followed up with a second question, which was to provide some type of narrative about the facts of the case to which those witnesses would testify. I briefly looked at that, but I did not see that there was any type of response to that regarding the medical professionals. Am I mistaken?

MR. DAVIS: Well, we referenced some.

THE COURT: As to what their testimony would be or the facts that they would testify, which I guess was the follow-up interrogatory after: Tell us who your witnesses are going to be. Was there an answer to that in your discovery?

MR. DAVIS: I think the answer is that we will or may call them as a witness.

THE COURT: But did you set forth the answer to the next question, which was: What are they going to testify to?

MR. DAVIS: Your Honor, I'm going to have to look at them and talk to Mr. Boyd.

THE COURT: If you'll do that now.

I'll be happy to give you a moment because --

MR. KACHMARSKY: And one step further.

THE COURT: Yes, sir.

MR. KACHMARSKY: The documents that were to be produced under the production, there were no documents produced either.

THE COURT: I'm not sure -- they've testified -- not testified. They've stated, they've argued that there were no documents that they were relying on as far as written reports or depositions, witness statements, I believe.

MR. KACHMARSKY: I understand.

THE COURT: Mr. Slotchiver, you might assist in possibly telling them what --

MR. DAN SLOTCHIVER: I'm not aware of any responsive documents, Your Honor, to what you're referring to.

THE COURT: No, I'm sorry, with respect to which interrogatory that was, that follow-up one.

MR. DAN SLOTCHIVER: Oh, I'm sorry.

THE COURT: Mr. Boyd is looking, and I was hoping you might could -- I believe it's the one that Mr. --

MR. DAN SLOTCHIVER: I think it was

No. 3, Your Honor.

THE COURT: -- Davis brought up here and I looked at.

MR. DAN SLOTCHIVER: No. 3, Your Honor.

MR. DAVIS: Your Honor, Dr. Gerace, Sarah Gerace, has been subpoenaed to appear as a witness. She is a doctor that deals with hearing.

MR. DAN SLOTCHIVER: I don't believe that subpoenaing a doctor complies with the discovery requests, Your Honor.

THE COURT: Yes, sir.

MR. DAVIS: Your Honor, he was provided a copy of the subpoena, and that supplements discovery.

THE COURT: But I don't believe, Mr. Davis, that that complies with his discovery request, which was to provide a narrative of the facts to which they would be testifying, statement of their testimony. I believe in the discovery that I looked at a few moments ago, unless that was supplemented at some point --

MR. DAVIS: I want to remind the court that the court has discretion to rule on this either way. The case law that I reviewed,

Floyd v. Floyd and the cases cited throughout that, give the trial court a tremendous amount of latitude to make sure that each party is afforded an opportunity to provide information, so the court will have what it needs to make a decision.

And it's clear in those cases, to me, Your Honor, that the higher courts want information at the trier-of-fact level, so the trier of fact can make an informed decision. We've got issues going back and forth. There's plenty of room for this court, in its discretion, to say that they have been provided with information, references to the medical professionals, which have been treating Abbie before this case and continue to treat Abbie, which are relevant to this case, and which came up at trial. I would ask the court to give us a special deference for the fact that this actually came up at trial, and we are doing our very best to protect the interests of Abbie and these trustees and co-conservators and co-guardians.

So it's within the discretion of the court to rule that they have gotten notice of it and that Dr. Cohen has received statements from them and that he has formed an opinion, so the

court, again --

THE COURT: So Dr. Cohen has seen written statements?

MR. DAVIS: No, oral statements, as in discussions, which is what I proffered before, so that this court can make informed decisions. So this court must, in my opinion, Your Honor, err on the side of receiving the information, because at the end of the day, in a legal process, it's about the court or the trier of fact having the facts and the truth to make an informed decision. That is what our legal system is designed to do.

And this court has discretion to receive that information, and I would hate for Abbie to be harmed or the trustees who have worked tirelessly forever, since Abbie's been injured, to be injured in any way because of a technicality that this court can see through and rule over. You certainly have discretion to do it, and they certainly were provided notice, Your Honor.

MR. DAN SLOTCHIVER: Your Honor, I would hate for my client to be harmed because he complied with the discovery rules in advance, and he did everything he was supposed to do.

I'll read to you, Your Honor, a short

section from the Samples case. This is Samples versus Mitchell, which is 495 SE 2nd 213, and on Page 5 of the decision, it states: The entire thrust of discovery, of the discovery rules, involves full and fair disclosure to prevent a trial from becoming a guessing game or one of surprise for either party. Essentially, the rights of discovery provided by the rules give the trial lawyers the means to prepare for trial, and when these rights are not afforded, prejudice must be presumed.

We availed ourselves of those rights. We submitted the standard interrogatories to counsel in order to have this information. There's not a companion argument. They sent us discovery. We answered in a timely manner. We brought it up to the court on several occasions. There's no give or take.

THE COURT: Mr. Slotchiver, did they provide the nature of the testimony of these medical professionals in their discovery response?

MR. DAN SLOTCHIVER: They did not.

THE COURT: I'm going to grant the motion and not allow the medical testimony to be presented by the Cohens.

MR. DAVIS: By the Cohens.

THE COURT: Yes, sir.

MR. DAVIS: Limited to the Cohens.

THE COURT: You're representing the Cohens, correct, as trustees and co-conservators?

MR. DAVIS: Yes.

THE COURT: They were presented with the discovery requests, they did not respond appropriately, and I think it's appropriate to then not allow that testimony to come in through the Cohens. They're not allowed to call them as witnesses, whether they were subpoenaed or not. I don't think it's their responsibility to look through all of those documents and try to determine what these medical professionals might testify. They asked for the nature of their testimony, the facts that they know about the case, and I don't think you responded to that with respect to those witnesses in your discovery response.

MR. DAVIS: Thank you, Your Honor. And I take it the ruling of this court is limited to the Cohens and does not have any impact on the attorney for Abbie or the guardian for Abbie?

THE COURT: I have ruled with respect

to your clients at this time. I will take up any objection if anyone else desires to call them as a witness at that time.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

BY MR. DAVIS:

Q. Dr. Cohen, again, you've been a trooper.

THE COURT: We are going to quit at 8:00, all right.

MR. DAVIS: Okay.

THE COURT: So you may finish, may not. I'm not sure. We'll see, Mr. Davis.

MR. DAVIS: No. I just had a -- I'm sorry.

THE COURT: No jokes.

MR. DAVIS: Exactly.

THE COURT: Thank you.

BY MR. DAVIS:

Q. Again, we're back to your opinion, Dr. Cohen, improvement. Has Abbie exhibited improvement, in your opinion, and can she see and can she hear, based on your witness observations and based on your opinion?

A. Based on my witnesses' observations?

Which witnesses are we talking about?

Q. That you have personally witnessed, I'm sorry, Dr. Cohen, and that you have personally observed.

A. Well, there's no question that she can see, because she watches TV, and there are a couple of shows that she seems to like more, and she looks at them, as opposed to her eyes drifting elsewhere, so -- and I know she can hear because occasionally there's, as in any house, something --

MR. DAN SLOTCHIVER: Objection, Your Honor, to his reference that he knows that she can hear, as I believe the court's ruling is he can testify as to his understanding and his belief, but not what she knows.

THE COURT: Yes, sir.

BY MR. DAVIS:

Q. Dr. Cohen, phrase it in terms of your understanding is that she can hear because.

A. I can observe that she hears because she has jumped -- at least her head has jumped when a sudden loud noise occurs, like something falls, and that's a typical response in a physical examination called a startle reflex.

MR. DAN SLOTCHIVER: Your Honor, at this point he's giving medical testimony. I would object.

THE WITNESS: You can find that on the Internet.

MR. DAN SLOTCHIVER: I'm not saying that he can't, Your Honor.

BY MR. DAVIS:

Q. Dr. Cohen, you can say that. Just couch it in the terms of your observation. You can go into the details of what a normal startle response test would be, and then explain that response.

A. You clap your hands in front of somebody's ears and --

MR. DAN SLOTCHIVER: Your Honor, I object. If I may, he's not been called as an expert witness in this case. He's been allowed the liberty to testify as to what he sees, what he observes, what he understands, but there's a distinction between that and: Tell me what you understand about all the rules to deal with reference to the startle. Now we've gone well beyond what he's observed.

MR. DAVIS: I think I can satisfy

Mr. Slotchiver.

THE COURT: We are going to limit his testimony to what he sees, what he knows, what he observes, and not rely on his medical expertise.

MR. DAVIS: And that's what I was trying to do, Your Honor. The clap, and then Abbie moves is what he's saying. That's all I was asking to -- that's what he was trying to tell us.

BY MR. DAVIS:

Q. Dr. Cohen again, explain --

THE COURT: In simple layman's terms. How about that?

BY MR. DAVIS:

Q. Explain what happens to indicate that she can hear.

A. Well, I asked her a question last Friday night. She said yes.

Q. How about if you clap by her ear, does she respond?

A. Well, again, it's called a startle response, and I don't understand how you can -- that's what it is. They sort of flinch when they don't expect it.

Q. Does she do that?

A. Like a backfire of a car that we all

have, makes you jump.
Q. Not the background of it, but does she do that? Have you witnessed her do that?
A. Yes.
Q. Is it consistent? Does she respond every time?
A. Well, I can't answer that. My memory isn't good on how often this occurs, but I've seen it. I can't tell you if I drop a plate on the ground three times a day, she's going to do it three times a day. We don't do it that way.
Q. Dr. Cohen, let's talk about Dr. Mamelak's deposition for a moment. What is your understanding of the -- your understanding, not your expert medical understanding, but based on your reading of Dr. Mamelak's report, deposition, Dr. Hays's report that is already into evidence, of the levels of consciousness. Let me throw out something, and you tell me if this sounds reasonable.
MR. DAN SLOTCHIVER: Your Honor, I would object. His understanding based on your reading of Mamelak and your reading of Hays and your reading of reports, that's not his understanding anymore. It goes beyond that. His

understanding would be a different scenario.
MR. DAVIS: How could it not be? It absolutely is his understanding.
MR. DAN SLOTCHIVER: That would be an opinion.
MR. DAVIS: I'm not asking -- I just said not as a medical expert opinion, your understanding. I've got understandings about things. You've got understandings about things. That's all I'm asking.
MR. DAN SLOTCHIVER: Well, then I would object to the relevancy of it.
MR. DAVIS: You'll see the relevancy. It fits like a glove into these reports, because the reports mention these things.
MR. DAN SLOTCHIVER: I believe he can testify as to his understanding of the reports, what he agrees or what he disagrees with in the reports, but his understandings of what the reports -- of comparing all the reports and all the medical documentation, at that point he's asking for an opinion.
THE COURT: I agree.
MR. DAVIS: You agree?
THE COURT: I agree with

Mr. Slotchiver. That would call for a medical opinion. If you want to ask him about a particular report and his understanding of a particular report, but I don't believe in comparing all the reports. I believe that goes beyond what he's here to testify regarding.
MR. DAVIS: Your Honor, I wasn't going to do that. What has been offered in the testimony is a reference to a coma or being brain dead, a reference to a vegetative state, a reference in Dr. Hays's report of minimally conscious, and, of course, there's a conscious state, which we're all in now. That's all I'm referring to, Your Honor, and these reports talk about those different states, and it talks about them in that order, so I'm not -- it's not some new science or something. This is stuff that actually is mentioned in Dr. Mamelak's deposition right here, and I'm just asking him does he understand that to be sort of a hierarchy of consciousness. And they're claiming that Abbie is either brain dead or vegetative, and we've got evidence to prove that she's either minimally conscious or conscious.
MR. DAN SLOTCHIVER: I don't know how

he can testify as to his understanding of the hierarchy of consciousness without giving an expert opinion.
MR. DAVIS: We had that. We had expert opinions. We had two of them, two neurologists.
MR. DAN SLOTCHIVER: But not Dr. Cohen's expert opinion.
MR. DAVIS: He's not giving his expert opinion. He's regurgitating information that he got from Dr. Mamelak and from Dr. Hays.
MR. DAN SLOTCHIVER: Well, if he's regurgitating it, I believe it would be irrelevant to regurgitate information. I think they can ask him about his opinion about this particular phrase, do you agree with the opinion that he gave, or based on your understanding, do you agree with it, based on your observations, do you agree with it, but not based on his medical opinion.
MR. DAVIS: I mean, we're kind of splitting hairs. Do they disagree that you're dead, brain dead, coma, or vegetative dead, mentally conscious, minimally conscious, and then conscious? I mean, is that something that's so hard to -- I mean, that's pretty simple stuff,

Your Honor. I don't see the problem.
THE COURT: I don't think Dr. Cohen can testify as a medical expert as to those. He can talk about his understanding and whether he agrees with those types of studies.
MR. DAVIS: And I'm assuming he can testify whether he agrees that that is a reasonable hierarchy of consciousness in his personal opinion.
MR. DAN SLOTCHIVER: That's a medical question, Your Honor.
MR. DAVIS: It's not. He's not been offered as a medical expert, Your Honor. I'm not asking the court -- again, back to my comments earlier. You have an opportunity to receive the information in, as we all know, and you say, okay, what level of credibility or what weight do I give this information, and you attribute the weight of that information. Just because it may sound like expert testimony, you, as the judge and trier of facts, say you know what, that is not from a medical expert, so I may downgrade it a little bit, and it came from a person, and you would have an opportunity to evaluate that, but if it's in his mind, it's his understanding, there's nothing

that should keep it out, Your Honor.
MR. DAN SLOTCHIVER: Your Honor, I'm not even sure that Dr. Cohen even read the Mamelak deposition. He testified earlier that he had looked at pieces of it and hadn't read it, and now we're asking him his opinion on the hierarchy of medicine of saying that it's not really a medical opinion, what's your opinion. If he's not a doctor, then I don't believe he has the qualification to give that opinion to begin with. Excuse me. I apologize. If he's not accepted as an expert in this case. I know he is a medical doctor.
MR. DAVIS: Your Honor, if you ask me what the color of this carpet is, and I say it's like a bluish-greenish gray, I'm not a textile expert, but I certainly can tell you what the color of the carpet is. My opinion is it's a pretty bluish-grayish-greenish color.
MR. DAN SLOTCHIVER: I don't believe you need a medical doctor for a qualification to determine a color.
MR. DAVIS: And I don't need an expert to determine that the color --
THE COURT: Mr. Davis, if you'd like

to move on, please. I'm going to limit his testimony with respect to these medical issues to what he knows, what he understands, but not in his capacity as a medical doctor or a medical expert.
MR. DAVIS: So he can say that his understanding is this is the hierarchy, personally, not medically, but he can say that. He understands that. Is that what you're saying?
THE COURT: I don't believe so, Mr. Davis.
BY MR. DAVIS:
Q. We have a copy of Dr. Mamelak's report in the record. Page 58, Dr. Cohen.
THE COURT: What is that number of the exhibit?
THE REPORTER: It's 109.
THE COURT: 109. Thank you. What page, Mr. Davis?
MR. DAVIS: Page 58.
BY MR. DAVIS:
Q. Dr. Cohen, what do you -- well, first of all, when was Abbie last examined by Dr. Mamelak?
A. 2006, maybe September.
Q. When was the action for the marital

dissolution brought?
A. I believe the whole thing started in early 2008.
Q. And when was Dr. Mamelak deposed?
A. May 28th, 2010.
Q. And to reiterate, your daughter Abbie had made improvement from 2006 to 2010, correct?
MR. DAN SLOTCHIVER: Objection in so much as it calls for medical opinion. If it's his understanding, no objection.
BY MR. DAVIS:
Q. You can answer, Dr. Cohen. In your opinion, as we testified before, as you've testified before, it's correct, isn't it, that your daughter Abbie made improvement medically and neurologically from 2006 to present?
A. That's correct.
Q. In Dr. Mamelak's report, does he characterize Abbie as a certain level of consciousness?
A. Well, again, I only saw a little bit of his report, but he says she's in a persistent vegetative state.
Q. And that's abbreviated as a PSV?
A. PVS.

Q. Excuse me, PVS.

On Page 58, the question on Line 7 says: Have you ever had a patient go from a persistent vegetative state to some level of minimal consciousness? He says: I personally have not. It has been reported.

Is your understanding that Dr. Mamelak is saying that his opinion is that she's in a persistent vegetative state; however, it is certainly possible to move to a minimally conscious state?

MR. DAN SLOTCHIVER: Your Honor, I don't believe that he can testify as to his understanding of what the report is. The report speaks for itself, and he's taking the context away from it, because there's plenty of other languages in there.

MR. DAVIS: That's what it says, Your Honor. I just read it.

MR. DAN SLOTCHIVER: It's in evidence. It speaks for itself.

THE COURT: It speaks for itself. I'll review it. Thank you.

BY MR. DAVIS:

Q. Dr. Cohen, if you'd turn to Page 59,

and can you read the answer starting on Line No. 5 regarding plasticity and how plasticity is described by Dr. Mamelak?

MR. DAN SLOTCHIVER: Your Honor, I object. I'm not sure of the purpose of asking him to read a document into the record. The record speaks for itself. If there's a question pertaining to it, that's a different situation, but just to read the document, we've already crossed that bridge earlier today.

MR. DAVIS: We haven't crossed this bridge, Your Honor. He's a physician. He understands what plasticity is.

MR. DAN SLOTCHIVER: He's not been provided as an expert.

MR. DAVIS: I'm not finished, please.

Counsel will not allow him to testify as to his understanding, because he's not a medical expert. We have a medical expert, one that they actually are relying upon, that in his deposition that they just offered into evidence, explains what plasticity is, so I'm simply laying the foundation so he can then comment on what plasticity is and how it relates to Abbie.

MR. DAN SLOTCHIVER: Your Honor, it's

not that I won't allow him to testify. He has not been listed as an expert. It is his daughter's case. He is not provided as an expert, and the court decides who is an expert and who is not an expert. I don't have that ability, but I certainly have the right to the notice.

Now, with reference to the testimony, there's no question. He just says: Can you read this document? If he said: Do you, of your own -- there's other ways to address it, if you agree with the statement from your own knowledge, or there's other ways to do it, but to just say read this section, that's not a proper question.

THE COURT: Sustained.

BY MR. DAVIS:

Q. Dr. Cohen, what is your understanding of plasticity, and what does it mean?

MR. DAN SLOTCHIVER: Your Honor, without -- the same objection as to he is not an expert to testify as to plasticity or anything in the medical field. He's not listed as an expert in this case.

MR. DAVIS: Again, Your Honor, we're playing cat and mouse. This is -- we're wasting time. I'm simply going right by what Dr. Mamelak

says is the definition of plasticity, which Dr. Cohen certainly already understands, and he's running interference, and it's a complete waste of time. I mean, we need to move through this case.

There's nothing harmful that -- he's offered this, and I'm simply saying, Dr. Cohen, what is your understanding of plasticity, and I'm laying a foundation, because he won't let me do it otherwise, so I'm relying on his document to lay a foundation. I've got to have some latitude here.

MR. DAN SLOTCHIVER: They can't rely on their expert to give an opinion, a medical opinion, and that's exactly what they're trying to do, and they're saying what is your definition of plasticity, what is your opinion about it, which that's not his role. Another doctor can testify to it if they disagree with Dr. Mamelak.

MR. DAVIS: Your Honor, we've gone off on some tangents here, and I want to just ask you, please, to reel us back in. This is getting kind of -- maybe we're getting tired, but it's getting kind of --

THE COURT: I'm sure we're all getting tired, Mr. Davis. If you could move on. I don't think he can testify in this respect. He's not

been qualified as an expert.
MR. DAVIS: And I'm not asking that, Your Honor. That's the whole point I'm making. I'm not asking him to testify as an expert. I'm asking him to testify of what Dr. Mamelak's opinion about plasticity is that's referenced in his deposition. I'm not asking for his -- that's the whole thing I said like ten minutes ago. I'm not asking him to testify as an expert. I'm simply asking him to tell me his understanding of Dr. Mamelak's definition of what Dr. Mamelak says is plasticity, and he can read it right here. I don't know what in the world --
THE COURT: Can the court not read it, Mr. Davis?
MR. DAVIS: Your Honor, there's a lot of stuff in here, and we need to hit the high points. This whole deposition has got some points that are important. He was afforded an opportunity to cherry-pick parts out of this that he felt were beneficial to his case, and we should be afforded the same opportunity to take parts out of here and establish the record of what plasticity is, what improvement can be made, so we can establish that she has made improvement. I

mean, come on.
MR. DAN SLOTCHIVER: Actually, Your Honor, in my examination, I was questioning Dr. Cohen in his capacity as a fiduciary and his responsibility to read -- whether he had a responsibility to read this, and do these factors impact it, and is he aware of this statement made by Dr. Mamelak, and does it affect his ability and his decision-making. It's a whole different thing than asking him to give an opinion about the doctor's opinion, and I'm not going to comment further on the other stuff.
MR. DAVIS: Your Honor, again, this has gone -- that part, his questioning -- or objections have gone too far. He is the trustee, he's the guardian and conservator of his child, and he's a physician, and he is monitoring her and working with her, and we've got a professional saying what is going on with her and that they're relying on. He certainly can answer questions about this deposition. I feel like I'm in The Twilight Zone.
MR. DAN SLOTCHIVER: I don't believe there's any professional coming in to say that, Your Honor, based on your ruling, and I don't

believe that he's treating her. He's taken care of her, but he's not treating her as a physician, and he's not listed as an expert. We've talked about this ten times.
MR. DAVIS: So can I not ask him any question about his deposition? Is that what he's saying, no questions about the deposition? Of course I can ask questions about the deposition. It's in the record.
THE COURT: I think you can ask certain questions, Mr. Davis, but I think you're limited as to what you can ask your client, who is the trustee, the parent, the guardian, the co-conservator, not to give his medical expert opinion as to what this physician may have meant by this particular statement or what his understanding is of that particular condition.
MR. DAVIS: You're now telling me that he cannot give his own personal understanding? Your Honor, you just ruled a while ago that he can give me his personal understanding.
THE COURT: His understanding of Abbie's condition, what he sees and knows and what he's witnessed as to how her condition may have changed over time.

MR. DAVIS: Well, let me ask the court, because I'm definitely confused. They have proffered an argument that Abbie is essentially brain dead and cannot appreciate visitation and cannot and will not ever make improvement, and we are charged with defending that, Your Honor, and you have handcuffed me for reasons that I don't understand. I mean, he certainly can testify with regard to the deposition that they offered.
MR. DAN SLOTCHIVER: Your Honor, we don't disagree anybody's been handcuffed. We just ask that he follow the rules, Mr. Davis follow the rules with reference to his examination.
MR. DAVIS: Dr. Mamelak, in his deposition, says plasticity, an indication of an improvement in plasticity is sight. It relates to sight, okay. And we've got evidence that her sight has greatly improved, absolutely improved. Her plasticity has, in turn, improved.
MR. DAN SLOTCHIVER: Now he's testifying.
MR. DAVIS: I'm not attempting to testify. I'm simply attempting to use their document to indicate what has happened.
MR. DAN SLOTCHIVER: What evidence do

they have that sight improved unless they're going to bring in a doctor, who they didn't disclose to us in advance? They have no testimony to support it. And he's testifying at this point, Your Honor. I'd ask that we move along. It has been a long day.

THE COURT: Mr. Davis, please move along.

BY MR. DAVIS:

Q. Dr. Cohen, has Abbie's sight improved since Dr. Mamelak examined her?

MR. DAN SLOTCHIVER: Is that limited to his understanding, Your Honor?

MR. DAVIS: Yes. We've already been through that.

THE COURT: Well, if you could phrase it in that manner, Mr. Davis, so that the record is clear.

MR. DAVIS: Yes, Your Honor. I thought I said your understanding.

THE WITNESS: Can I answer?

THE COURT: Yes.

THE WITNESS: It's my understanding that her sight has improved since she was seen by Dr. Mamelak.

BY MR. DAVIS:

Q. Can you please turn to Page 64?

MR. DAVIS: And Your Honor, if you will, I would point out to the court that what they're doing is a very good legal litigation tactic, but it's not fair to us, and what they're doing --

THE COURT: Mr. Davis, if you could refrain from those comments and move along, I would appreciate it.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: I don't think they're necessary.

BY MR. DAVIS:

Q. On Line 7, does it appear that Dr. Mamelak has indicated she's moving in a certain direction?

MR. DAN SLOTCHIVER: Your Honor, I believe the record speaks for itself. Does it appear that he stated something? The record speaks for itself.

MR. DAVIS: I'd like for him to read it.

MR. DAN SLOTCHIVER: Well, he's asking

him to read a document, Your Honor, that --

MR. DAVIS: 64, Lines 7 through 10.

MR. DAN SLOTCHIVER: Your Honor, I would object to him just reading a document. There's no question on --

MR. DAVIS: This is the last thing that I'm going to have him read, Your Honor, if I can beg your indulgence for four sentences.

MR. DAN SLOTCHIVER: Last thing or not, I still place the objection. It's still not proper. It's the same thing that we've dealt with over and over again.

MR. DAVIS: And if we can stomach four sentences, I'll move on.

THE COURT: Mr. Davis, we have been over this. You can't ask the witness to just read the document. You can ask him limited, very limited questions, I'm afraid, regarding this medical deposition.

MR. DAVIS: And I don't know what is --

THE COURT: And I'm happy if you would like to recess now and resume this testimony in the morning. That might give all of us an opportunity to clear our heads a little bit and

regroup. Of course, you cannot talk to Mr. Cohen, I'm sure you won't --

THE WITNESS: Dr. Cohen.

THE COURT: -- about his testimony.

Any objection -- and I know we talked about quitting at 8:00, and it's just a couple minutes 'til 8:00.

MR. DAN SLOTCHIVER: Absolutely, Your Honor. If we could just take up some quick housekeeping as far as tomorrow.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Your Honor, I know we would like to be able to finish with the testimony of Dr. Cohen, to call John Freeman and to call Julian Walker tomorrow. Those are our three witnesses that we intend to call tomorrow, and if we can, we'll call Dan Dorn. But the timing perspective, I'd like a little bit of guidance, if I may, as far as scheduling the expert witnesses. They cost money, and I just want to know -- they're coming from Columbia, so --

THE COURT: We're going to finish with everybody. We'd like to finish with Dr. Cohen, I believe, first, which means that Mr. Davis would

complete his examination of Dr. Cohen. I believe you've already examined him.

MR. DAN SLOTCHIVER: I have.

THE COURT: And then Ms. Hedgepath, Ms. Moore, Mr. Kachmarsky, and then any follow-up.

MR. DAN SLOTCHIVER: Right. If I could just ask, I don't know if anybody has any idea how long the testimony is going to be. Obviously, we don't know -- it's just a guess -- if it's two hours or three hours or one hour.

MR. DAVIS: We're looking at finishing -- he's asking me how long do I have left?

MR. DAN SLOTCHIVER: If you have any idea, yes.

MR. DAVIS: And again -- well, not again, but it really depends on how many objections Mr. Slotchiver raises. I can get through it in 15 minutes if he didn't raise objections, but then with objections, and I'm not saying it in a disparaging way --

THE COURT: Well, how about this, Mr. Davis. How about if you try to be mindful of the objections he's already made to your examination and my rulings in support of his --

MR. DAVIS: I think it would be an hour-and-a-half, two hours.

THE COURT: Well, Mr. Davis, I'm going to remind you of the objections that have already been made and the objections that I have sustained and ask you to conform your questioning of Dr. Cohen, mindful of those objections that have been sustained, so that he doesn't continuously stand up and object to the form of the question or getting into medical testimony that he's not been qualified as a medical expert, so that we might can move this along.

MR. DAVIS: Thank you, Your Honor. And I would also ask the court to advise Mr. Slotchiver the exact same thing, because a number of his objections are identical that you have ruled on, and several were overruled, so I would ask that you make him -- caution him to be mindful as well.

MR. DAN SLOTCHIVER: I'll be mindful, Your Honor.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: I understand that Mr. Davis says he's got two hours, and I'm assuming that there's at least another hour of

stuff. What time --

THE COURT: Is that what he said, two hours?

MR. DAN SLOTCHIVER: He said an hour-and-a-half to two hours.

THE COURT: I thought that was -- is that correct, Mr. Davis?

MR. DAVIS: Based on what we've done so far.

THE COURT: But I think everybody's going to try to be very mindful of the objections and not go down the roads that we've already been down.

MR. DAVIS: I'm going to do my best, Your Honor --

THE COURT: Thank you.

MR. DAVIS: -- to move along. I don't like stretching this out any more than anybody else does. It's a tremendous amount of objections. I think it's a lot. He's entitled to object. I'm not saying he's not.

MR. DAN SLOTCHIVER: What time are we going to start tomorrow, Your Honor?

THE COURT: Well, let me go through this a little bit more.

MR. DAN SLOTCHIVER: Please.

THE COURT: So based upon that, Mr. Davis, how long would you anticipate?

MR. DAVIS: I mean, you want to say an hour, Judge?

THE COURT: I'm asking you. Do you think maybe an hour?

MR. DAVIS: I am very, very hopeful.

THE COURT: And Ms. Hedgepath and Moore?

MS. HEDGEPATH: We'd like your guidance tonight. On Mr. Cohen -- Dr. Cohen?

THE COURT: Yes, ma'am, just on Dr. Cohen.

MS. HEDGEPATH: Mine's going to be brief, no more than 30 minutes at max, more like 15 minutes.

THE COURT: Ms. Moore?

MS. MOORE: I was going to say 15 to 30 minutes at max.

THE COURT: Mr. Kachmarsky?

MR. KACHMARSKY: I would say 30 minutes at max.

MR. DAN SLOTCHIVER: So looks likes we're at about two hours, two-and-a-half hours,

Your Honor, maybe three.
THE COURT: I guess we should say three.
MR. DAN SLOTCHIVER: Under that circumstance, Your Honor -- I don't know what time you're planning to begin, I'm assuming 8:30?
THE COURT: 8:30.
MR. DAN SLOTCHIVER: So under that circumstances, could I -- would it be fair for me to have Mr. Freeman here by 11:30, and if, for some reason, we finish a few minutes earlier, maybe we'll get an early lunch and come back.
THE COURT: Well, are you wanting to go to lunch before we begin with Mr. Freeman?
MR. DAN SLOTCHIVER: Well, actually, I'd rather not. My concern -- and I'll let the court guide me. My concern is I've got Mr. Freeman coming, and I think that my testimony with him is going to take 45 minutes. How long cross and everything takes, I don't know, but I'm hoping that Your Honor will allow us to attempt to finish Mr. Freeman before we go to lunch, and then to take a break, come back, and let me call Mr. Walker, and if you're so inclined to continue to work tomorrow a little bit later, like we did

today, because I don't want either of the experts to have to spend the night if we can possibly avoid that.
THE COURT: I would certainly try to do that.
MR. DAVIS: Your Honor, I think mine's going to be a little quicker, because I'm looking back at some questions that I've got left. Hopefully, 30, 45 minutes, unless something unusually unforeseen comes up, but based on the ruling with regard to the medical professionals, it's going to probably streamline what I'm going to do.
THE COURT: So could Professor Freeman possibly be here at 10:30?
MR. DAN SLOTCHIVER: He can be here at whatever time you want. I'm just -- we can pay him once he gets here. That's why I wanted to try to arrange it.
THE COURT: I understand.
MR. DAN SLOTCHIVER: But if we got him here at 10:30, and would it be fair, Your Honor, to assume that if he starts at 10:30, could I have Mr. Walker here at 2:30? Would that be appropriate?

THE COURT: 10:30, 11:30.
MR. DAN SLOTCHIVER: Including a lunch somewhere in between and all.
THE COURT: Right, maybe 2:00. What were you saying, 2:30?
MR. DAN SLOTCHIVER: 2:30.
THE COURT: You know, I don't know how long -- you're saying 45 minutes with Professor Freeman?
MR. DAN SLOTCHIVER: Well, I think that if this case has demonstrated one thing, it's we're all very poor judges of time, and things seem to take a little bit longer. If we started with Dr. Cohen at 8:30, and we were done by --
THE COURT: 10:30.
MR. DAN SLOTCHIVER: Which would be surprising to me, then if we started Mr. Freeman at 10:30 --
THE COURT: 11:30.
MR. DAN SLOTCHIVER: I'm guessing 12:30 or 1:00, because it's going to be my testimony, and then the whole circle again, so 11:30 to 1:00, perhaps 2:00 with Mr. Walker. Would that be okay?
THE COURT: I think that would be

fine.
MR. DAN SLOTCHIVER: Thank you, Your Honor. I'll let them know.
THE COURT: Anything else from counsel?
MS. HEDGEPATH: Yes, ma'am. If you're going to allow us to call Dr. Dean, Dr. McCarthy, and Dr. Gerace, we need to let them know, and, of course, Robin Morris. We need to know so that especially the doctors, as well as Robin, can clear their schedule.
MR. DAN SLOTCHIVER: And I have an objection, Your Honor, which I'll be happy to put on the record whenever you want.
THE COURT: And I don't think we're going to go into that now. When do you say, Ms. Hedgepath, you have to let them know?
MS. HEDGEPATH: Well, if we're going to be able to get to them Thursday, I feel that I need to let them know first thing tomorrow morning, because with the doctors, I'm sure they're booked up on a Thursday, and they would have to clear those times.
THE COURT: I guess if you could let them know to be on standby, and then we'll try to

take up this issue.
MR. DAN SLOTCHIVER: I would imagine, Your Honor, that we're going to take all day tomorrow. We'll be lucky to get to Dan Dorn. Then at the conclusion of my case, as I understand it, Mr. Davis and Mr. Boyd go with their case. At the conclusion of their case, when they've rested, then the guardian ad litem's attorney goes, then when she's rested, I guess -- so it's a long -- I don't think it's going to be this week.
MS. HEDGEPATH: Do Mr. Boyd and Mr. Davis have any -- are y'all to going to call any additional witnesses in your case-in-chief, or are the witnesses we're talking about now, is that going to be the totality of it?
MR. DAVIS: We've got an expert.
MR. DAN SLOTCHIVER: I'm assuming they're going to call Wingate.
MR. BOYD: Yes. We've got Wingate.
MR. DAVIS: Other than that, we've covered it. So is it just one more? We just have one -- I'm sorry, Your Honor. We just have the one witness, Wingate, Ken Wingate.
MR. DAN SLOTCHIVER: Maybe we could take it up tomorrow at a break, Your Honor,

whatever you want, but I do want to argue that point.
THE COURT: I don't know if we'll get to them or not by Thursday, Ms. Hedgepath. I think you could tell them to try to be on standby. Certainly, I know we're all working very hard to try to get this finished by Thursday. I don't know if it's going to happen or not.
I'm available on Friday. If we want to try to go one more day, I can certainly do that. I know everybody was set to go through Thursday. And I'm willing to go late on Wednesday, late on Thursday, to this time or later, if necessary, and I'm also available on Friday, if that's a possibility, so that we might could get it finished.
So I'll let y'all think about that. If you want to tell these people they might need to be on standby for Thursday, late Thursday. That's the best I can tell you now.
MR. DAN SLOTCHIVER: My client can't be here on Friday.
THE COURT: Pardon me?
MR. DAN SLOTCHIVER: My client cannot be here on Friday. He has the right to be here.

That's why we had limited it to Monday through Thursday, Your Honor. We'd like to get it done also. I don't know. We'll see what happens tomorrow.
THE COURT: I suggest, Ms. Hedgepath, if you want to tell them they might could be on standby. I don't know that we can give anything else more definite than that.
MS. MOORE: Could we at least address what objections Mr. Slotchiver may have in the morning?
THE COURT: First thing?
MS. MOORE: Correct.
MR. DAN SLOTCHIVER: Your Honor, I would prefer, honestly, not to, because we've got witnesses we're bringing in to testify. We've got to finish this examination to get to these two, and if I have --
THE COURT: Well, why don't we start at 8:00.
MR. DAN SLOTCHIVER: I'm just stating if I have an overlap, and they're both here, it's costing my client an incredible amount of money.
THE COURT: I know. I'm saying maybe we start at 8:00 and hear the objections to them

bringing in --
MR. DAN SLOTCHIVER: If that's what you're so inclined to do, Your Honor. I would rather do it at the end of the day, after we've finished our witnesses.
THE COURT: But Mr. Slotchiver, if they have witnesses they need to notify, and some of them are doctors, to try to come in on Thursday --
MR. DAN SLOTCHIVER: They can notify them right now. We could argue the motion later on down the road, Your Honor. I don't want to be -- I don't want my case -- in all candor, I don't want my case and my expenses to be increased because they have witnesses they want to notify. That's in their case. In my case, I've accommodated Ms. Meyer and let it go forward, but now I'm getting to the point that I've got two experts coming to testify, and I'm paying hourly rates for both of them, and I'm guessing when they're going to start, and I know I'm going to have some dead time, and I just don't think that it's fair to us to be in that position, when the other alternative is for them to notify the doctors to be here, and they'll let them go if

they don't need them.

MS. HEDGEPATH: And Your Honor, it's not fair to our witnesses, the doctors, to clear out their day and then not have their patients come in, and it's not fair to their patients for them to show up on the day that they have to be there, and the doctor's not there.

MR. DAN SLOTCHIVER: I represent a party in this case in this court and asking for fairness for my party. If they're a witness, that's always not the most pleasant thing for them to do, but Your Honor, I think that we brought the case. We should have the ability to move forward with the case and with our case as we proceeded, and I don't think we should be impacted by their desire -- by their concern about witnesses separate.

MR. DAVIS: We brought a case, too, Your Honor, and that was a pivotal thing that we discussed all afternoon, or tonight, and I think it needs to be taken up immediately, as soon as we possibly can, to let these doctors know, because that's a very important part of this case.

MR. KACHMARSKY: Judge, I also want to make it clear that if they bring medical experts

in, that I will be calling one myself, and I'll be seeking the court to grant payment out of the trust for it. And it'll be a neurologist, because I have the right to do that.

THE COURT: I suggest we take it up first thing in the morning, so that we can then move on, and I will take limited argument on it.

MR. DAN SLOTCHIVER: If it's not done by 8:30, can we proceed with Dr. Cohen? I just want to have a time table.

THE COURT: Well, we'll limit it, okay. I'm not going to let you go on very long. I'm happy to come in at 8:15, let you argue for 15 minutes, and I'll make my decision.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: How is that? We'll start at 8:15.

(The proceedings were adjourned at 8:11 PM.)

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 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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THE COURT: We are back on the record this morning in the matter of Abbie Dorn. It is March 6th, 2013, I believe, on Wednesday -- good morning -- Case No. 2008-GC-26-25 and 26-50.

And I believe we were going to start this morning -- there was an issue that was raised late yesterday about some of the parties or counsel calling witnesses that the court has indicated to counsel for the Cohens, denied their right to call them as witnesses to respond appropriately to discovery requests, and I think there was some indication by maybe Ms. Moore or Ms. Hedgepath, maybe even Mr. Kachmarsky. Were we not going to talk about that first?

MR. DAN SLOTCHIVER: We were, Your Honor.

MR. BOYD: Yes, Your Honor.

MR. DAN SLOTCHIVER: I assumed we were going to do it very briefly, then move back into the testimony.

THE COURT: We are going to do that briefly, have argument on it, and then move on to our next witness.

MR. DAN SLOTCHIVER: Yes, Your Honor. Thank you very much.

My understanding is that either Ms. Hedgepath or Ms. Moore intend to call as witnesses those doctors who have been precluded from testifying based on the discovery responses of the Cohens' counsel with reference to this case in that they want to be able to notify them to be here, and I wanted to be heard on that issue.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Your Honor, the correlation could be made in the criminal world to what's called fruit of the poisonous tree. If a car is stopped wrongfully, and in the car there are drugs and weapons and other criminal items, you cannot charge that person, the charge cannot stick against that person, because when you go back to the stem of the arrest, it was improper.

In this case, my understanding, even if we take the evidence in light -- or in the light most favorable to the Cohens' testimony, which that Abbie has some cognitive ability to communicate, even their testimony about her limited ability would not place her in a position wherein she was able to vocally converse with the guardian or the guardian ad litem's attorney about her interaction with different doctors.

THE COURT: I'm sorry. It's not the guardian ad litem's attorney.

MR. DAN SLOTCHIVER: Excuse me. I phrased it wrong. With the guardian ad litem or her appointed attorney. She would not be able to converse with either of them about who she saw, what they did, what they determined for her. The only way to obtain that knowledge would be through the Cohens, in that fruit of the poisonous tree analogy.

Your Honor, to allow them to call the witnesses that the Cohens had wanted to call would be an end run around the system. It would be a mockery of the discovery rules. It would actually even allow the Cohens to cross-examine the witnesses who they were not allowed to call.

If the information is deemed to be relevant and prudent to the case -- and I'll remind the court that this case, although it's captioned between -- although there's different parties, we've got the parties representing the minor children, we've got the parties representing the Cohens, we've got the parties representing Abbie, I would argue that the parties representing Abbie, their interest -- I'm not trying to speak

for them, but as I understand it, their interest is for Abbie. We're not seeking to remove the Cohens as guardians for Abbie. This is purely about the wrongful expenditures of monies.

So far throughout this proceeding and all the proceedings relevant to the case, there seems to be more of a line divided between Dan Dorn and everybody else on every issue. There's not a single issue I've seen that's been supported by anybody other than those persons representing the minor children.

Further, Your Honor, I went through the billings submitted to date from both Ms. Hedgepath and Ms. Moore. None of those billings reference any communications they've had, any outward efforts they've made to meet with or to contact these doctors independently. It appears to me that this is purely an effort to do that which the Cohens can't do, and to allow them to do that would be to place into evidence information that would be improper.

From our perspective, a lot's been said about the fact we haven't sent discovery. Well, part of the reasons that you send discovery is to learn what is discoverable. Because of our

understanding of the facts, neither Ms. Hedgepath or Ms. Moore can learn things other than what we learn or other than through the Cohens. And if the Cohens advise them of things, either directly or through their counsel, and if those things are pertinent to the case, that is information that we should have known.

So the only way they can have it is through the Cohens. If the Cohens are allowed to elicit it and to bring in the communication, as per the court's prior ruling, then how could the guardian ad litem or the attorney for Abbie or anybody else in this case be able to elicit that information? Thank you.

THE COURT: Thank you.

MR. DAVIS: Is this purely -- I'm sorry, Your Honor. Is this purely between Ms. Hedgepath --

THE COURT: At this point it is.

MR. BOYD: Your Honor, I would like an opportunity to be heard on this, if I may be heard briefly.

THE COURT: Let me hear from Ms. Hedgepath and Ms. Moore.

MS. HEDGEPATH: Your Honor,

Mr. Slotchiver is correct. I had not contacted any of these doctors. It was my understanding, from talking with Mr. Boyd, since we had not sent out discovery, that the main objection to the monies that had been spent was the monies that had been spent on the litigation. I did not know or realize that they were objecting to some of the treatments, did not realize until Mr. Kachmarsky's opening, and as we got further into it, of course, find out he even wants to put her in a nursing home.

MR. KACHMARSKY: I never made that statement, by the way. I asked her about whether or not she had ever considered or looked into a nursing home, but I have no desire to put Abbie in a nursing home. I just want to make that clear.

MS. HEDGEPATH: It led me to believe that a nursing home was an option that he had wanted them to consider, why I asked them about it.

But when all of this came up, Ms. Moore and I were talking about the doctors, and I think the following day is the day that Ms. Moore was sick and was not here. And I talked with counsel and I believe the Cohens to find out

who the doctors -- who the primary doctors were that did such and such a thing, and I went and visited those doctors and made the decision, in consultation with Ms. Moore, that it would be important to the court and certainly important to Abbie for the court to know what they have to say, what her condition is today, the benefit that she is receiving from the money that's being spent on a daily basis or on a monthly basis for this care.

If you remove them as trustees, she may well not get that, and this is important. The court needs to know that had they not fought for the visitation and got the visitation that they got for her and had they not pursued every treatment that they felt was beneficial, then if that money had not been spent, Abbie may well not even be here today. If she had been kept in a facility, certainly would not have received the care and would not be at the -- reach the extent of improvement and the condition that she is now. And quite frankly, I was very impressed with some of the treatments that she received and the results that they told me that they were getting.

Now, I have talked with Dr. McCarthy and Dr. Dean, and though I have not yet talked

with Gerace, Sarah Gerace, the therapist, I think she would be important, from what I understand. And the other witness I want to call -- we might as well go ahead and address it now -- is Robin Morris. There's nothing to preclude me from doing that.

THE COURT: Ms. Moore?

MS. MOORE: Yes, ma'am, Your Honor. They are absolutely correct, I have not had direct contact with the medical providers. However, in an effort to keep the cost of this litigation down, I actually asked Mrs. Cohen if there was any way I could get some information that would be in greater detail from all of the providers that would give me an idea of how their treatment interacted with each other, what sort of treatment they provided, how they saw the improvement.

And there was actually a roundhouse that was held where every single provider participated, there was a recording done for my benefit, and there was a detailed discussion as to what type of care was being provided for Abbie, and the comments being made something to the effect of that they were very glad to have done the roundhouse, so that they could know what each

was doing and how it was impacting Abbie.

So they're absolutely correct. I have not had direct information, but I certainly have information that would give me the detail that I needed to know as far as the care of Abbie was concerned.

In addition, the information that was provided me obviously has to come from the Cohens, because they're the ones that make the arrangements for the medical care, so as far as the identification of the people, certainly, I asked Mrs. Cohen, and I wrote it down in a detailed memo.

Once again, had discovery been served upon me, I certainly would have provided every single name, address, telephone number, and a summary, just like I have, of what it is that I would expect them to testify to.

But I think it is important for the court to be provided with information certainly not from every single provider, but from some of the providers that have been providing some of the critical care for Abbie that has been done at the direction of both Dr. Cohen and Mrs. Cohen in their capacity as guardian and trustee.

I don't think you can separate the two. Certainly, their responsibility to make arrangements comes under the auspice of being a guardian, making the decision about what type of care needs to be done, but then the flip side is is as trustee, they have to make a decision about whether or not the care is fiscally responsible, whether or not there are sufficient funds to cover the cost, and they have to weigh the balance of that.

So I believe that is important, and I don't believe there's anything that prohibits either Ms. Hedgepath or myself from calling any witnesses that we feel are necessary that have not been called by either Mr. Slotchiver or by Mr. Reese or Mr. Boyd. Often is the case where that happens.

Most times, quite frankly, it's a witness that neither one of the parties want to call, and therefore, the guardian ad litem is put in a position where they feel it's necessary to present that information to the court. In this situation, it is a little unusual, where it might have been a witness that otherwise would have been called by the Cohens, no question about that, but

just because there has been a ruling that would prohibit the Cohens from calling those individuals as witnesses, I do not believe that it prohibits us from calling them as witnesses.

THE COURT: Thank you.

MS. HEDGEPATH: Your Honor, may I add one more thing?

THE COURT: Yes, ma'am.

MS. HEDGEPATH: There has been a lot of discussion about failure to comply with discovery, and though I did not send that formal discovery -- I, as Mr. Kachmarsky, had been trying to keep fees down -- but as the trial was approaching, I emailed Dan Slotchiver to get from him and asked him if he would, though it was not formal, provide me with a list of the costs that they found objectionable. I never heard anything back.

Now, he is correct. Under the rules, he had no obligation to respond to me, but all this has not been one-sided, Your Honor, and I have kept nothing from him of which I'm aware that he has asked for.

MR. DAN SLOTCHIVER: Your Honor, actually, the email I received was asking me what

the issues were that I thought were going to be presented. I found it surprising that two years into a case, I'm getting an email from the guardian, the attorney for Abbie, not knowing what the issues were. And we had answered the discovery. We have a lot of other moving parts in this case, and we went forward with them.

Your Honor, once again, I'm not disputing that these witnesses would be appropriately called or could be appropriately called if they had appropriately been identified. My concern is that because of the discovery responses given, we've been precluded from moving forward. Had we been provided the information, we would have had the opportunity -- we asked for it over two years ago, two years ago January. We asked for it 26 months ago. We would have had the opportunity within that time period to have taken a deposition if we chose to do that.

Obviously, when counsel is contacted by -- counsel or Mrs. Cohen is contacted by the guardian ad litem about who are these doctors, and I'm going to set up a roundtable, if they didn't have notice by that time, I don't know when they would. But it goes back, Your Honor, to the issue

of the fruit of the poisonous tree. It all stems from the Cohens' conduct or lack of or misconduct in the case.

THE COURT: Mr. Slotchiver, thank you. I appreciate it.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Mr. Boyd, I'm not going to hear from you on this matter.

Anything from you, Mr. Kachmarsky?

MR. KACHMARSKY: I want to make it pretty clear that I have no issue with the Cohens and the way that they've handled Abbie. I mean, I think they've done a remarkable job, and I know she's had a lot of treatments that have helped her physical body.

I only take exception with her cognitive functioning, and that seems to be a lot of what we're hearing a lot about, that she can do certain things that I don't believe, based on the testimony I've looked at or the deposition, that it's possible.

So one of the questions I would like to ask is with regard to the professionals that you call, the medical experts, is the neurologist one of them? Would that be one of the persons

that would come here? Because that's who I'd like to hear from.

MS. HEDGEPATH: Mr. Kachmarsky had indicated before we left yesterday if we were allowed to call the doctors that we were anticipating, then he was going to call a neurologist, but if he anticipates calling a neurologist, yes, we will call Abbie's neurologist.

MR. KACHMARSKY: And I only -- I represented to this court yesterday that I did not propound discovery, I didn't have any intention of bringing any witnesses or any documents that Mr. Slotchiver hasn't already identified, and I would only do that to the extent that I perceive this to be an attempt to rehabilitate the case that is brought by the Cohens. If they're going to do that, then I'm going to do the same thing, but only if the ruling is that they're allowed to go forward on that.

THE COURT: Thank you. I believe that -- I do not believe that Abbie, through her court-appointed attorney and guardian ad litem, who is the person who's the primary benefit of the trust, is precluded because the co-trustees and

co-conservators have been precluded by the court from calling these witness. I don't believe that precludes Abbie, through her court-appointed attorney and guardian ad litem, from calling these witnesses.

They were not presented with any discovery requests. They did not fail to respond to discovery requests. I think they can call witnesses, and I think it would be prejudicial to Abbie if the court precluded her attorney and her court-appointed guardian ad litem from calling the witnesses based upon what counsel for the co-trustees and co-conservators may not have done with respect to the discovery requests.

I have precluded them from doing that. They could choose not to call them if they didn't want to. If they want to call them, I'm not going to preclude them because I've precluded the Cohens from calling them.

I will, though -- and I'm happy to hear this argument when we get to it, but I am inclined to preclude their counsel from questioning these witnesses. I don't know if there's a basis for doing that or not, but I would think that there would be, because they're

precluded from calling them to begin with, and, of course, we're going to allow them to go around that preclusion by allowing them to question them. I will probably restrict their ability and not allow them to examine those witnesses and allow counsel for Abbie, Mr. Kachmarsky, and counsel for Dan Dorn to examine those witnesses.

MR. DAN SLOTCHIVER: I would ask that in conjunction with that, Your Honor, that you also place a gag order precluding the Cohens or their counsel from speaking with the guardian or the guardian's attorney about the issues with which they believe would be prudent or any issues relative to those experts.

In other words, they called them, they can ask them, but they shouldn't be able to coach them, because if they're able to coach them and tell them what they think was prudent, then they're accomplishing through them, meaning Ms. Hedgepath and/or Ms. Moore, exactly what you said they could not do.

THE COURT: I will take that into consideration.

MR. DAN SLOTCHIVER: In the meanwhile, while you're taking it into consideration, can you

temporarily place that gag order so that if they do it today, they're not in violation? If they do it tomorrow, they might be.

THE COURT: I will instruct them not to talk with the Cohens about these particular witnesses and try to solicit from the Cohens information regarding these witnesses. I'm not going to preclude them from talking to the Cohens about other matters.

MR. DAN SLOTCHIVER: I understand. I wasn't asking it. Would that also apply to Cohens' counsels?

THE COURT: Yes.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

MR. BOYD: Your Honor, I have a motion that I would like to bring to the court's consideration, if I may, very briefly.

THE COURT: Very quickly.

MR. DAVIS: Can we address this, what you just did? You just precluded us from doing something without giving us an opportunity to be heard, Your Honor. I think we ought to have at least a chance to argue.

MR. BOYD: Your Honor, I'm not

familiar with any case where a gag order has been prescribed, but maybe I can address that as part of my motion for reconsideration, may it please the court.

Your Honor, I'd just like to briefly address -- because I did not speak yesterday. I was not in the bullpen. I want to make just a very brief observation and a quick motion for the court's consideration.

THE COURT: And I don't want to go back over what we've already ruled on.

MR. BOYD: I understand, Your Honor. I just would like -- could I just make one observation for the record?

THE COURT: Yes, sir.

MR. BOYD: One of the overarching -- and I would like to put this to the court, Your Honor, in the form of a motion for reconsideration, but what my point, Your Honor, is that one of the overarching aims of the rules of discovery, as I've reviewed them and the cases interpreting them, is that trial courts are encouraged to make their decisions on as much evidence as is available as possible. The courts have made clear -- appellate courts have made

clear in order --

THE COURT: Mr. Boyd, are you asking me to reconsider my ruling of yesterday evening regarding the ability of your clients to call these witnesses?

MR. BOYD: Yes, Your Honor, I am.

THE COURT: I deny that.

MR. BOYD: May I just briefly put something on the record, Your Honor?

THE COURT: Very briefly.

MR. BOYD: There are three cases that I want to bring to the court's attention, Your Honor, and the standard, Your Honor, for excluding evidence, which is a Draconian remedy. It's a very high standard. And the cases refer to willful disobedience or gross indifference to the rights of the other party. There's three cases that I'll bring to the court's attention: Briggs versus Richardson --

And I've got copies I'll hand up in just a second, Your Honor. Actually, I'll go ahead and hand these up, if I may. I'm sorry, Your Honor. I only have copies of one of these cases. I will email copies of the other cases to counsel.

The second case after the Briggs case, Your Honor --

MR. DAN SLOTCHIVER: Your Honor, I understood he was going to give the names of the cases so we could proceed, if that would be acceptable. Just to move forward with the witnesses, he was going to name the names of the cases. You've already denied the motion.

THE COURT: I will give him two minutes.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

MR. BOYD: Your Honor, in the Briggs case, the court said that allowing witnesses whose name was not disclosed pursuant to interrogatories to testify was harmless error unless the outcome of the case was determined by the testimony of that witness.

The second case I would bring to the court's attention is the Bowman versus AT&T case. It's a very important case, Your Honor, and it talks about a trial court improperly excluding the testimony of an expert doctor who had not been named in response to an interrogatory. Nonetheless, the court excluded it, but there was

a failure of a showing by the other party of willful disobedience or gross indifference to their rights.

And Your Honor, the last case that I will bring to the court's attention is the case of Jenkins versus Few, which I've handed up, talks about sanctions and the Draconian remedy that we're talking about here, which is excluding evidence. And the court, in the Few case, said before excluding a witness as a sanction for violating the continuing duty to disclose information, the trial court should ascertain: One, the type of witness involved; two, the content of the evidence; three, the explanation for the failure to name the witness in the answer to the interrogatory; four, the importance of the witness's testimony; and five, the degree of surprise to the other party.

Your Honor, just in very brief summation, with respect to these witnesses that we admittedly did not suffice Mr. Slotchiver's standard, meet Mr. Slotchiver's standard in answering our interrogatories --

MR. DAN SLOTCHIVER: Your Honor, I object to the characterization that it's my

standard. I believe it was the court's standard.
MR. BOYD: What he's saying, Your Honor, is, look, we're just following the rules, but let me -- I would ask the court briefly to go back. What he's asking us to do is look at his complaint, which is extrapolated forward.
MR. DAN SLOTCHIVER: You ruled on this matter, I believe, Your Honor.
THE COURT: Thank you.
MR. BOYD: Your Honor, there's something that needs to be on the record because this is a very important issue, Your Honor, and he's asking us to extrapolate forward from his complaint and then work backward to every possible document that could be relevant in any conceivable direction that he could go with his case, and then he's going to say, hey, it's a standard interrogatory. And he may be right in that regard, Your Honor, but in the way it's being applied in this instance, it's unduly burdensome, and it's unfair.
Candidly, Your Honor, when I first looked at this case, it looked to me something akin to a declaratory judgment. I believe there was a relatively small universe of documents, the

order of transfer of jurisdiction, the California orders of conservatorship, the special needs trust itself, that the court would effectively be interpreting to determine exactly what the authorities of the trustees were and whether they exercised those authorities appropriately.
If I read Mr. Slotchiver's petition, it basically alleges as follows: We've not been filing the accountings. We demand those. You didn't get prior court approval for commencing California litigation and paying attorneys' fees in California that you paid. They asked for restrain performance, bond, removal of the trustees and the co-conservators, and, of course, they asked for attorneys' fees.
MR. DAN SLOTCHIVER: Your Honor, I think the document speaks for itself. I have a witness coming in an hour and 45 minutes.
THE COURT: I understand.
MR. BOYD: I would encourage the court to review -- the interesting thing when you review Mr. Slotchiver's petition, Your Honor, is it does not mention --
MR. DAN SLOTCHIVER: This has gone well beyond the argument, Your Honor.

THE COURT: One second, Mr. Slotchiver.
MR. BOYD: It does not mention in any regard the benefit Abbie receives from visitation or any lack. It alleges no lack of benefit that she receives from visitation.
Number two, it has absolutely zero references to medical providers selected by the trustees and certainly no allegation that any such provider was improperly selected.
Three, there is no reference at all in Mr. Slotchiver's petition to the efficacy of any treatments that the Cohens have undertaken for their daughter and certainly no allegation that they were paying for treatments that have no benefits for Abbie.
In fact, Your Honor, when you look at Mr. Slotchiver's petition, I can't find the words medical, physician, or doctor mentioned in his petition. So if he wants to limit us to the four corners of our discovery in a strict legalistic interpretation of the rules, then I would submit to you that we need to limit Mr. Slotchiver to arguments that are raised in his petition.
And I would also move that in addition

to a motion for reconsideration, I would move that we exclude any evidence that Mr. Slotchiver would present that has not been raised in his petition, and that will narrow the case significantly, Your Honor.
THE COURT: Thank you.
MR. BOYD: Thank you.
THE COURT: I'll take that under consideration during a break.
MR. DAVIS: Your Honor, one last thing. You've ruled that we are unable to cross-examine the witness. I understand the court's ruling, and I understand he's been very persistent in his arguments, and I have to applaud that; however, it doesn't change the fact that there's no legal basis for not allowing us to cross-examine the witness. Had I not brought them up at all, and they just on their own unilaterally said we're going to call these witnesses, nothing would have precluded us, Your Honor.
MR. DAN SLOTCHIVER: We would have made the same objection.
MR. DAVIS: We would have cross-examined those witnesses just like in any case that ever comes before -- when a guardian or

an attorney for the ward calls a witness, every time that I've ever seen, we've been able to cross-examine a witness, Your Honor.

So just because I brought up testimony does not change the fact that we're still entitled to cross-examine a witness, and it would absolutely be prejudicial to the Cohens, who are being sued here. And Your Honor, I remind you what Mr. Boyd said about the allegations in his complaint, so we certainly should have an ability to cross-examine.

MR. DAN SLOTCHIVER: Your Honor, they're both arguing the same points, and I believe this has been heard.

THE COURT: Thank you. Let's move on, please. I understand Dr. Cohen was testifying late yesterday.

MR. DAVIS: Yes, Your Honor.

THE COURT: Would we like him to re-take the stand? I believe, Mr. Davis, you were examining the witness.

MR. DAVIS: Your Honor, to avoid -- to speed this along, I just want to make sure we're clear. You have ruled that Dr. Cohen can testify as to his understanding, but he is not an expert,

medical expert, and cannot give his opinion. Is that generally what you've ruled?

THE COURT: His medical opinion, that is right.

MR. DAVIS: Cannot give a medical opinion, but can give his opinion as a trustee formulated in his own mind. Is that -- my understanding is correct? I just want to preempt any unnecessary objections by Mr. Slotchiver.

MR. DAN SLOTCHIVER: Object to the reference to unnecessary objections.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: I believe they were necessary.

THE COURT: We'll strike that statement.

MR. DAVIS: I withdraw the statement if he considers it to be offensive. I wasn't intending it to be, Your Honor.

THE COURT: Thank you.

PAUL COHEN

having first duly affirmed, testified further as follows:

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Dr. Cohen, as trustee, what is your understanding of Dr. Mamelak's diagnosis of Abbie three months after her accident?

A. Three months after the accident, he said that she was in a persistent vegetative state.

Q. Is your understanding that he also mentioned in his deposition that improvement is possible?

A. He cited some -- he reported that there was some case reports of this.

Q. Dr. Cohen, I'd like to draw your attention to Respondent's Exhibit No. 6.

MR. DAVIS: And for the court's information and everybody else, that report is Dr. Hays's medical report.

THE COURT: Just briefly while you do that, what time is your first witness going to be here, Mr. Slotchiver?

MR. DAN SLOTCHIVER: 10:30, Your Honor.

BY MR. DAVIS:

Q. Dr. Cohen, are you familiar with Dr. Hays's report?

A. I haven't read it recently, but I'm

familiar with it.

Q. And can you explain to the court who Dr. Hays is?

A. She is a professor of neurology at Medical University of South Carolina in Charleston.

Q. And how did she become involved in a case in California?

A. She was a court-appointed neurologist for the divorce proceedings.

Q. What is your understanding of Dr. Hays's examination of Abbie?

A. Well, her examination of Abbie -- the initial part of the first two-and-a-half, three pages consists of a history of what happened, and there after that, she did a neurological examination, which would have been --

MR. DAN SLOTCHIVER: Your Honor, I would object. This is -- he's just giving a narrative as to what a document says. It's not relevant.

MR. DAVIS: Your Honor, I'm just asking for his understanding. That's all I'm doing. I don't know any other way to do it.

THE COURT: Let me just caution

counsel, we need to move along as quickly as we can this morning. I would recommend, Mr. Davis, that you move along as quickly as you can with your witness and try not to elicit testimony that might not -- maybe it's already been presented, it's not critical to the trial of this, things that I can gather from reading the document myself.

Mr. Slotchiver, I recommend that to the extent that you can give a little bit of leeway with your objections. I certainly don't want to tell you you can't object to anything if it's a critical matter, but we do need to move this along.

MR. DAVIS: And I completely agree, Your Honor. I'm going to do everything I can --

THE COURT: You've got to finish, everyone has to examine Dr. Cohen, and we need to finish by 10:30.

MR. DAVIS: You have my word. I'm going to do everything I can, Your Honor, to do that.

THE COURT: Thank you.

BY MR. DAVIS:

Q. Dr. Cohen, the point that we're trying

to get at is there's been a change in diagnosis. Is your understanding that there actually has been a change in diagnosis from Dr. Mamelak's report to Dr. Hays's report?

MR. DAN SLOTCHIVER: Your Honor, I object. He is not listed as an expert. He cannot pit the two doctors against each other and give his understanding of the difference between the two doctors' reports, especially insomuch as Mamelak's report said: I believe at this time this is her condition. Hays's report said similar things, but in a different way. I don't believe he can ask him to compare the two of them to give an opinion as to a change.

MR. DAVIS: Your Honor, I'll be happy to do whatever, and if you want to instruct me on a more efficient way to do it, be it Dr. Mamelak, who at three months after -- the testimony will show three months --

THE COURT: I understand, and I will certainly review both of those reports in full, Dr. Mamelak's and Dr. Hays's report.

BY MR. DAVIS:

Q. Dr. Cohen, what is your understanding of Dr. Hays's diagnosis?

A. She believed that Abbie was in a minimally conscious state and not a persistent vegetative state.

Q. And it's your understanding that's improvement?

A. It's a higher level of functioning.

MR. DAN SLOTCHIVER: Your Honor, now he's been asked to give an opinion.

MR. DAVIS: It's his understanding.

BY MR. DAVIS:

Q. Not your opinion, Dr. Cohen, your understanding as trustee.

MR. DAN SLOTCHIVER: Your Honor, the documents speak for themselves. You've already stated you're going to read the documents. To continue to ask him --

MR. DAVIS: Let me put it in context.

MR. DAN SLOTCHIVER: If I could finish, please.

He's continuing the same efforts without changing. He's asking him to give his opinion about a document. The document speaks for itself. Since he's not an expert, he cannot opine, so the only thing he could do is look at the opinion and tell you what it says, and I

believe from that standpoint, Your Honor, you just as well can read the document, you've already stated you would, and absorb everything that you can read from it by reading it yourself.

THE COURT: Thank you.

MR. DAVIS: And Your Honor, that's just not -- it's not helpful to the court in this case, and it's not appropriate. Let me explain why. They are charged, as we mentioned yesterday, as he mentioned, and we established the testimony, and it's already been established, that they're charged with the responsibility of doing things that are in the benefit of Abbie. How can they determine what is going to be in the benefit of Abbie unless they understand her condition?

So it cuts right to the heart of the case, Your Honor. I'm not sure why he's objecting. And we're trying to determine will she receive a benefit and can she receive a benefit, and we need to know what information -- the court needs to know what information he's using to formulate the understanding that, yes, she will receive a benefit, Your Honor, and that's all I'm doing.

MR. DAN SLOTCHIVER: I believe he can

ask -- but he can ask him what information did he use in order to determine it, and if he says: I relied on Dr. Hays's report, you're going read Dr. Hays's report. He's already told us he didn't read Mamelak or rely on it, but he can say: I relied on Dr. Hays's report, and then we can move on to the next issue.

THE COURT: Could you do that, Mr. Davis?

MR. DAVIS: I think I can. I think that I'm doing it, Your Honor. And again, I'm not trying to be cute. I'm trying my best to get -- to move it along. I really am, Your Honor.

BY MR. DAVIS:

Q. Is it your understanding, not your medical opinion, Dr. Cohen, that Abbie has received an improved diagnosis?

A. Yes.

MR. DAN SLOTCHIVER: Objection, Your Honor. That would have to be a medical opinion to state there's an improved diagnosis. He's testified he believes she's improved, but now he's asked to give an opinion as to an improved diagnosis.

MR. DAVIS: Your Honor, that is not

a medical opinion.

THE COURT: I'm going to allow that.

MR. DAVIS: Just like anybody knows that takes a family member to the doctor what --

THE COURT: Mr. Davis, please. We don't have time.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q. Dr. Cohen, have you taken any compensation for serving as trustee?

A. No.

Q. Please tell me and the court what services your son Jeffrey provides for the trust, or for Abbie, rather.

A. He does bookkeeping for us. He pays all Abbie's bills, provides also personal services to her at times. He reads to her over the telephone, and we believe that she derives a benefit from this.

Q. Does Jeffrey have particular skills with regard to items that would be beneficial to Abbie?

A. Well, of course, he reads to her. He has a pleasant reading voice. She seems -- we believe that she seems to derive benefit from

this. He also has better bookkeeping skills than his mother does, that I don't. He is working at an accountant's office right now and doing various things there, so he could do that a lot better than she -- my wife can.

Q. Does he have a particular skill and ability to read in Hebrew?

A. Yes.

Q. Do you believe Abbie benefits from being read to in Hebrew?

MR. DAN SLOTCHIVER: Objection to any foundation as to how he can know that she benefits from being read in Hebrew versus any other language.

MR. DAVIS: It's his understanding. He's making an informed understanding as trustee --

MR. DAN SLOTCHIVER: There's no foundation.

MR. DAVIS: -- that she benefits or not. The foundation, Your Honor, is his personal witness and experience. We've already established that he's there with her and sees it happening. How else can --

THE COURT: I'll allow it.

MR. DAN SLOTCHIVER: Your Honor, my understanding is she doesn't even speak Hebrew.

MRS. COHEN: Yes, she does.

THE COURT: I'll allow it.

BY MR. DAVIS:

Q. Dr. Cohen, do you know whether or not your daughter Abbie speaks Hebrew?

A. She can to some extent, but I think she understands it a lot better.

Q. Is it your understanding that she is receptive to Jeffrey more so than she would be someone else?

MR. DAN SLOTCHIVER: Objection, no foundation.

MR. DAVIS: Well, he witnessed that she is receptive to Jeffrey's reading of Hebrew to her.

MR. DAN SLOTCHIVER: Objection, no foundation as to her being receptive.

MR. DAVIS: Your Honor, again, his understanding based on personal observation. We've already talked about this.

THE COURT: I'll allow it.

THE WITNESS: She's family. She's always had a good relationship with him. Excuse

me. He is family. She's always had a good relationship with him.
BY MR. DAVIS:
Q. Do you believe it to be, your understanding, your understanding -- I realize -- we all know that you can't tell us what's Abbie's understanding, but your understanding from your personal observation, does it appear to be soothing to Abbie when --
A. It appears to be soothing to Abbie.
MR. DAVIS: Your Honor, we've got some additional information that's going to be quite significant.
THE COURT: Quite significant? I'm sorry.
MR. DAVIS: Quite significant, and I'll move along as fast as I can, Your Honor.
THE COURT: Please.
MR. DAVIS: Your Honor, yesterday there was testimony from Ms. Meyer that the statement of case that we've been working from was not the final order of this case. We're South Carolina attorneys, as you know, not California attorneys. We've been working under the understanding -- and I won't speak for

Mr. Slotchiver, but I would like to know whether he knew about this or not, but testimony yesterday indicated that there was, in fact, a final order, that the statement of the case was not the final order, as you recall from Ms. Meyer's testimony.
We have obtained a copy of that final order that was clocked January 24th, 2012, that we were not aware of, Your Honor. And I don't -- again, I can't speak for Mr. Slotchiver, but I would ask him was he aware that there was a separate document. It appears from his questioning that he may have been, but I'm not going to speak for him, and I would just -- so I would ask him myself or ask the court to ask him was he aware that there was actually a separate document that was considered the final judgment in the California marital action.
THE COURT: Did you have something you wanted to admit, Mr. Davis?
MR. DAVIS: Yes, Your Honor.
THE COURT: If you'd like to go forward at this time, I'll be happy to hear that.
MR. DAVIS: May I approach, Your Honor?
THE COURT: Yes, sir.

MR. KACHMARSKY: Can I get a copy as well, please?
MR. DAVIS: I'll be more than happy to, Your Honor; however, I'm limited. I'm kind of going to go off memory because I don't -- this is something that we received yesterday, and I don't have another copy. Understand that I've given Mr. Slotchiver a copy, and Ms. Hedgepath and Ms. Moore have copies, and that's my last copy there.
THE COURT: Ms. Moore, do you have a copy? I'm just wondering if --
MS. MOORE: Yeah, that's fine.
MR. DAVIS: We probably need some -- it may be helpful.
THE COURT: You could ask her back here. She'll be happy to make you several copies. Okay. Mr. Boyd will. Thank you, Mr. Boyd.
Go ahead, Mr. Davis.
BY MR. DAVIS:
Q. Dr. Cohen, is this the final order for the marital action in California?
MR. DAN SLOTCHIVER: Your Honor, if I may have a moment to review this. I have not been provided a copy of this before.

MR. DAVIS: Can I ask Mr. Slotchiver if he was aware -- in his questioning, he said was there --
THE COURT: Mr. Davis, let's just give him just a moment. We're going to take about two minutes.
MR. DAN SLOTCHIVER: Okay, Your Honor.
THE COURT: Mr. Davis, if you'd like to proceed.
BY MR. DAVIS:
Q. Dr. Cohen, does this appear to you to be the final judgment in the marital action?
A. Yes.
Q. Are you familiar with the document?
A. Well, I haven't seen this document in quite some time, so there's so many documents I've seen, I don't remember this one per se.
MR. DAN SLOTCHIVER: Your Honor, if Dr. Cohen has seen this document before and it hasn't been produced to us, I'm curious as to why. If this is relevant or, as Mr. Davis says, got some significant things coming, I'm curious why it hasn't been disclosed to us before, keeping in mind that the duty of disclosure not only falls upon counsel, but also on the clients.

THE COURT: Mr. Davis or Mr. Boyd? I'm happy to hear from y'all.

MR. DAVIS: Yes, Your Honor. I was -- as I mentioned yesterday, we received a notice of this document yesterday. It's a final judgment of the case in California, it's public record, and it's got some beneficial value in this case. I believe it should be accepted, Your Honor, into evidence.

MR. BOYD: Your Honor, if there's a doctrine that would apply, I would say this is an example of mutual mistake. I mean, I'm not -- I can't get in anybody else's head, but prior to Ms. Meyer's testimony yesterday, I thought that the document that had been distributed as the final judgment of the court was, in fact, the final judgment of the court.

THE COURT: You did not have this document, Mr. Boyd?

MR. BOYD: No, ma'am.

MR. DAN SLOTCHIVER: But Dr. Cohen testified that he was aware of it.

MR. BOYD: Your Honor, we're placing --

MR. DAN SLOTCHIVER: He testified --

if I may finish, Your Honor. He testified to that just a few moments ago. Your Honor, the obligation, as I understand it, is for the counsel not to just give what he has in his possession, but in order to search out what exists. In order to do that in any case, you must ask your client. And it applies not only in a probate case, but in a civil case and a divorce case. If I was to ask what evidence do you have of XYZ, if someone asked me that question, then I would look at my file. I have none, don't have any, but what I really have to do is go to my client and find out the answer.

So if they want to rely on a document, and they want to assert this to be the order, as opposed to what's already been presented, which we will argue over if we need to, but if they want to assert it, they certainly should have presented this document to us before, especially in light of the fact that Dr. Cohen has testified under oath that he's seen this before, it's been quite some time, and I'm assuming quite some time did not mean yesterday afternoon.

THE WITNESS: Actually, I'm going to retract that. I've never seen this document before.

MR. DAN SLOTCHIVER: Well, Your Honor, we have an issue because a moment ago he testified he did, and then we have an --

THE WITNESS: I've seen parts of this document, but I've never seen this first page.

MR. DAN SLOTCHIVER: So now, Your Honor, we've had three responses all in five minutes.

THE COURT: Okay, Mr. Slotchiver. Mr. Davis, if you could explore that testimony with your client, and then I will rule.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q. Dr. Cohen, you've had a chance now to glance at the document that I handed you. Does that document appear to be the final order in the marital dissolution action in California?

A. As I said, I've never seen the first or second page, but I've read parts of this on the computer. I've never seen this, the first two pages.

Q. But with regard to my question, do you understand this document to be the final order, an order of judgment in the marital action in California?

A. It appears to be so.

Q. On Page 1, does it incorporate the statement of the case that we've been working off of in this South Carolina matter?

A. Page 1 of what, this first page?

Q. Page 1 of the numbered lines.

THE COURT: Let me -- Mr. Davis, I don't mean to interrupt you, but let me ask Dr. Cohen a couple questions.

MR. DAVIS: Sure.

THE COURT: Dr. Cohen, you said a moment ago that you had not seen that document for quite some time.

THE WITNESS: That's correct.

THE COURT: And then you said: I take that back. I've never seen this document. And then you said: I've never seen the first two pages of the document, and I saw some of the other pages on the computer. I need you to clarify for me and explain to me whether you were aware of that document, what you have seen, what you have not seen.

THE WITNESS: Okay. I've never seen these first pages, and therefore, I've never seen this document in toto. I've seen -- when we got

the first stuff from the attorney, I read all this stuff here, but I've never seen these first two pages, and therefore, I can say I've never seen this document in its totality.

MR. DAVIS: Your Honor, I need to advise the court also, I don't believe we're under an obligation to produce this. This is actually signed by Dan Dorn himself and his attorney, so he certainly has a copy of this document, Your Honor. It's consented to and signed by him, so we're not under an obligation to produce that. They already -- clearly, they already have it because he signed it, and his attorney signed it.

MR. DAN SLOTCHIVER: Your Honor, if they're relying on this -- and I don't know why they are, and I don't know why it's significant, so I'm arguing it more for the procedural benefit at this point, and I can certainly cross-examine him, if so desired, but at this point my concern is that once again, we're in a situation where we've heard counsel say this is significant, same way he said it with reference to the documents testimony, it's going to be big, significant stuff. I have these doctors, surprise.

Now this is significant stuff, Your

Honor. We have significant stuff coming forward, and he shows us a document that he'd never given us before that he believes is significant in the defense of this case, that he's advising us that -- and his client has testified four different ways at this point that I've seen, and I don't believe it appropriate to come in. I don't believe that they have complied with the discovery again.

MR. DAVIS: Your Honor, let me rephrase my statement earlier. I think it's important that the court get this. I think there's a lot of significant events. I'm not indicating that this is more significant than the other events. I would simply like to have it as evidence for the court to review. I don't believe it any more significant than the doctors' testimony, than the testimony of Dr. Cohen. I believe it to be a very important document. I was merely anticipating a number of objections. I guess significant from the time standpoint, Your Honor, more so than anything else, so I'd like to rephrase that, if I may, for the court.

But again, we're under no obligation to provide this in discovery, and it's a document

that they already have, in fact, they've already signed, both him and his attorney, Your Honor.

MR. KACHMARSKY: That's nonsense. I object to that. If you're going to use it in trial, you need to produce it. I mean, that's all there is to it.

MR. DAVIS: Again, Your Honor, I appreciate Mr. Kachmarsky's comment; however, I completely disagree with him. The purpose of discovery is to avoid surprise, to give parties information that's helpful. We've talked ad nauseam about the statement of the case representing that was the final judgment of the case.

MR. DAN SLOTCHIVER: It was, Your Honor. That's the whole point. The statement of the case is -- it's incorporated. Even in this language, he testified it's incorporated as part of it, but now he wants to add additional language to it.

MR. DAVIS: I just want to --

THE COURT: I'm going to allow it in over your objection, give you an opportunity to cross on it, Mr. Slotchiver.

MR. DAN SLOTCHIVER: Thank you, Your

Honor.

THE COURT: Mr. Davis has indicated that until yesterday, counsel did not know it existed, Dr. Cohen has clarified his testimony that he had not seen this document in its entirety, and so I'm going to allow it in.

MR. DAVIS: Thank you, Your Honor.

So I'm going to need some help on which number to call this. I'm R, as I understand.

THE COURT: Respondent.

(RES. EXH. 15, Order of Judgment in Marital Action in California, was marked for identification.)

MR. DAVIS: Your Honor, one last thing for the court's edification on that document. The Cohens -- and I represent to the court the Cohens advised us that they did not realize the difference between the statement of the case --

MR. DAN SLOTCHIVER: Objection, Your Honor.

THE COURT: Mr. -- thank you.

MR. DAVIS: Is that information objectionable?

THE COURT: You can question your

client about that, but I think it's inappropriate to tell me what your client told you --
MR. DAVIS: Okay. I apologize, Your Honor.
THE COURT: -- at this juncture. Thank you.
BY MR. DAVIS:
Q. Dr. Cohen, is there a current neurologist that treats Abbie?
A. Yes.
Q. What is his name?
A. Dr. Benz, B-E-N-Z.
Q. Is there a current physician that -- or a current provider, medical provider, that treats Abbie with regard to her hearing?
A. To her hearing?
Q. Her hearing.
A. No. Abbie has no problems with hearing. She doesn't need a hearing doctor.
Q. What does Sarah Gerace do?
A. She's a speech therapist.
Q. Is that related to hearing?
A. No, it's related to speech.
Q. How about is there a physician that treats -- or medical provider of some sort that

treats Abbie for sight or seeing matters?
A. His name is Mark Dean, D-E-A-N.
Q. Are you familiar with any special treatments that he provides for her?
A. Special exercises.
Q. Is your understanding that he works to help Abbie improve?
MR. DAN SLOTCHIVER: Objection, Your Honor. He's now asking him questions as an opinion, and I don't believe that's proper.
MR. DAVIS: I'm just asking for his understanding, Your Honor. If you find it objectionable, I'll certainly move on, but I think it's within the purview of what you've already ordered.
THE COURT: I think we've heard a little bit of this already, Mr. Davis, from Mrs. Cohen. We certainly need to move on to those things that maybe we have not heard.
MR. DAVIS: Yes, Your Honor.
THE COURT: Thank you.
BY MR. DAVIS:
Q. Dr. Cohen, is there a medical provider that provides medical services to Abbie with regard to her neurological functioning or

biofeedback?
A. His name is Dr. McCarthy.
MR. DAVIS: Your Honor, that's all I have. Thank you.
THE COURT: Thank you very much.
MR. DAVIS: Thank you, Dr. Cohen.
THE COURT: Ms. Hedgepath?
CROSS-EXAMINATION
BY MS. HEDGEPATH:
Q. Dr. Cohen, I'm certainly not going to belabor it. We've talked about Dr. Mamelak's deposition --
A. Could you speak a little louder, please?
Q. If I can, I will. I'm not going to belabor it, but we have talked substantially or a good bit has been said about Dr. Mamelak's deposition.
A. Mamelak.
Q. Mamelak, okay. He treated Abbie when she was in the hospital. Is that correct?
A. That's correct.
Q. And that would have been from June 21st, 2006, correct?
A. That's correct.

Q. And she was in the hospital for how long, about a month?
A. About three months.
Q. And his deposition was not taken until May 28th of 2010, about four years later?
A. That's correct.
Q. After Abbie left the hospital, did he treat or see her at all?
A. I don't believe he saw her at all.
Q. Now, I asked your wife this, but I must ask you, because you are a co-trustee, and if she is responsible, then you may also be held responsible. The monies in the trust for Abbie, have they been used for anything other than for Abbie's benefit?
A. No.
Q. Have they been used in the best interest of Abbie?
A. We believe so.
Q. Have you used any of the monies for your personal benefit or gain?
A. Absolutely not.
Q. Have you used any of the monies for the personal benefit or gain of any of your family 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

dollar amount that was spent on just visitation.
THE COURT: I'll allow you to ask him that, Ms. Hedgepath.
BY MS. HEDGEPATH:
Q. Did you understand my question, Dr. Cohen?
A. Could you rephrase that again?
Q. I'll try. Was the billing and the time spent so intertwined, the issues so intertwined, that you cannot tell me here today the dollar amount that was specifically designated for visitation?
A. No, I cannot.
Q. If you had dropped the cause of action for visitation, do you believe you would have -- that Abbie would have received any visitation with her three children?
MR. DAN SLOTCHIVER: Objection, Your Honor. There's no foundation for him to answer that. I don't know how he possibly could answer that. That's a legal eagle issue, according to Dr. Cohen.
MS. HEDGEPATH: Your Honor, they're blaming the Cohens for proceeding with visitation. I think Dr. Cohen has the right to tell the court

why he thought it was necessary to pursue the issue of visitation.
MR. DAN SLOTCHIVER: And I pursued that with him, Your Honor, and he responded to that by stating that he had no basis, he had no foundation, so they're now asking him to impeach himself on what he told us earlier, and all I'm asking, Your Honor, is she can ask the question, but before he answers, I would ask that she be required to lay a proper foundation that he has the ability to answer.
THE COURT: Ms. Hedgepath, would you like to explore that?
MS. HEDGEPATH: I'll try, Your Honor.
BY MS. HEDGEPATH:
Q. Dr. Cohen, you have been asked and the issue posed to you about you did not have to proceed with the issue of visitation, and I think you may have indicated to Mr. Slotchiver that yes -- or to some of the attorneys -- that you could have dropped it?
A. What do you mean, dropped it? I don't understand dropped it. Dropped that part of the divorce proceedings or the whole divorce proceedings? You're asking me a question that I

don't understand, and there's a lot of things going on here that they're all so intertwined that that's impossible for me to answer that question directly.
Q. I want us to focus just on visitation right now.
A. Meaning that part of the divorce proceeding, the visitation?
Q. Yes, sir. Now, could you -- it's my understanding that you have testified, and I may be wrong, that you could have dropped the issue of visitation, that you, as a co-trustee for Abbie, did not have to pursue visitation?
A. We felt it was in the best interest of our daughter to have visitation, and therefore, we couldn't drop it.
Q. Do you believe she would have any visitation today had you dropped it?
A. It's a theoretic question, but we don't think so, but it's a theoretic question, of course.
Q. And I understand it's your opinion that Abbie -- that you believe that it's your understanding that from what you observed, that Abbie does derive a benefit from being in contact

with her children?
A. It's our perception as her parents and co-trustees --
MR. DAN SLOTCHIVER: Your Honor, I would just ask to limit that testimony to his perception. I don't believe he can testify as to his wife's perception.
BY MS. HEDGEPATH:
Q. Just tell me what you believe.
A. It's my perception as a parent and as co-trustee, co-guardian, co-conspirator -- I mean co-conservator -- that Abbie draws benefit from visitation.
Q. The present condition of Abbie, from what you have observed from the time she left California and the time you moved her from California to the condition she is in now, has it improved?
A. Yes.
Q. Tell me what things she can do now that she could not do prior to your bringing her to South Carolina.
A. Okay. Well, I mentioned a number of these things yesterday, I believe, and one thing I did leave out was we have her hooked up to a

computer with a program from Boston College, and it is called Eagle Eyes.

MR. DAN SLOTCHIVER: Your Honor, I would object to his testifying about a program and the results of a program. That would be expert testimony. I believe the question was what, in your perception -- or appropriately would be asked what, in your perception, can she do that she couldn't do.

THE WITNESS: If you'd let me finish, I would.

THE COURT: I'll give him a little bit of leeway.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thank, Your Honor.

She's hooked up to a computer with electrodes to the sides and the top and the bottom of her eyes. They pick up the motions of her eyeballs --

MR. DAN SLOTCHIVER: Objection, Your Honor. Once again, he's now testifying as an expert as to a program that he is asserting that it benefits her or she can do things with it.

That goes way beyond his observation.

THE WITNESS: I can observe her do it.

MR. DAN SLOTCHIVER: He can observe her hooked up to electrodes. He cannot observe the results.

THE WITNESS: Yes, I can, on the video screen.

MR. DAN SLOTCHIVER: Your Honor --

THE COURT: I'll give him --

MR. DAN SLOTCHIVER: Now he's interpreting results as an expert. He's not listed as an expert, and he's not qualified as an expert in this case, and I believe it's gone beyond the scope of what he can be asked. Stating your understanding will allow him to say what he observes, but not opine on them, and I don't think it's proper, and I do object.

THE COURT: Ms. Hedgepath?

MS. HEDGEPATH: Your Honor, if these are things that -- he is a physician -- that, in his capacity as a layperson, he has observed her doing, whether it's by and through a machine or something, that she has improved, that she can do physically, I think it's proper for him to testify to those.

THE COURT: I will allow him to testify regarding what she may be doing, what he actually witnesses, but not reading reports, reviewing computer-generated type of reports, and trying to interpret those, but he can testify as to what he has witnessed her doing through this computer program.

THE WITNESS: May I be allowed to describe this, Your Honor?

THE COURT: Yes, sir, I will allow it.

THE WITNESS: Okay. Thank you.

Again, she has these electrodes hooked up. They're hooked up to her -- around her eyes, which measures her eye --

MR. DAN SLOTCHIVER: Your Honor, once again, he's testifying as to what the machines do.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Describing it, I would object to that as the relevancy of it. Describing the machine can only be for the purpose of telling what the machine does. Telling what he observed --

THE WITNESS: No. It's Abbie does it, not the machine.

THE COURT: Sir --

MR. DAN SLOTCHIVER: What he observes is different, Your Honor. And I believe, once again, we're going beyond the scope.

THE COURT: Thank you.

BY MS. HEDGEPATH:

Q. Through what doctor does she receive this treatment?

A. None. We bought it ourselves.

Q. And how did you discover or know about this?

A. My wife discovered it online.

MS. HEDGEPATH: So Your Honor, he is the only one that can testify about this machine, how it works and how Abbie is able to operate it.

MR. DAN SLOTCHIVER: Your Honor, he's not an expert in this case. He can't testify to it. And I don't understand that he's the only one. He's not an expert in this case to testify as to this machine or the results of the machine.

THE COURT: Mrs. Cohen, I'm sorry. I think you need to have a seat, ma'am.

THE WITNESS: May I be allowed to --

THE COURT: I'll give them a little bit of latitude for him to describe this computer program or this machine.

THE WITNESS: This machine follows her eye motion. She has a large cursor on her computer. It's a laptop, about your size, and there is a circular -- it centers a cursor, which is a circle, a circular halo, like a doughnut, with her eyes, and she can move that cursor.

MR. DAN SLOTCHIVER: Your Honor, I object, because it's still, once again, going to the medical testimony and his opinion about what the machine does and what she can do relative to the machine.

MS. HEDGEPATH: But Your Honor, if he's sitting there --

THE COURT: I'm going to allow this, Mr. Slotchiver.

THE WITNESS: There are some games she can play, some things she can do. She can move this cursor and basically kill space aliens. She does this willfully. She can kill them. She doesn't do it with the speed of a child, okay, with a joystick, but she can move the cursor. When it hits one of these little squiggly aliens, it goes poof, and that's it. She can also move a soccer ball around into the net. There are some icons on there where she can select music. I'm

not talking -- I'm just talking about -- I'm not even sure what kind of music.

BY MS. HEDGEPATH:

Q. All these are games on the machine that you've observed her playing?

A. Yes. And this is not given by a doctor. It's given -- her caregivers do it for her, with her. There's not a medical -- it's not a medical procedure. But she can do this. Obviously, she knows what she's doing. She didn't do it well at first, but she does it better now. I mean, a child could do a lot better, obviously. You or I could do a lot better.

MR. DAN SLOTCHIVER: And I object, Your Honor, to his testimony that she knows what she's doing. I believe he can testify to his observations based on your instruction.

THE WITNESS: You can come to our house and look at it.

THE COURT: I'll strike that. Thank you.

BY MS. HEDGEPATH:

Q. Dr. Cohen, are there any other improvements in Abbie since she came to Myrtle Beach that you would like to inform the court?

A. Well, she does take visual therapy with Dr. Dean, which he has told us --

MR. DAN SLOTCHIVER: Objection, hearsay, Your Honor.

THE COURT: Yes, sir.

BY MS. HEDGEPATH:

Q. You can't tell what Dr. Dean has told you.

A. Can I rely on medical testimony and what they tell us?

Q. You can tell us -- you can tell the court what you have seen or noticed her do as a result of the treatments of Dr. Dean.

MR. DAVIS: Your Honor, may I make one comment? I believe it was established yesterday that there's an exception, my discussion with court and Exception No. 4 to the hearsay rule. We went over that, and I believe you ruled on that, that this is medical diagnosis and treatment, 803-4, which I brought to the court's attention, so I believe he can testify as to what they told him, the doctor told him.

MR. DAN SLOTCHIVER: And Your Honor, we discussed the fact that because they did not disclose this information to us in discovery, they

could not.

MR. DAVIS: And he's right, we can't, but they can.

MR. DAN SLOTCHIVER: But the Cohens cannot.

THE COURT: The Cohens cannot, but Ms. Hedgepath can go in --

MR. DAN SLOTCHIVER: She can ask him the question, but I don't believe he's afforded to answer the question. They can bring in that doctor. I understand you've ordered they could bring in the doctor if they want to, but to allow them to ask the question of Dr. Cohen is to accomplish exactly what they have been told they cannot do, because they did not provide that to us in advance.

THE COURT: I'm sorry. You're right. I'm not going to let you go into that with Dr. Cohen.

BY MS. HEDGEPATH:

Q. Without telling me what anyone has told you, Dr. Cohen, please tell the court other improvements that you have observed in Abbie.

Excuse me just a moment. I know you talked yesterday about her wetting herself, you

discussed that, so we don't need to go back into that. You've told me this morning about the computer that she can play on, do the games on. What else, Dr. Cohen?

A. Well, I said that she can communicate better with us by blinking. As I said, she can't talk. There are words that come out periodically. I told you about that last -- most recently, it was Friday night, I asked her a question, and I heard her blurt out yes, because that was a different voice than her mother, who was in the room, and in terms of her communication abilities, appropriate communication abilities, with her eyes.

Q. When she came home to Myrtle Beach, did she give you any indication that she -- either by hollering out or otherwise, that would lead you believe that she was in pain?

A. Yes.

Q. Has that subsided somewhat?

A. Dramatically.

Q. And if you know, tell the court to what you attribute that.

A. Well, I believe that most of it is attributable to a Baclofen pump --

MR. DAN SLOTCHIVER: Your Honor, I object. This is going into opinion testimony as an expert.

THE COURT: And I believe Mrs. Cohen testified regarding that.

BY MS. HEDGEPATH:

Q. Dr. Cohen, is there any other improvements that's been obvious to you in Abbie that you would like to tell the judge about?

A. Nothing I can think of right now.

Q. Now, if Abbie were in a facility, a nursing home, an assisted living, or similar place, do you believe she would get the type of care that she does in your home?

A. Absolutely not.

MR. DAN SLOTCHIVER: Objection, Your Honor. Objection, number one, as to relevancy. Number two, nobody has alleged that she should be in one of these homes or that she should go into one of these homes, and it's speculative. How can he speculate as to what kind of care she would get in one of these nursing homes? How can he do that? He's not an expert in this case to give that speculation. Nobody's asked that she go into one of these homes.

MR. BOYD: Your Honor, Mr. Kachmarsky presented evidence and a table that was very speculative that anticipated a reduced cost of care.

MR. DAN SLOTCHIVER: And they objected to it.

MR. BOYD: We did, but counsel's simply making a statement that's not true. The argument is it's been known, it's been alluded to, it's been made.

THE COURT: Ms. Hedgepath?

MS. HEDGEPATH: Your Honor, I wouldn't even be talking about a nursing home had Mr. Kachmarsky not compared the cost of keeping her at home versus a nursing home if that thought was not in his mind, oh, we could save all this money for the children, not use it for Abbie. We're not using all of it to take care of Abbie on a daily basis. If we just stuck her in a nursing home, we could accumulate this however millions it was that he came up with on his schedule. That's why I'm asking about the comparison of care. Yes, ma'am, it costs a lot to take care of Abbie on a day-to-day basis, but the care that she gets cannot compare to what she --

MR. DAN SLOTCHIVER: Now counsel's testifying, Your Honor.

THE COURT: I'll allow you, if you can establish a foundation, for him to testify about that.

BY MS. HEDGEPATH:

Q. Have you ever considered, in light of the money that you could save, placing Abbie in a nursing home?

A. No.

Q. Why?

A. This is for Abbie's benefit, for no one else's, and also, we believe that Abbie would get more poorer care in a nursing home than at home.

Q. I want you to expand on that for me.

A. Well, at home, she's surrounded by people she loves and who love her. Her caregivers have been with us for a long time. They know her. She's in a familiar surrounding. She's in her own room, surrounded by her own things, and her physical body is taken care of a lot better than it would in some sort of sucky nursing home, and there are no really good nursing homes.

MR. DAN SLOTCHIVER: Your Honor, I

object. I believe he's gone beyond the scope.
THE COURT: Yes, sir. I'll strike that.
BY MS. HEDGEPATH:
Q. Dr. Cohen, when Abbie left California, what was her condition? From a lay standpoint, what was her condition?
A. Well, she was obviously still mentally and physically impaired because of her physical problems, that she was in constant pain, she was taking six full doses a day of pain medication. She required these around the clock, and these continued until we got her Baclofen pump inserted, and there was a much better improvement. I mean, it was immediate the first night after she had it inserted down at Medical University of South Carolina in Charleston.
She required constant turning, constant repositioning. All night we would be up with her virtually every night with leg spasms, and sometimes we didn't get any sleep, and I had to work the next day. My wife and I had a schedule who was on call to get up with Abbie in the middle of the night, along with her caregiver, and it was tough. It was real tough. And we did

this for two years, until we had this Baclofen pump put in, and that made Abbie's life a lot easier, not to mention ours.
MS. HEDGEPATH: Thank you, Dr. Cohen.
CROSS-EXAMINATION
BY MS. MOORE:
Q. Dr. Cohen, I know that we've gone over a lot of information as far as medical doctors are concerned, but I want to make sure that I have a clear timeline of when certain doctors were retained and periods of time that Abbie would have been treated by various doctors, so I'm going to try to go through this quick.
MR. DAN SLOTCHIVER: And Your Honor, I'll place an objection as it relates to any doctors who Ms. Moore or Ms. Hedgepath intend to call, based on the court's earlier tentative decision that they cannot be informed or educated by the Cohens or Cohens' counsel regarding these doctors. It goes right back to the heart of the issue, and what I'm trying to avoid is them going around and getting the same -- and they want to get it through counsel by asking now on examination.
MS. MOORE: Judge, I have all the

names of the people that we might want to call. I simply want to place a timeline that's a little more clear, because when Dr. Cohen's been testifying, there's been so many objections that it's been very disjointed as far as his testimony has been concerned relative to her care.
MR. DAN SLOTCHIVER: Your Honor, once again, it can't go both ways. They've already said they have the doctors they want to call. They told us yesterday that they had -- they wanted to know for sure where we were so they could know if they were going to bring them or not bring them, and now they're trying to educate themselves with more information from the Cohens, which is exactly what we sought to block. Actually, we sought a lot more than that, but that was my understanding of the court's ruling is they cannot speak about this with the Cohens.
THE COURT: Ms. Moore?
MS. MOORE: Your Honor, my understanding of the ruling is that we could not consult with them, converse with them, obtain their assistance as far as developing, I guess, the questions that would be posed to these doctors, not for the purpose of preventing me from

cross-examining Dr. Cohen as to type of care that was obtained for her, why he might have obtained, how he got his referrals, the fact that he, as a doctor, obviously participated in the care and the coordination of the various medical doctors for the benefit of Abbie.
THE COURT: I'm going to allow that, Mr. Slotchiver.
MR. DAN SLOTCHIVER: Thank you, Your Honor.
BY MS. MOORE:
Q. So Dr. Cohen, obviously, we know what went on as far as California is concerned, but once she came to South Carolina, from whom did you seek treatment for the benefit of Abbie?
A. Well, she has been seen by Dr. O'Connor, who works at Little River Medical Center. A number of times he's made house calls, just a pure examination. Most of her medical care is provided by Dr. Corrine Merrill, who is also a medical doctor in North Myrtle Beach, and my wife communicates with her periodically.
Q. What type of physician is she?
A. She's a medical doctor. She also does homeopathic treatment, as well, too.

Q. And let me stop you right there. The ones that you have named thus far, how did it come about that you sought treatment with those particular physicians?

A. Well, I contacted Dr. O'Connor even before we came back from California. And also, I'm not sure how we got to Dr. Merrill. I just can't recall. I'm sorry.

Q. That's okay. And then what other physicians or other medical providers would you have sought treatment for the benefit of Abbie?

A. Abbie had some ear problems, mostly with ear wax problems, and we sought the physician in Little River. He's since moved on from the area, and I frankly forgot his name, but he never did test her hearing. But she sees Dr. Frank Benz periodically, who is a neurologist.

Q. And how did it come about that you went to Dr. Benz?

A. Well, may I interject before that -- we're getting out of order here -- we also took her down to the medical university for a neurological evaluation and saw Dr. Hinson, H-I-N-S-O-N, down there, and she recommended Dr. Benz.

MR. DAN SLOTCHIVER: Your Honor, I object to hearsay testimony.

MS. MOORE: Your Honor, for the purpose of determining a diagnosis, prognosis, a schedule for treatment, who he would go to as far as doctors are concerned, I believe it's perfectly admissible for him to indicate that because he went to a doctor at MUSC, that doctor gave him a referral, and that referral took him to Dr. Benz.

THE COURT: I'll allow it.

THE WITNESS: She told us to see Dr. Benz on a local basis, because at that time it was before we had a van for Abbie, and we had to rely on an ambulance to get her back and forth, and it was just a real pain to do that, so since that time she's been seeing Dr. Benz, I think 2009, I think. I don't know exactly when. He sees her periodically. Also, she had the evaluation 2010 by Dr. Hays we know about from the medical university.

BY MS. MOORE:

Q. And you're referring to the Dr. Hays that was appointed for the court evaluation?

A. That's correct. She came out to our house and examined Abbie. That's where everything

was generated from, a home visit.

She sees Dr. McCarthy for neurofeedback. She's done some marvelous things to show us what her --

MR. DAN SLOTCHIVER: Objection, Your Honor.

BY MS. MOORE:

Q. And once again, as far as getting to Dr. McCarthy --

MR. DAN SLOTCHIVER: I would move to strike that last part of the language.

THE COURT: I will strike his last statement regarding Dr. McCarthy.

BY MS. MOORE:

Q. As far as getting to Dr. McCarthy, did you receive a referral?

A. Yes. He was referred -- we were given his name by a speech therapist that DHEC was sending out to Abbie's house, and she gave us his name.

Q. And for what period of time have you been having Dr. McCarthy on board?

A. I believe 2009, maybe a little bit later.

Q. And what other types of medical

providers have been involved in the care of Abbie?

A. She also gets her pump filled by Dr. Wilkins, who is a physical medical specialist here in Conway.

Q. Now, do you oversee, in general, the types of medical care that may be provided to Abbie?

A. Well, her mother and I do.

Q. And have there been other types of care provided to her, for example, such as acupuncture?

A. Yes.

Q. For what period of time would she have been receiving acupuncture? I'm not looking for a specific date, it's just a general overview of time period.

A. After she came back from California.

Q. And would that have been at the referral request of a medical doctor?

A. No.

Q. Have you seen a benefit to Abbie from the treatment she receives from the acupuncturist?

MR. DAN SLOTCHIVER: In his lay opinion?

THE COURT: Yes, sir.

THE WITNESS: It seems to relax her, at least for a little bit. I know she always liked acupuncture. She was a chiropractor, she believed in it, so we --
BY MS. MOORE:
Q. When you say she, you're referring to Abbie?
A. Abbie, yes. She believed in it, so we're continuing to treat her as was her beliefs were.
Q. Now, as far as other types of therapy, what type of therapy is Abbie receiving, other than acupuncture?
A. At the current time?
Q. Yes, sir.
A. Well, she gets this craniosacral therapy. I can't tell you too much about that.
Q. Who is that provided by?
A. His name is Dave Paxson. I can't spell his last name.
Q. That's all right. And did you receive a referral for Dave Paxson?
A. No.
Q. How did you come by information as to his type of treatment?

A. I believe that she was -- we were given his name by our physical therapist, who also comes out to the house five days a week. Her name is Heidi McGovern. Actually, her real name is Harriett, but she goes by Heidi. She comes to the house five days a week to give physical therapy to Abbie. And she also sees Dr. Mark Dean, who's a vision therapist. I think I might have already mentioned him already. And she goes to speech therapy to Ms. Gerace. Well, she changed her name recently. It's Gaddy, G-A-D-D-Y.
Q. Now, as far as various types of therapies, have there been therapies over the years that were implemented that you felt did not provide a benefit to Abbie?
MR. DAN SLOTCHIVER: In his lay opinion, Your Honor?
THE COURT: Yes, sir.
THE WITNESS: I haven't thought about that for a while. Oh, yes. Dr. McCarthy, I believe -- I can't remember all these doctors, keep them straight, but somebody suggested this laser treatment for muscle relaxation. It didn't seem to do very much, and we stopped that.
BY MS. MOORE:

Q. So you and your wife discussed whether or not to continue that type therapy?
A. Yes.
Q. And decided against it?
A. Yes. Also, she was getting hyperbaric treatments, which she got in California as well, too, and that she had to take her to Charleston for, and that became too -- just too hard to do. We didn't think she was getting that much benefit from it anyway, so we stopped that.
Q. Dr. Cohen, are there any other therapies that you have investigated that you feel would be of benefit to Abbie?
A. That we feel would be of benefit to Abbie?
Q. Yes.
A. Therapies?
Q. Yes, sir.
A. Not that I can think of at the moment.
Q. Now, as far as decision-making in terms of what type of therapies to participate in, has that been a joint decision between you and your wife?
A. We discuss it.
Q. Do you rely upon her or does she rely

upon you in making those types of decisions as far as her medical care is concerned?
MR. DAN SLOTCHIVER: Objection, Your Honor, as to who she relied on. I believe he can testify as to what he relied on or who he relied on, but he can't testify as to his wife's mental state of mind.
THE COURT: Thank you. If you could clarify that, Ms. Moore.
MS. MOORE: Thank you.
BY MS. MOORE:
Q. Dr. Cohen, who took the lead as far as looking into the types of therapies or making decisions as far as therapies were concerned for Abbie? Who took the lead, you or your wife?
A. Decision to initiate or decision to terminate or not to do it at all?
Q. Any of the three.
A. She begins, and I decide whether to stop or start.
Q. Yes, sir. And has there ever been a situation where you and your wife have disagreed as to the type of treatment to be provided to Abbie?
A. Disagreed how loudly?

Q. Disagreed in any fashion.
A. No, we've never -- we discuss, and then we make a decision.
Q. Now, as far as improvement that you've seen of Abbie, have there been any therapies or treatment where you did not see an improvement with Abbie, other than the two, the hyperbaric --
MR. DAN SLOTCHIVER: As a layperson, correct, Your Honor?
THE COURT: As a layperson.
THE WITNESS: Well, and this laser therapy, I didn't really see any need to do that. We did have an acupuncturist who also played the viola come out to the house, and while she was doing acupuncture, she did that too. She seemed to like that, but that's not really a medical treatment.
BY MS. MOORE:
Q. So as far as the treatments that she's currently receiving, do you see a benefit to Abbie of her receiving these treatments?
A. Yes.
Q. Now, is there also some type of program where Abbie is able to maintain viewing of a movie?

A. Yes.
Q. Is that through the Eagle Eyes program?
A. No.
Q. What type of program is that?
A. That's through Dr. McCarthy.
Q. And have you actually --
MR. DAN SLOTCHIVER: Your Honor, I will object to the hearsay testimony about something Dr. McCarthy would have done or initiated. If they have the program, that's fine, but I think they have to be able to testify as to their own knowledge without interjecting something that Dr. McCarthy set up.
MS. MOORE: He didn't say anything about Dr. McCarthy setting up, other than it was implemented by Dr. McCarthy.
MR. DAN SLOTCHIVER: Maybe I misunderstood.
THE COURT: Yes, sir. Thank you.
BY MS. MOORE:
Q. Have you actually seen this program?
A. Yes. We -- right now she goes to Dr. McCarthy's office, but before this, she did it at our house, and he was online at the same time

through the Internet.
Q. When you say he was online, who do you mean?
A. Dr. McCarthy.
Q. And what do you mean by being online?
A. Well, it was hooked up by computer.
Q. And is this the same computer that Abbie utilizes for playing of the games?
A. No, no, it's not -- yeah. She can do it through that. It's just done through a laptop, that's all. It's not a special computer, but she also has a different -- a bigger screen in the room attached to the wall.
Q. And what have you actually witnessed as far as the operation of the program is concerned?
A. Can I briefly say how it's set up?
Q. Just as far as what you can see.
A. Otherwise, it's going to be impossible for me to explain.
Q. Only as part of what you can see in the program, when you say how it's set up.
A. Well, there are electrodes hooked up to her brain which read her brain waves.
MR. DAN SLOTCHIVER: Objection, Your

Honor.
THE WITNESS: I can't explain it any other way.
BY MS. MOORE:
Q. Dr. Cohen, let me help you. So there are electrodes set up to her brain?
A. Yes.
Q. And are those electrodes connected to the computer?
A. Yes.
Q. Does she look at a computer screen?
A. Yes.
Q. Does the screen show a movie?
A. Well, I don't -- right now it does show real movies, but before that, it was more of a computerized version of it.
Q. And what would you see the screen do while Abbie is sitting in front of the laptop?
A. It moves.
Q. Moves in what fashion?
A. It plays out a little video.
Q. And are there times where the video can no longer be seen or gets dimmer?
A. No. It just stops.
Q. And when you say stops, stops in what

fashion?
A. Just halts. It freezes.
Q. Is there anything that occurs afterwards that would cause the video to recommence?
MR. DAN SLOTCHIVER: Objection, Your Honor. I don't believe he can testify as to the workings of a machine. He can testify as to what he sees, but not as to the basis for why a machine does or doesn't do what it does.
THE COURT: Ms. Moore?
BY MS. MOORE:
Q. Do you see anything as far as Abbie's face, her eyes, or her body before the screen recommences?
A. No. This is all done with her mind.
Q. And this is a program?
MR. DAN SLOTCHIVER: And objection on that, Your Honor.
THE COURT: I will strike that.
BY MS. MOORE:
Q. But there are times while Abbie is sitting in front of the screen where the video stops?
A. Yes.

Q. And there are times when the video recommences?
A. Yes.
Q. And for what periods of time will the video stay running?
A. It depends on Abbie's -- it depends on what Abbie's doing.
MR. DAN SLOTCHIVER: Objection, Your Honor.
THE COURT: I will allow that.
BY MS. MOORE:
Q. And what I'm asking for is does it stay running for five minutes? 10 minutes? 20 minutes?
A. Depends on what Abbie's doing.
MR. DAN SLOTCHIVER: Objection.
THE COURT: So noted.
BY MS. MOORE:
Q. And this program is actually operated or overseen by Dr. McCarthy. Is that correct?
A. Yes.
Q. For what period of time has he been -- strike that.
For what period of time has Dr. McCarthy utilized this program with Abbie?

A. Well, I believe since about 2009. I can't give you an exact date, maybe -- certainly no later than 2009.
Q. And Dr. Cohen, obviously, I was involved in the very beginning. Do you recall that?
A. Yes.
Q. Now, as far as Abbie's condition then versus now, and I'm talking about her physical condition, what's the difference?
A. I mean, as you look upon her, it's really hard for a layman to see the difference, because she's basically trapped inside her own body, even though we believe her mind --
MR. DAN SLOTCHIVER: Objection, Your Honor. He's just testified that a layman can't see the difference, and he is testifying as a layman, so I would ask that he move along.
THE COURT: I'll strike that.
BY MS. MOORE:
Q. And Dr. Cohen, I may not have artfully asked the question, but I meant as far as her physical condition.
A. As an outsider would come in, you couldn't tell the difference.

Q. Is she able to sit in a chair now?
A. Yes.
Q. Was she able to sit in a chair then?
A. In a wheelchair?
Q. Yes, sir.
A. She sits in her wheelchair.
Q. Is she able to lay on her bed without support?
A. I don't know what you mean lay on her bed without support. Doesn't take much to lay on a bed.
Q. Does she have to have rolled pillows fashioned around her while she is laying on the bed?
A. Yes, in order to keep her arms straight, and also to keep her legs straight.
Q. Back in 2006 and -7, was she allowed to stay in a chair for any period of time?
A. It was harder for her to do so.
Q. Why was that?
A. She would go into muscle spasms and cry out.
Q. Today is she able to stay in a chair for periods of time?
A. She can stay in a chair for about two

hours.
Q. And in recent years --
A. May I say she can stay like in a lounge chair for two hours easily, if not longer.
Q. In recent years, have you and your wife begun taking Abbie out of the house?
A. Yes.
Q. Were you able to do that initially?
A. Well, we didn't get a van until like in 2009, so we depended on ambulances. That's about it. The only time she went out was for doctors visits, but now she can go to other places.
Q. And what types of other places do you and your wife take Abbie?
A. Movies. She went to see a ballet. She's been out to see plays. She has been to see -- she's been on that big ferris wheel in Myrtle Beach, the real big one, Brookgreen Gardens. I can't think of anything right off the top of my head right now. Those are the first things.
Q. You indicated in direct testimony that you had --
A. Oh, she likes to go to the IMAX

theater down at the Broadway at the Beach.
MR. DAN SLOTCHIVER: Objection. He can testify where he took her, but he can't give her personal observations.
THE COURT: I'll strike she likes to go to.
BY MS. MOORE:
Q. You had indicated in direct examination that you looked at parts of Dr. Mamelak's deposition. Is that correct?
A. Yes.
Q. And you're obviously familiar with the opinion that Dr. Mamelak has. Is that correct?
A. Yes.
Q. You're also familiar with the opinion expressed by Dr. Hays. Is that correct?
A. That's correct.
Q. Were there other doctors' opinions that you have secured upon which you rely in terms of designing her therapy plan?
MR. DAN SLOTCHIVER: And Your Honor, if these doctors' opinions have not been provided to us, I would ask that he not be allowed to answer this question. I don't know what the answer is going to be, but if he's relying on this

as part of his -- as his defense of this case, we should have been provided that. We've already discussed this over and over. Before he answers the question, I wanted to make a proactive objection.
THE COURT: Ms. Moore?
MS. MOORE: Judge, a lot of the discovery requests that have been asked are about records and reports and whatnot that would have been in the possession that have not been provided to Mr. Slotchiver. I don't know what records were in the possession of the parties, because I've not been provided with these records, but these arguments are premised on the fact that they believe those records exist and are in the possession of.
There certainly would have been an opportunity to have subpoenaed the records directly from the doctors. The doctors' names clearly are listed in the accountings. There's no question about it, no surprise as to who these doctors would have been.
So as far as access to records, I'm simply asking as far as his communications. I'm not asking him based on reports of other doctors,

other than, of course, Dr. Hays and Dr. Mamelak. I'm asking what other doctors may he have spoken to, upon which he has based his decision of how to conduct or how to set forth these therapies.
MR. DAN SLOTCHIVER: And Your Honor, had he provided the names of the doctors, together with the important information they had to share, we wouldn't be in this position. One of the things that we can't overlook is the fact that they could have, in the discovery requests to us, said what are your positions, what are your concerns, what are your issues. They could have asked voluminous discovery questions from us, in which case they would have gotten a concise overall grouping of everything that we were possibly looking at, but they never did, and now they want to come in and say that we should be able to testify to things.
I understand Ms. Moore's question, but I don't believe, based on the earlier rulings of the court and based on the actions of the Cohens, that he should be able to now talk about doctors and their opinions that he relied on when he hasn't disclosed those to us.
MS. MOORE: Your Honor --

MR. DAN SLOTCHIVER: If I could finish, please. It's a continuation of the same abuse that we've discussed over and over again. If he can't -- she has the right to ask who he went to, but she can't ask him now what advice he sought or what he relied on when he hasn't disclosed that to us, because that allows him to testify to things that he should have shared with us a long time ago if he felt them to be important, and if they're not important in his decision-making, then they wouldn't be relevant to this matter.

THE COURT: Do you have your discovery requests where he would have had to supply this information?

MR. DAN SLOTCHIVER: It's the same request where we asked them who their witnesses are in their case and what pertinent information do they have, the same ones we showed yesterday. I can hand them up again, Your Honor, the same request. And you looked at it yesterday, and your ruling yesterday was you have to give the names, and they said yes, we gave -- we said every medical provider we could have used, and you clarified that they have provided it.

THE COURT: That doesn't seem to be what Ms. Moore is asking him.

MR. DAN SLOTCHIVER: I understand. What she's asking him now is what other doctors did you rely on, neurologists or other doctors. He's not going to testify to doctors that he relied on and the significance of why, and I don't believe he can do that.

THE COURT: And I thought your interrogatory yesterday was who are your witnesses going to be, and what are they going to testify to.

MR. DAN SLOTCHIVER: Correct.

THE COURT: But that's not what --

MR. DAN SLOTCHIVER: And who are your experts, and that was a separate one. If he's going to testify as to experts that we haven't been identified with, it wouldn't be appropriate.

THE COURT: It doesn't sound like to me like that that's what she's asked Dr. Cohen.

MR. DAN SLOTCHIVER: And Your Honor, just for clarity, it wasn't who are your witnesses. It was who are the witnesses. And I believe, once again, it's going around the whole purpose of the discovery.

At some point, Your Honor, maybe we should take this up at another point, because this case we've repeatedly argued over the discovery. It's had an effect on us, which we should not be placed in this position in a trial to have to deal with these issues over and over again.

THE COURT: And Mr. Slotchiver, I recognize that, and I have tried to cure that as best I can by precluding the Cohens from calling those witnesses that they did not identify their testimony to you. I've told them that they're not going to have an opportunity -- I'm going to reconsider -- but initially to examine those witnesses that might be called by Ms. Hedgepath or Ms. Moore, Mr. Kachmarsky.

MR. DAN SLOTCHIVER: I understand, and I understand the court's ruling, and I appreciate that. That being said, we still shouldn't be placed in this position, and it's been repeatedly throughout the case.

THE COURT: And I'm not going to preclude, as I ruled, the attorneys and the guardian ad litem for Abbie from calling whatever witnesses that they believe they need to call.

MR. DAN SLOTCHIVER: I understand. I

understand your ruling on that.

THE COURT: Mr. Davis?

MR. DAVIS: Your Honor, it's very important for the court to know and to note on the record that we complied fully with discovery because we did not intend to bring these witnesses or to rely on this testimony, because he had not pled that in his pleadings, and we did not know that we would need this until we were surprised at trial that this was going to be an issue, so we absolutely complied, Your Honor. We did not know this was going to be an issue, based on his pleadings, and we indicated -- we provided -- we did not intend to argue this and intend to call these as witnesses.

So we fully complied, and we're simply fielding arguments that came up at trial the best way we know how, Your Honor. So we're being restricted, and we also in here, to be -- to cover ourselves, said any medical professionals referenced in the documents. So we did the best that we possibly could, Your Honor. We could not --

THE COURT: And Mr. Davis, I found that you did say any of the medical professionals

that might be in the documents, we may call them as witnesses, but you did not answer -- the next question is what is the nature of their testimony, what will they testify to at trial.

MR. DAVIS: Well, we didn't know.

MR. DAN SLOTCHIVER: We can mark the record, Your Honor. If counsel did not intend to call these people, then I think it inappropriate that they listed them in response to discovery as witnesses. The rules do not allow you to ambush somebody with hundreds of potential witnesses when you never have any inkling that you're going to call them, and I believe that's what the statement was just now.

It's one thing to say this is the universe of people that I may call, but it's a whole 'nother matter to say we never intended to call them, but by the way, any and every doctor in the 5,000 pages of documents you better look at, because we could call them, even though we never have any intent to do it, and I'd like the record to reflect that, Your Honor.

MR. DAVIS: Your Honor, his discovery request says any doctor who may. It doesn't say any doctor who you will. I mean, I don't know

what --

THE COURT: Mr. Davis, I don't know that we need to argue this again.

MR. DAVIS: One last question, Your Honor. I'm assuming you said you'd reserve an opportunity for us to argue again on this idea of questioning the witnesses, but I assume we'll bring it up again at that time. Is that what you --

THE COURT: I may reconsider that. I'm going to look at the motion that Mr. Boyd made this morning, the cases he gave to me, asking me to reconsider, and during a break, I'm going to look at that. I'm just dealing with the objection that I have now from Mr. Slotchiver.

I'm going to allow Ms. Moore to ask him having to do with these medical professionals that he relied on.

MR. DAN SLOTCHIVER: My objection, can we note it on the record, Your Honor?

THE COURT: It is noted. Thank you.

BY MS. MOORE:

Q. Do you remember the question, Dr. Cohen?

A. No.

Q. I had asked you what other doctors did you rely upon in making the decision about the type of therapies to provide to Abbie?

A. I forgot who I mentioned right now. I'll have to take myself back to the beginning. There's Dr. Merrill and Dr. McCarthy, Dr. Dean, Dr. Benz, Dr. Wilkins, who fills her pump. I can't think of anybody else right now off the top of my head.

Q. Would you agree that in making your decisions, you discounted Dr. Mamelak's opinion?

A. Discounted his opinion? Well, as a layperson?

Q. Yes, sir, in your position as guardian, trustee, and father.

A. I believe that she was at a little higher level of functioning than he said. Now, I'm not saying she couldn't have been that way in 2006, but she wasn't that way later on.

MR. DAN SLOTCHIVER: Your Honor, I object that this is an opinion of an expert, and I don't believe he has an opinion to differentiate between her condition, other than as a layperson.

THE COURT: As a layperson.

MR. DAN SLOTCHIVER: But this person

he's measuring -- he can testify as to his opinion about her as a layperson, but I don't believe he has the ability to interpret or question or disagree with a medical doctor's opinion, and that's what he's doing at this point.

THE COURT: I think as a layperson, I'll allow him to testify.

THE WITNESS: I was asked as a father, not as a doctor, so as a parent, I believe that she was at a higher level of functioning than Dr. Mamelak's report indicated at a later period.

BY MS. MOORE:

Q. And did that belief direct your decision-making as far as the types of doctors to be seen or the types of therapy for Abbie to be involved in?

A. Yes.

MS. MOORE: That's all I have, Your Honor.

THE COURT: Thank you.

Mr. Kachmarsky?

CROSS-EXAMINATION

BY MR. KACHMARSKY:

Q. Dr. Cohen, the last exhibit that was handed up, the judgment, would you turn to what

would be, I guess, Page 1, which is the third page of that document?
MS. MOORE: Which exhibit are you referring to?
MR. KACHMARSKY: I'm referring to the judgment that they handed up, the very last one.
THE COURT: Respondent's 15, I believe.
BY MR. KACHMARSKY:
Q. Would you agree or disagree with me that the agreement, starting on Line 4: The parties acknowledge that the court issued a statement of decision on April the 7th, 2011. The parties hereby agree that the court's statement of decision shall be adopted by the court as the findings of this court.
Do you agree or disagree with me that this document has been incorporated? We're talking about the statement of decision in this --
MR. DAVIS: Your Honor, not to stretch this out, the document speaks for itself. I believe the court could read that. I was admonished a number of times not to read from the documents.
THE COURT: I'm going to -- I'll allow

him to question him about that. Thank you.
THE WITNESS: Could you repeat the question?
BY MR. KACHMARSKY:
Q. Yeah. I just want to know if you'd agree or disagree if the statement of decision is incorporated in this document?
A. Well, I'd like to read the paragraph first. I don't know what a pendente lite means.
Q. Pardon me?
A. I don't know what a pendente lite means.
Q. I'm not sure I do either.
A. How can I interpret it if I don't know what a word means?
THE COURT: Did you read the paragraph? I don't have a copy of that.
MR. KACHMARSKY: I'll read it into the record. The parties hereby agree that the court's statement of decision, confidential and public versions, shall be adopted by the court as the final findings of this court on custody and visitation, and therefore, those findings as set forth in the statement of decision are incorporated herein --

THE WITNESS: You missed the first sentence where it says: The parties acknowledge. You started at the second sentence. You said Line 4, and you started at Line 5.
MR. KACHMARSKY: Your Honor, I'm just asking -- would you ask the witness to please just answer the question? I'm asking him, very simply, if he agrees or disagrees that this judgment incorporates the judgment of decision dated April the 7th, 2011, into this order.
THE WITNESS: I didn't have time to read the paragraph. I stopped at the second line.
BY MR. KACHMARSKY:
Q. You can agree, disagree, or just tell me you don't know. Any of those are fine.
A. Probably in general, but again, I don't know what some of these words mean.
Q. I'll take that as an I don't know, and that's fine.
THE COURT: Thank you.
MR. KACHMARSKY: Can I have No. 86, please? Do you have a copy of the statement of decision?
THE COURT: 86?
MR. KACHMARSKY: That's the one that's

missing.
THE COURT: I have a copy, hasn't been marked, but I do have a copy from the court's record previously. No. 86, statement of decision.
BY MR. KACHMARSKY:
Q. I'm going to ask you to look at what would be -- we're going to go to Page 2. We had talked about -- you'd made some comments about Dr. Hays previously.
THE COURT: Go ahead, Mr. Kachmarsky.
BY MR. KACHMARSKY:
Q. We have what would be the second new paragraph on that page. It begins: In determining Abbie's degree of disability.
THE COURT: Give me the page number again, Mr. Kachmarsky.
MR. KACHMARSKY: Page 2, looking at the second full paragraph on that page. It begins: In determining Abbie's degree of disability.
BY MR. KACHMARSKY:
Q. Do you see that, Dr. Cohen?
A. Yes.
Q. I'm going to start on the last word of the third line.

A. The last word of the third line.
Q. It begins: The videotape deposition of Abbie Dorn and the testimony of Abbie's evaluating neurologist, Dr. Hays, must be viewed under the preponderance of the evidence standard. Given this standard, the court concludes that it is more likely than not that Abbie Dorn does not have any significant cognitive function, that her eye blinking and smiling and movements are involuntary movements described by Dr. Hays as brainstem reflexes.
Do you agree or disagree with that statement?
A. I disagree with what the judge found, but that was the judge's statement.
MR. DAN SLOTCHIVER: Your Honor, should we re-mark this as a new 86 until we find the other one?
MS. MOORE: Let me make sure I didn't take it.
THE COURT: We'll look for it during the break, and if necessary, we'll certainly re-mark it.
MR. DAN SLOTCHIVER: I'll leave this with the reporter in case we need it, so we won't

have that issue.
BY MR. KACHMARSKY:
Q. This is a copy of Dr. Mamelak's deposition. I'm going to make this very brief. I just want to ask you three or four questions in it, okay.
Would you please turn to Page 17? Are you there?
A. Yes.
Q. I'm down on Line 16, and I'm asking you if you would agree or disagree with the statement that: The damage is so severe, so global, that it would be exceptionally unlikely, if not essentially impossible, for her to regain a conscious function.
Do you agree or disagree with that?
A. I'm not an expert witness. I can't testify to this.
Q. I'm asking you as a layperson whether you agree or disagree.
A. As a layperson, it would be hard to know this.
Q. You don't know?
A. No.
Q. That's fine, and that's okay.

Would you please turn to Page 26? Are you there?
A. Yes.
Q. Down on Page -- or Line 21, would you agree or disagree that: Abbie developed the classic findings of a vegetative state: Roving eye movements, blinking eyes, mouth movements, moving of her tongue a little bit.
Do you agree or disagree with that?
A. When he examined her -- may I state a timeline for this, please?
Q. Sure.
A. When he would have examined her, I wasn't there, I was not in California, and the last time he saw her would have been September 2006.
Q. That's correct. And just to clarify for the record, this examination, the last time he did see her, was in 2006?
A. Yes. I was not in California at the time, so I couldn't say what he saw, what he didn't see.
Q. Would you please turn to Page 61? I'm down on Line 10. Basically, he is opining that 60 to 75 percent of her brain functioning was

essentially destroyed, and on Line 13, he says that: Yes. I'm being generous.
Do you agree or disagree with that?
A. As a layperson or as an expert witness?
Q. As a layperson.
A. I don't know -- I don't know how you make that determination as a layperson, how you do 60 or 75 percent as a layperson. There's no way I could tell. There's no way any layperson could tell.
Q. So you don't know?
A. I don't know.
MR. DAVIS: Your Honor, I object. He clearly knows. He's being put in a difficult position. He knows the answer, but he's been --
THE COURT: Yes, sir. He's restricted. Thank you.
MR. KACHMARSKY: I've asked him as a layperson.
THE COURT: Yes, sir. I understand that.
MR. KACHMARSKY: And he can answer if he agrees or disagrees or he can answer he doesn't know.

THE WITNESS: I don't know how to -- as a layperson, I don't know how to make an estimation of how much brain function is lost.
BY MR. KACHMARSKY:
Q. I understand. Let's go to Page 84. I'm at the bottom paragraph, starting with Line 22: And the difficulty of medicine in general and underlies the difficulty in this case is you can never say zero one way or another. You have to give what's the highest probability opinion.
Do you agree or disagree with that as a layperson?
A. Well, that's what all doctors do to give you the highest probability of opinion, more likely than not, ABC is going to happen.
Q. Please answer the question. You can agree, disagree, or just tell me you don't know.
A. In general, that's probably true.
Q. Is that agree?
A. That's as best as I can tell you. I could give a qualified yes.
Q. Thank you. Page 85, top paragraph: In the highest statistical probability, a person who's shown no response at a year has, well, less

than a 1-percent chance of ever gaining conscious behavior.
MR. BOYD: Excuse me, Your Honor. Counsel, did you say Page 85?
MR. KACHMARSKY: Yes.
MR. DAVIS: Your Honor, I would object also. Yesterday, you prohibited me from going into detail about this deposition, a number of objections made by Mr. Slotchiver, and I'm not sure Mr. Kachmarsky's afforded the opportunity to do what I was not afforded the opportunity to do yesterday, Your Honor.
MR. KACHMARSKY: I think I'm asking him a question that he can answer -- I'm asking him a very simple question that he can answer without opining as an expert.
MR. DAVIS: That was my attempt as well, Your Honor, yesterday, and I was pretty much cut off and handcuffed and said -- I believe the court said it would read the deposition, limited my questioning, and said: Move along, Mr. Davis.
MR. KACHMARSKY: I believe I'm phrasing my questions in a way that can be asked.
THE COURT: I agree. I think Mr. Kachmarsky can go forward with this.

MR. BOYD: Could counsel please restate the line number and the paragraph that he's reading from?
MR. KACHMARSKY: I'm on Page 85. I'm on the first -- Line 1.
Did we get an answer to that last question?
THE COURT: I don't believe so.
THE WITNESS: What was the question again?
MR. KACHMARSKY: Would you repeat the last question, court reporter, please?
(The Court Reporter read the question commencing on Page 1448, Line 22.)
BY MR. KACHMARSKY:
Q. Would you agree, disagree, or do you not know as a layperson?
A. As a layperson, I wouldn't know, except that statistically, as a layperson, if you're that 1 percent patient, it's 100-percent improvement for you.
Q. Page 86, on Line 23, this is a question asked to Dr. Mamelak. He asked: First of all, is locked in the same as what lay people commonly hear as trapped inside your own body?

And his answer to that is: Correct.
In your previous testimony, you made reference to Abbie as being trapped inside her own body. Is that correct?
A. Yes.
Q. I'm going to direct you now up to Line 7, and Dr. --
A. Line 7?
Q. Yes. Dr. Mamelak is being asked: Is it possible that Abbie is locked in? And on Line 8, the answer to that question is --
MR. BOYD: I think we need to renew our objection just for the record. I don't believe this is an appropriate use of deposition transcript at trial, particularly when we don't have the original transcript, and he's effectively using this testimony in an improper fashion.
MR. DAN SLOTCHIVER: And I would object, Your Honor, to counsel. They've exchanged -- seems like every other time, a different one stands up to object. I believe this is Mr. Davis's witness. He testified earlier in the proceeding yesterday it was his witness, he would make any objections, and I would object to Mr. Boyd making those objections.

THE COURT: Sustained. I'm happy to hear from Mr. Davis.

MR. DAVIS: Your Honor, again, my attempt yesterday was to go to parts in the deposition that would be helpful to explain the likelihood that Abbie has made improvement, and I attempted to do that and see if he agreed with that as a layperson in his opinion, and I understand now -- and I was not allowed to do that.

I now understand that Mr. Kachmarsky is finding parts in the deposition where he wants to prove or indicate that Abbie is essentially brain dead and cannot get better, and I was trying to ask those questions as to Dr. Cohen as a layperson and to elicit a response.

So he's trying to do exactly the same thing that I was trying to do yesterday, Your Honor, and you told me that I could not do that and told me to move along. So again, I don't -- I believe it's a misuse of the deposition, and I'm confused, Your Honor, why we're both on cross-examination, we're in the same posture, the same position, and I was attempting to do what he's being allowed to do right now.

I realize it was late in the night, we were trying to move things along, but it was very important to me to establish parts in the deposition where it clearly indicates that it is certainly possible for Abbie to make improvement, and I was unable to do that, Your Honor.

MR. KACHMARSKY: I think Mr. Davis was trying to solicit testimony from Dr. Cohen last night. I'm not trying to solicit anything but whether or not he agrees or disagrees to what I'm asking him. I'm not trying to get him to opine as an expert. I'm not trying to lead him. I'm not trying to get him to say anything other than whether he simply agrees or disagrees with findings, I say, with the opinions of an neurologist in a deposition that has been --

THE WITNESS: Dr. Mamelak's a neurosurgeon, sir.

MR. KACHMARSKY: Neurosurgeon, you're correct. And I've got one more question, then I'm done.

THE WITNESS: What was the last question?

THE COURT: I'm going to overrule the objection and allow him to ask his last question.

THE WITNESS: What was the last question?

THE COURT: I do see there is a difference, Mr. Davis, in what Mr. Kachmarsky's doing versus your questioning of Dr. Cohen last night. You seemed to be getting more into him giving an opinion as to what Mr. -- excuse me, Dr. Mamelak, his diagnosis. He's asking simple questions, do you agree with what he said here or not. I do see a distinction there.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. KACHMARSKY:

Q. Again, going back to Line 7, the question that is asked of Dr. Mamelak is: Is it possible that Abbie is locked in? And I'm going to ask you beginning on Page -- I'm sorry, Line 8, with the statement that he makes, whether you agree or disagree with it. His response is: So it is not possible that Abbie is locked in? To be locked in means that you have the exact opposite of what Abbie has. To be locked in, you have no spinal cord function, but normal cerebral brain function.

Do you agree or disagree with that, or

do you not know?

A. I'm a layperson. How could I interpret that?

Q. You do not know?

A. I do not know.

MR. KACHMARSKY: Thank you. I have nothing further, Judge.

THE COURT: Mr. Slotchiver?

MR. DAN SLOTCHIVER: Very brief, Your Honor.

THE COURT: Very briefly. Thank you.

MR. DAN SLOTCHIVER: Maybe three questions.

THE COURT: Okay. Good.

REDIRECT EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Dr. Cohen, are you familiar with the term heter mer rabanan?

A. What? What did you say?

Q. Are you familiar with the term heter mer rabanan?

A. I think it's mea heter rabanan.

Q. Are you familiar with the term?

A. Yes. And it's rabanan, not rabanan.

Q. Thank you for your correction. That's

your understanding of it.
Do you understand that to be a religious procedure that Dan Dorn needed to get before he could move on and date or marry?
MR. DAVIS: Your Honor, I object. Is he asking him now as an expert in the Jewish faith? I mean, that's the same objection he's made to me. He's asking --
MR. DAN SLOTCHIVER: There's a difference in being a -- having knowledge of Judaism and customs as a Jewish person than being a doctor or a professional who needs to be sworn as an expert. I don't believe I've ever heard of anybody being sworn as an expert in Judaism or in any religion, and I'm not asking him as an expert. He testified he knows what the term is, and I want to ask him some questions because it's relevant to the examination he was giving yesterday.
THE COURT: Overruled.
BY MR. DAN SLOTCHIVER:
Q. Are you familiar with the fact that before Dan could remarry/date, he needed to get -- obtain one of these?
A. Yes.
Q. And are you familiar with the fact

that in order to get one of these, he needed over 100 rabbis to approve it?
A. I think he needed 100. It's 100 in Hebrew.
Q. And are you familiar with the fact that it takes quite some amount of time to obtain that?
A. I have no idea how long it takes.
Q. Do you know that it took him a year-and-a-half after he began the process?
A. I have no idea how long the process takes.
Q. Do you understand that until the divorce took place, he couldn't even begin that process?
A. Until the divorce took place. You mean the civil divorce?
Q. The dissolution of marriage, yes, sir.
MR. DAVIS: Your Honor, I would object. He's asking leading questions. I'm not sure -- I believe this was his witness on direct examination. He's placing all the information and just asking him a yes or no question. I believe that's a leading question. This is his witness on direct examination.

MR. DAN SLOTCHIVER: Your Honor, I don't believe I'm getting any gainful edge, number one, number two is we've already asked Your Honor to allow him to be treated as a hostile witness, but this is very basic questions about a procedure and his knowledge about it.
THE COURT: In an effort to move this along so that we can get to our expert witnesses, I'm going to allow him to -- a little bit of latitude to ask leading questions. He said he had three or four questions, so we can finish this, Mr. Davis.
THE WITNESS: I'm not expert on Holaka Jewish law, and I have no idea.
BY MR. DAN SLOTCHIVER:
Q. Fair enough. Was there ever a time when the proposition of using LegalZoom was suggested to you or your wife for the divorce procedure?
A. Not to me, but it could have been directed to my wife, but it was not in my presence, so I couldn't say yes or no.
Q. Was there ever a time when you would have told Dan Dorn: You need to get a lawyer?
A. I'm not sure I used that terminology.

I visited a lawyer, and I gave him her card, and I said: This is the lawyer who we visited.
Q. And that was before any filings took place?
A. I think you have to -- what filings?
Q. Any filings, for divorce, for dissolution.
A. Well, you have to go to a lawyer for that first. That was before anything else happened. That's just the preliminaries.
Q. You've testified earlier today on cross-examination about a bunch of doctors who Abbie treated with, and you've even given the time frame, based on Ms. Moore's questions. Do you recall that?
A. Yes.
Q. And you've testified about a variety of procedures that Abbie was -- or that you believe Abbie was able to undertake, such as the video-type games and eye tracking-type procedures?
A. That is not a medical -- you mean what I described, the Eagle Eyes?
Q. As a layperson, you testified you believe that she benefited from it?
A. Yes.

Q. And that she could utilize these programs?
A. Yes.
Q. And I believe you testified that these go back to perhaps as late as -- or as early as 2009. Is that correct?
A. I don't believe that we got that in 2009. It's been no more than a year-and-a-half, maybe. I just don't know.
Q. I believe the record speaks for itself.
A. I really don't know for sure, sir.
Q. Fair enough. Dr. Cohen, the programs and the doctors, these types of things have been going on for several years, correct?
A. Some, yes, some of them longer, some of them shorter.
Q. Including your testimony pertaining to Abbie's ability to blink responsively?
A. Yes.
Q. And do you agree with me, sir, that all of this information was something that you had -- I don't want to cross the attorney-client privilege, but you had the ability to provide to your counsel in the California case?

A. I'm not sure what was provided to them in terms of medical documentation.
Q. You're familiar that -- you've read the court's order and the statement of decision, correct?
A. Yes.
Q. And you're familiar that the statement of decision which was incorporated as part of the court's order actually spoke about having viewed evidence submitted of Abbie wherein she purportedly was responding affirmatively or negatively. Are you familiar with that?
A. I believe that was her so-called deposition, yes.
Q. And are you familiar with the fact that the court found no credence in the argument set forth before it, not only in the records, but also having viewed the physical evidence, and they specifically stated in the order that they don't find it. They said as much as they understand the desire and the wish and the hope that people have, they don't find it to be credible. Are you familiar with that?
A. Yes.
Q. And do you concur with the fact that

despite all that and despite the findings in the order and the statement -- or the findings in the statement of claim, you, as a trustee, as a conservator in this matter, agreed to conclude the California action with those findings rendered by the court?
A. Yes.
MR. DAN SLOTCHIVER: I've got nothing further.
THE COURT: Thank you.
Mr. Davis, anything else from you for the witness?
MR. DAVIS: One question, Your Honor, if I may ask it from here.
THE COURT: Yes, sir.
RECROSS-EXAMINATION
BY MR. DAVIS:
Q. Dr. Cohen, there's been a lot of discussion about levels of consciousness. I believe the last discussion from Mr. Slotchiver was conscious level, which is where we are all in now. Do you understand -- is it your understanding that a person has to be conscious to have the benefit from visitation with their children?

MR. DAN SLOTCHIVER: Your Honor, it's actually asking for a legal conclusion.
MR. DAVIS: I'm asking for his understanding, Your Honor.
MR. DAN SLOTCHIVER: It's actually calling for a legal conclusion, Your Honor. He's asking if in order to have visitation with the children, which is a legal issue that's heard before a family court, you have to have certain qualifications. It's asking for a legal -- not even a medical, but at this time a legal conclusion. I would object.
MR. DAVIS: I have not tried to get him sworn as a legal expert or a medical expert. He's simply a trustee, co-trustee, co-conservator, and co-guardian. I've been allowed latitude to ask about his understanding with no limitations that --
THE COURT: I'll allow it.
BY MR. DAVIS:
Q. Dr. Cohen, there's been discussion about the levels of consciousness, about the persistent vegetative state mentioned in Dr. Mamelak's report, about the minimally conscious state mentioned in Dr. Hays's report,

also been reference to a conscious state of mind. Do you believe that it's necessary to have a conscious state of mind to receive a benefit from visitation with the children?

A. As a layperson, my understanding would be you can still derive benefit from -- you don't need to be fully conscious to understand the benefit -- to get benefit from visitation.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Thank you.

Ms. Hedgepath, Ms. Moore, anything else for the witness?

MS. HEDGEPATH: Nothing, Your Honor.

MS. MOORE: Nothing further.

THE COURT: Mr. Kachmarsky?

MR. KACHMARSKY: Nothing.

THE COURT: The witness can step down, then.

We're going to take ten minutes, if that would be sufficient time. Thank you.

(A recess transpired from 10:42 AM to 11:12 AM.)

THE COURT: We're back on the record in the Abbie Dorn matter.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: Thank you, Your Honor.

We referred to the Paul Cohen deposition. We opened the transcript when we impeached his testimony. We had that information read into the record, but if it's acceptable, I'd like to go ahead and put it into the evidence so the court will have the original.

THE COURT: Thank you.

Any objection?

MR. BOYD: No objection, Your Honor.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: Your Honor, at this point we would like to call Professor John Freeman.

THE COURT: And I'm sorry. Do we know what number that is, then?

MR. DAN SLOTCHIVER: 110.

(PLF. EXH. 110, Deposition of Paul Cohen, was marked for identification.)

MR. DAN SLOTCHIVER: Your Honor, I think I speak loud enough not to have to use this. Is that okay?

THE COURT: Sure, yes, sir.

MR. DAN SLOTCHIVER: I don't like to

use this.

THE COURT: I think you do. No offense.

MR. DAN SLOTCHIVER: None taken.

PROFESSOR JOHN P. FREEMAN being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Professor, would you please state your name and address for the record?

A. John Patrick Freeman, F-R-E-E-M-A-N, 2329 Wilmot, W-I-L-M-O-T, Avenue, Columbia, SC, 29205.

Q. And would you please describe your educational background?

A. Graduated from Notre Dame with a bachelor's degree in accounting, and I received a BBA, Bachelor in Business Administration. In 1967, went to law school at Notre Dame. 1970, got my JD. I subsequently received an LLM from the University of Pennsylvania in Philadelphia.

Q. What did you do after law school?

A. Went to work with the Jones Day law firm, which is a large law firm headquartered in Cleveland, and worked there for a couple years.

And then I went and took a fellowship to the University of Pennsylvania, and I received my LLM from that work at Pennsylvania studying money management.

And then I came to South Carolina in 1973 to begin as a young professor and assistant professor of law, and I started teaching at the law school in '73 and continued on at the law school until 2008, when I retired. In the meantime, I had worked for the Securities and Exchange Commission, also taught at the University of Texas Law School in Austin and Loyola Law School in Chicago.

Q. My understanding is that you're retired now?

A. True.

Q. What was your rank when you retired?

A. I was a -- I had the John Campbell chair in business and professional ethics, and that was -- I was a chaired professor of law.

Q. Professor, can you explain to me what it means to have a chair?

A. Sort of like being a bird colonel in the military. You're not quite a general. I wasn't a dean, but you're not an associate

professor, you're not an assistant professor, you're not an instructor, so it's the highest you can be without becoming a dean of the law school, either an associate dean or the actual dean.

Q. Thank you, sir. What courses did you teach?

A. Taught various courses. The main courses I taught year in and year out were -- started out as business association, which is agency/partnership/incorporations folded into a four-hour block. That became corporations -- the name of it was corporations, but it had the same basic content, and also, when LLCs came along, that got folded into that, so that was a major course that I taught for well over 30 years.

I also taught, almost every single year, professional responsibility, sometimes multiple times a year, and that, of course, is a legal ethics/law office/malpractice kind of course.

I also taught legal accounting for over 20 years, starting with my first year at the law school, and I taught business planning, corporate finance.

And toward the end, I did a couple

things. One is got in the area of legal malpractice, which is part of another course, but I taught the legal malpractice section of that course, and then also taught business crime for about ten years, which sort of takes the business aspects and money management aspects and takes a look at that from the criminal side.

Q. You mentioned that you taught legal accounting. Could you please tell us what the legal accounting course covered?

A. Sure. Legal accounting course was principally designed to help our law students, who had been, oftentimes, liberal arts majors, never took a business course, were afraid of business courses, afraid of finance, and that kind of thing. Suddenly, they're on the verge of becoming lawyers, and they need to come to grips with that.

And so that was to help them ramp up to understand how books are kept, the importance of financial statements, how accountants interact with business people, how accountants interact with lawyers, and as sort of a -- it's a great course, really, because it was designed not for kind of high thinking kind of literary emphasis, but basically, this is what you got to know in

order to make it in the real world, so I enjoyed teaching that.

Q. And how long did you teach that course for?

A. I would say around 20 years, could have been over 20 years, but around 20 years.

Q. Professor, what experience have you had in accounting?

A. Well, besides being an accounting major and besides being a member of Beta Alpha Psi, which is an honorary accounting fraternity, I also worked for an accounting firm, the McGladrey firm, and I taught it. And to be honest with you, a lot of the matters that I've had to deal with, legal matters, since the time I became a lawyer in 1970, in some form or fashion, have accounting issues, financial issues in them.

Q. Have you received any awards or honors for your teaching?

A. Yes. I was voted the best teacher four times by the students at the law school.

Q. Thank you, sir. Have you worked anywhere else?

A. Well, yeah. I worked at -- I mentioned the SEC, Securities and Exchange

Commission, studying issues of investment managers handling investment money and fees. I also -- that was two summers at the SEC while they were doing an intensive study in an area where I have some skills.

I also, as I said, worked at Texas Law School, where I taught the corporations course, taught corporations and securities at Loyola, and from time to time, I've also been involved as a lawyer in legal matters.

Q. In your teaching capacity, did your activities include any focus on the topics of fiduciary obligations or the scope of authority?

A. Yes, because sometimes I tell the students that basically -- for instance, the corporations course, agency/partnership/ corporations/LLCs, essentially, that is all about fiduciary duties, because agents are fiduciaries, principles are in a fiduciary relationship, corporate directors are, officers are, members of LLCs, if they're managing members for sure, are, partners are, general partners are, and so you've got all these stirring together of these fiduciary obligations.

Likewise, in PR, lawyers are going to

be a fiduciary, a lawyer handling money is going to be a fiduciary, accounting to clients or not accounting to clients. So yeah, it was -- pretty much everything that I dealt with had fiduciary overtones.

Q. And a little further with it, Professor. In your teaching, did you have a focus on the duties that fiduciaries owe when handling and managing money?

A. Sure. Lawyers, for example, I mean, we talk about trust accounting and the need to keep things straight in the business area, the same thing, the duty to account, accounting proceedings in a partnership setting, and on and on.

Q. Outside the classroom, have you, as a lawyer, focused on the duties that fiduciaries owe when handling and managing monies?

A. Sure.

Q. Can you describe that, please?

A. Well, for one thing, I've written about it. For instance, there was an article I did back in my SEC days. One of the key things I looked at for the SEC was the ability of managers of mutual funds, the investment adviser, who is a

fiduciary as to the fund itself -- Fidelity, for example, sets up a Contrafund, which is a Fidelity fund -- the duties of the adviser in managing that money and spending that money, for example, using some of that shareholder money to generate new sales of fund shares and the propriety of that.

It's a really difficult issue, simply because nobody's ever really shown that selling additional fund shares benefits the shareholders. So if you take their money, who's being benefited? It's the investment adviser who benefits by the fund growing, so there's a fiduciary duty issue there that I've written about at considerable length.

I wrote about it in the 70s, I wrote about it with two major articles in the last eight or ten years, and as a result of that, for example, I ended up testifying before the US Senate on money management/fiduciary duty issues.

Q. Other than your experience as an author for the articles you've written, have you ever, as an expert or a litigation consultant, focused on the duties that fiduciaries owe when handling and managing monies?

A. Sure.

Q. Can you tell me about that?

A. Well, the mutual fund investigations that I made led to some -- a lot of cases, actually, and I ended up as a litigation consultant in various cases attacking the fiduciary behavior of investment advisers really around the country, and so that would be one thing. In terms of being a litigation consultant in other types of cases, I think it's been pretty much in the mutual fund area.

Q. Do you give lectures on fiduciary duties?

A. Sure.

Q. When was your most recent lecture?

A. About two weeks ago.

Q. Can you tell me briefly about that?

A. Right. There was a series of lectures. There was three of them. They started in December, then there was one in January, and then one in February, I think it was February 12th, or thereabouts, maybe three weeks ago, at the Bar headquarters.

And the focus of these lectures was on the duties that lawyers would owe in dealing with vets, because a lot of veterans, for example, may

be elderly, and you're trying to accomplish something for them, their needs of dealing with family, their needs of dealing correctly with the government. And so that was three hours. The most recent hour was vets and their families and how you coordinate. And it's all -- the lawyer is a fiduciary because that's what you are as to the vet and as to the family dealing with these money problems.

Q. What do you do to stay current in the area of fiduciary duties?

A. One thing I do is answer my phone, because I get calls all the time, usually multiple times a day, from lawyers who have issues, oftentimes money-related. But also, when you write about it or when you lecture about it, that forces you to learn about things.

Also, for example, periodically, I would say once every three or four weeks, you get a call from a reporter who wants to know about some new thing, and you learn from -- put it this way: Usually when people call, it's not an easy question, particularly when it's lawyers. It's something that if they knew the answer, they wouldn't need to call me, or if they were

100-percent sure, they wouldn't need to call me, so you learn from that, that interaction.

Q. Have you ever been involved in lawsuits involving challenges to the reasonableness of fees charged in a fiduciary setting?

A. Sure.

Q. Can you describe your experience in that?

A. Well, I mentioned all those mutual fund cases. Also, I've been involved in cases involving the lawyers and how they handle money and how they handle fees. I've been involved in numerous cases where the issue was the reasonableness of the lawyer's fees and the lawyer's behavior.

Oftentimes, in a large class action, for example, there are issues as to the reasonableness of the behavior, i.e., the settlement, and as to the fee that's being charged, and I've testified many times in those cases, and periodically, I've also been involved in litigation against trustees who have failed to handle their fiduciary obligations properly.

Q. Have you ever written about

fiduciaries' obligations in handling money belonging to others?

A. Sure. That's -- for instance, all my mutual fund stuff is along that line.

Q. And have you ever sued fiduciaries for their misconduct in the handling of their fiduciary duties?

A. Sure. I mentioned a couple cases against large banks -- SCN was one and Bankers Trust of New York was another -- and they failed as fiduciaries, and they got sued.

Q. Professor, are you here today to express legal conclusions?

A. No, I am not.

Q. What are you here to do today?

A. I'm here to express my opinions as an expert in the area of fiduciary obligations and handling money, about the reasonableness of actions and decisions taken by the Cohens and the extent to which that those -- in my judgment, those behaviors were within the scope of their authority.

MR. DAN SLOTCHIVER: Your Honor, at this time I move to submit Professor Freeman as an expert in the field of fiduciary obligations and

the handling of money and making business decisions that have affected the Abbie Dorn Special Needs Trust.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, we think for the limited area of fiduciary obligations, that we would concede that Mr. Freeman has an impressive CV and background, but we just would note that there's been little said about the actual types of trusts that are involved in this case, but with the limited -- with the specification that counsel provided, we have no objection.

THE COURT: Thank you.

Ms. Hedgepath, Ms. Moore, anything?

MS. HEDGEPATH: I concur with Mr. Boyd.

MS. MOORE: Same.

THE COURT: Mr. Kachmarsky?

MR. KACHMARSKY: No objection.

THE COURT: Mr. Boyd, you mentioned with the limited area of fiduciary obligation --

Mr. Slotchiver, if you could step aside, just so I can see Mr. Boyd.

MR. DAN SLOTCHIVER: Yes. I'm sorry, Your Honor.

THE COURT: I think Mr. Slotchiver asked that he be qualified as an expert in the area of fiduciary obligation and handling money.

MR. BOYD: Well, Your Honor, I would object to -- I'm not sure if handling money is a legal term of art or not. I'm not familiar with that. I think that's an overly broad characterization of Mr. Freeman's expertise. Handling money --

THE COURT: As a fiduciary?

MR. BOYD: Everything involved, but if it's simply an expert as to fiduciary standards, we're not going to contest his qualifications.

THE COURT: Is that -- there's some limitation?

MR. DAN SLOTCHIVER: Perhaps I can ask Professor Freeman another question.

THE COURT: Yes, sir.

BY MR. DAN SLOTCHIVER:

Q. Professor Freeman, have you been qualified as an expert before in other cases in the field of fiduciary obligations in the handling of monies?

A. Yes.

Q. Any idea as to how many times?

A. Multiple times. For example, one of the problems that you run into in the investment area is investment advisers are broker/dealers, abusing their clients by gouging on fees or misapplying money, been involved in cases where lawyers have done the same thing and testified -- you're asking for a number -- 15 times or more.

Q. I'm assuming you've never not been qualified?

A. No. I've never been found unqualified to testify about that.

MR. DAN SLOTCHIVER: Your Honor, I would move once again, understanding the objection of Defendant Cohens' counsel.

THE COURT: I will qualify Professor Freeman in the area of fiduciary obligation and the handling of money.

MR. DAN SLOTCHIVER: Thank you.

THE COURT: Thank you.

MR. DAN SLOTCHIVER: And we had added to it, Your Honor, unless you're not going to include them, but also in making business decisions affecting the Abbie Dorn Special Needs Trust.

MR. BOYD: Your Honor, I didn't

understand that to be a specific qualification of Mr. Freeman's expertise.

MR. DAN SLOTCHIVER: Actually, it was. It was verbatim to what I quoted before, Your Honor.

THE COURT: Maybe you can explore that just a little bit further with Professor Freeman.

MR. DAN SLOTCHIVER: Be happy to.

BY MR. DAN SLOTCHIVER:

Q. Professor Freeman, have you been involved in cases wherein you've been qualified as an expert in the making of business decisions affecting financial matters?

A. Sure.

Q. And is the manner in which or the substance in which I am putting you up to be an expert consistent with other matters that you have been authorized by the court to speak on as an expert?

A. Yes.

THE COURT: So would that be a qualification in the area of making business decisions as a fiduciary?

MR. DAN SLOTCHIVER: Well, in this case, it's affecting the special needs trust, but

it would be as a fiduciary.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, I just want to point out, I know it runs contrary to the view of the case held by other counsel in the room, but the Abbie Dorn Special Needs Trust is not a business, Your Honor. It's not in existence for the purpose of returning value to shareholders. It is not a business, Your Honor. It is a special needs trust specifically established for the benefit both under the law, the Medicaid provisions, and by its own terms for the benefit of one person, Your Honor.

MR. DAN SLOTCHIVER: And we'll address that, Your Honor.

THE COURT: Thank you.

Then I will qualify Professor Freeman as an expert to testify with regards to the fiduciary obligation and the handling of money and also in making business decisions as a fiduciary.

MR. DAN SLOTCHIVER: Thank you, Your Honor.

BY MR. DAN SLOTCHIVER:

Q. Professor Freeman, what have you done to prepare to testify here today?

A. Besides consult with counsel, I have -- and reading the transcript for the last however many days as we have had a court reporter putting that out on the Internet, just to keep myself informed as to what's been going on in the courtroom. But as I testified at my deposition, and that's one of the things I've done is been deposed in this case, I have read the depositions of the Cohens, Dan Dorn's deposition, I've read Dr. Mamelak's deposition. I have reviewed legal bills. I think there's around 413 pages of legal bills. I have reviewed material pertaining to Mr. Jeffrey Cohen and his activities and his billings. I have reviewed certainly the trusts and fiduciary duty authorities. And let's see if I left anything out. Of course, the pleadings in the case, general ledger, California decisions, Mr. Kachmarsky's pleadings, his fee petition, I read various transcripts, done what I could to try to stay abreast of these facts.

Q. Thank you, Professor. In your preparation, have you conducted the kind of investigation that is common for experts in your field testifying in cases such as this?

A. I have.

Q. Please describe what you have done to prepare for your testimony.
A. Well, again, I've reviewed material which is standard for an expert of my type, I have formulated opinions, I have formulated reasons for those opinions, I have presented myself at a deposition and been deposed, my views are a matter of record, and I come into the courtroom today to share those opinions and reasons with the court.
Q. Thank you, sir. Have you conducted an investigation concerning the trust on payments of the Cohens as trustees to their son Jeffrey for accounting fees?
A. Yes.
Q. And what did your investigation consist of?
A. Well, there's a report on his fees, which is already in evidence. It's been referred to, I know, in the transcript at various points. It's a three-page summary of different billings by Jeffrey. It's got a third page with a total amount of $88,917.41. I looked at that, reviewed that. I also had a wealth of financial information about expenditures by the trust, different checks that were cut that were charged

against the trust. Typically, the checks were made out by Mrs. Cohen.
I reviewed a payroll register prepared by the AccuChex. I reviewed tax returns prepared by Webster Rogers. I conducted some investigation into the issue of exactly what is the market for bookkeepers and how are bookkeepers paid and came up with data on what seems to be the going payment, annual salary, or charge for bookkeepers, and that's a summary of where I looked in order to evaluate Jeffrey Cohen's behavior as a bookkeeper.
Q. Thank you, sir. Professor Freeman, I'm going to hand you a copy of Mrs. Cohen's deposition. Did your investigation include reviewing this?
A. It did. I've got some pages from her deposition with me today.
Q. Did you note Mrs. Cohen's testimony about hiring her son to do an accounting for the trust?
A. Yes. And specifically, I noted her to say, quote: My son is an accountant. That's on Page 46, Line 5.
I noted her to say on Page 51, question, Line 19: His job description, is that

as a bookkeeper? That's a question. Answer: Right. That's primarily what it is.
And she also -- I also gleaned from there information about payment and why he was -- why he was hired. On Page 50, Line 2, quote: I was paying my firm here $95 an hour, so he initially didn't want to take any money. I wanted him to take at least that an hour, was her testimony.
Later on -- that kind of puzzled me later on when I read it, because Page 52, Line 8, she says: Well, I had Webster Rogers. They were charging me $95 an hour. That's why I said I need somebody. I can't pay $95 an hour, which was confusing to me and more confusing when I saw her testimony at trial that he only gets paid $25 an hour. But that's her testimony here in this courtroom that this man is paid $25 an hour, okay. I took that into account in evaluating his hiring and his work.
Q. Have you sought out to determine how he was paid?
A. Yeah. It's shown on -- it was Deposition Exhibit 8. I don't know what the number is in the court file for this Jeffrey

Cohen --
Q. I'll be happy to get it for you, if you'd like.
A. Just so the record is clear on what I'm referring to. Your Honor, I think, understands what I'm referring to.
THE COURT: Yes, sir. I believe that has been admitted, hasn't it?
THE WITNESS: Yes, it has. It's been discussed by various people.
Anyhow, I took this into account. I took also the AccuChex numbers into account, because they show the money going out to Jeffrey every two weeks, and I reached certain conclusions based on this evaluation.
BY MR. DAN SLOTCHIVER:
Q. Can you tell us those conclusions?
A. Yeah. I think there's a waste of assets here. I think there's a breach of fiduciary duty and severely improperly handling of this by the Cohens as fiduciaries. And I have reasons for this, and I want to give my reasons.
Q. If you would, please.
A. First of all, if you look at the chart of Jeffrey's payments, they start off what seems

to be some kind of hourly system, and you have different numbers for 2008. It says hourly, and they add up to $5,500. And when you get into the middle part of 2009, it shoots up to $1,500 every two weeks.

Q. And not to interrupt you, Professor, but just to make sure we're on the same page, I believe this is Exhibit 88. Let me hand you the exhibit so we have clarity for the record. Is this the document you're referring to?

A. It is.

Q. Thank you, sir.

A. Well, middle of 2009, the 400, 500, 600, 900, 600 numbers suddenly become stabilized exactly at $1,500 every two weeks. That's $3,000 a month, and that continues on that way for the better part of two years, exactly $3,000 a month. It turns out to be a little bit more than that, because 26 times $1,500 comes out, I think, to $39,000, not 36, say $39,000 a year.

My evaluation is that's high for a bookkeeper to begin with, assuming that that's really what the man is, which is what he under oath was presented as at Mrs. Cohen's deposition.

And here's why I have problems, big

problems, with this behavior. What is he accounting for? He's not accounting for payroll. That's AccuChex. That's a separate vendor. They're being paid separately. He's not even accounting for his own payroll or his own expense. AccuChex is doing all that for him and the other healthcare providers. As far as I can see, he's not doing the taxes, because Webster Rogers, who supposedly bills too much, they seem to be keeping on as the tax accountant. So that's fine.

And then when you look at the financial statements, and you look for accounting, what are we paying for accounting or bookkeeping? Bookkeeping isn't there. Jeffrey isn't there. You have a charge for accounting, but it's only about $7,000 a year. So where is this $39,000 or $36,000 number, and what is being done for that by this man who is a supposed bookkeeper?

Well, there can't be much, because payroll's AccuChex, taxes are Webster Rogers. That would leave something like data entry to put in the bookkeeping process the data that -- what data is there? And the answer is, well, Mrs. Cohen is writing checks. That's what she's doing, and she is, and I've seen the bank

statements, and I've seen the canceled checks, and I didn't see any checks written by Jeffrey. I saw checks written by her.

Well, what about these checks? There are not that many of them. If you total up the number of checks on a monthly basis, you might have a month that's got 75, might have a month that's got 80, you might have a month that's got 90. I don't remember seeing any month where there was 100 checks, but there could have been.

Why is that significant? Well, over a period of time, you've got -- if you've got 100 checks a month, and you're paying somebody $25 an hour, and they're earning this kind of money, they would be working a lot of hours in a given month, okay, to make that kind -- so you got to work four hours to make $100. You got to work 60 hours to make $1,500. That gets you for the first two weeks, and then double it, so you're at 120 hours for the month at $25 an hour for that kind of money.

Now, okay, so what do you do to earn that kind of money as the bookkeeper? Well, you're going to keep the books, okay. Fine. There are about 100 checks a month. That would be

generous. There'd be usually fewer than that. But say there's 100 checks, and you've got 150 hours that you're working that month. Well, the checks are all credits to cash, so debits and credits, that part of the equation you don't have to worry about. All you got to do is write down a debit. Works out to maybe, let's say, four checks a day or five checks a day, max, for your $3,000 plus a month.

How on earth do you spend that amount of time -- you show up at work at 9:00. You have four checks to enter on the books, one for prescription, one for equipment, one for half payment of the rent, so forth. You do that. That takes you a minute, five minutes if you're really, really slow, and then what do you do for the rest of the day as this full-time bookkeeper with that work? And the answer is you're not bookkeeping, because there's no work there for a bookkeeper, okay.

To enter, let's say, 100 checks a month, 12 months a year, that's 1,200. Checks, to enter those checks onto the books couldn't take you more than 20 hours, so that's not even really half of your first week, and you're being paid

$39,000 a year.

So that's very suspicious to me, because the fact is he can't be doing the bookkeeping and getting paid that kind of money. That is a waste of assets. That is throwing money away.

Now, I looked high and low for evidence of what Jeffrey is doing to earn that money. I couldn't find it. It's not in the tax return. There's no -- it's not -- I just couldn't find it. I could see the money going to him, but in terms of him being this bookkeeper, doing it -- you know, being paid $39,000 for a 20-hour-a-year job is ridiculous, so I got a huge problem with that.

Now, I understand that lately there's a claim that he's not the bookkeeper, per se, he reads to Abbie, or he somehow is a value to Mrs. Cohen as a sounding board or something like that. I mentioned that at my deposition. I'm glad that he loves his sister. I'm glad that he loves his mother. I'm glad that he's there for them. But that's called being a son. That is not a bookkeeper, and you don't -- to be paid $25 an hour to read a book to somebody, I'm not sure that

that's a good use of assets.

It looks to me like we're kind of inventing things, and I have a big problem with it because this man is a relative. This is what's called a related party transaction where there's a conflict of interest, and these transactions, typically, in the fiduciary area, are scrutinized very closely. And you would expect if there's $39,000 going to Mr. Cohen, that there would be documentation, clear-cut, explaining why this is good for the trust and good use of funds and so forth.

This is roughly one-tenth of annual trust money going out to Jeffrey. For what? Can't be for bookkeeping. It has to be -- in my judgment, if it is for bookkeeping, it's wildly gross overpayment for bookkeeping, and if it's for being a son or being a good family member, I'm not sure that that's compensable, and if it is compensable, I don't believe it should be compensable at $25 an hour, $39,000 a year. There are a lot of people who would like to work real hard for $39,000 a year.

So I've got serious problems with all of the Jeffrey payments, simply because I don't

find any substantiation, and the facts seem to kind of waver in front of you. It's $95, I wanted him to take more, and then this. This is also in Mrs. Cohen's deposition repeatedly. Jeffrey said he'd do it for free. Well, you know, that's fine. If he'd do it for free, he has got a pretty good idea of what his time is worth. It's not worth very much to be a bookkeeper --

MR. BOYD: Your Honor, I object to that testimony. There's no basis for that statement.

MR. DAN SLOTCHIVER: He's an expert giving his opinion, Your Honor.

THE COURT: I'm going to allow it.

THE WITNESS: Jeffrey didn't want any money. If I was a fiduciary operating with an eye single to the trust and to Abbie Dorn's needs and had somebody who didn't want money, I would not be chasing them around trying to stuff it in their pockets.

MR. BOYD: Your Honor, again, I have to object to the witness's statement. There's no basis in evidence that I'm aware of for the count -- for the witness's statement that Jeffrey didn't want any money. Mrs. Cohen has

testified --

MR. DAN SLOTCHIVER: That he didn't want any money.

THE COURT: I think she testified that he didn't want any money initially, so I'm going to allow it.

THE WITNESS: I just want to be clear on this, in light of what has been said more than once, but here on 53, Line 15 of her deposition -- well, starting on 12. Did he determine the $36,000? Answer: No. Question: Or was that your determination? Answer on Line 15: That was my determination. This is Susan Cohen. He didn't want to take any money from me. He said: Please just let me do it for you. And I said: No. I would feel guilty calling you so many times a day.

So that, to me, is not good behavior for a fiduciary. It's overpayment, assuming he's doing any work, and it doesn't have the -- it doesn't have the earmarks of an arm's length bargain at all. I think it's unfair to the trust, waste, a serious breach of trust by the fiduciaries.

BY MR. DAN SLOTCHIVER:

Q. Are you familiar with the term

self-dealing?
A. Yes.
Q. Would that apply to this issue?
A. I already said it did. It applies to -- it applies to this because it's a family member, it's a close family member getting the money.
Q. Professor Freeman, did you notice where it was that the payments to Jeffrey were listed?
A. They're in the AccuChex report.
Q. And where in the AccuChex report were they listed?
A. With the help, the helpers who come in on a daily basis.
Q. Was there a place they could have been listed in the accounting section?
A. Sure. For example, you could have listed it as an accounting expense or a bookkeeping expense. It was never there.
Q. Does it surprise you that a bookkeeper would not be listed as an accounting expense?
A. It does surprise me. I would think that that would be the accurate way to do it if he's actually a bookkeeper, as she said he was.

Q. So the record is clear, Professor Freeman, do you, as an expert, deem that the Cohens' conduct concerning the hiring and paying many thousand of dollars to their son Jeffrey for so-called accounting services to be reasonable or unreasonable?
A. Unreasonable.
Q. And can you explain that opinion?
A. Your Honor, I incorporate by reference my previous testimony. I just -- there isn't enough work there for him to do, just entering those checks, assuming that he does that. It's purely what to debit. You make that decision a thousand times. Fine. That might take you a day, but it doesn't take you a year for $39,000 to make that decision a thousand times. It's just ridiculous.
Q. Focusing on fiduciary obligations, what conclusions do you draw concerning the Cohens' behavior from these facts?
A. As to Jeffrey, it's poor behavior for a fiduciary. It doesn't stand -- in my judgment, particularly since it's a related party transaction, doesn't stand the light of day, doesn't have the hallmarks of arm's length

dealings. I just think it's wrongful, and you just can't necessarily, as a fiduciary, do things that you want to do, just because you want to do them.
Q. Thank you, sir. Professor, have you conducted an investigation concerning the trust fund payments by the Cohens as trustees to legal counsel litigating the issue of visitation concerning Abbie Cohen's children?
A. Yes.
Q. And what facts did your investigation produce?
A. Well, it's been referred to many times. There's a decision out of California that, in essence, the judge out there reached a conclusion that the visitation issue that was before the judge out there in the Dorn dissolution case, the visitation issue, had a lot of the hallmarks of being a disguised parental visitation.
MR. BOYD: Your Honor, I object to the testimony to the extent counsel is stating a legal conclusion.
MR. DAN SLOTCHIVER: He's giving his opinion, Your Honor.

THE WITNESS: My interpretation of what the judge held.
THE COURT: I will allow it.
THE WITNESS: In my interpretation, again, this -- I've got the order here. I'm referring to the April 7th, 2001, order. There's an earlier order that's got the same language in it. And I hesitate to even take up the court's time in reading it. The court's heard this numerous times.
BY MR. DAN SLOTCHIVER:
Q. Are we referring to No. 86, what's been introduced as No. 86?
A. Yes.
Q. Thank you, sir.
A. But I want to reference that there's an earlier order by the same judge, and it's got the same findings in it.
MR. BOYD: Objection, Your Honor. He's referring to a document that has not been entered into evidence.
THE WITNESS: It's part of my investigation as an expert.
MR. DAN SLOTCHIVER: He can testify as to his investigation, Your Honor.

MR. BOYD: Nor was it produced at his deposition, Your Honor.
THE WITNESS: Sure was. I resent that. It was absolutely produced, right here, Cal orders.
MR. BOYD: Dan, is he holding 86? May I approach, Your Honor?
THE COURT: Yes, sir.
THE WITNESS: No, I'm not holding 86. This was part of the visitation stack.
MR. BOYD: I think what the witness is referring to, Your Honor, is what's been marked as Exhibit 86, which is not a prior order of the California --
THE WITNESS: No, sir. If you will come back here, I will show you the prior order is attached to it, right here. And this was with me at my deposition. It was handed over to the court reporter. It was copied.
MR. DAN SLOTCHIVER: Your Honor, so the record reflects, the court reporter took his entire file and copied it. This was -- what he's brought with him, I understand, is a copy of what -- or is exactly what the court reporter had.
THE WITNESS: As it was returned to me

by the court reporter.
THE COURT: I'll allow it.
THE WITNESS: Do you have a question for me?
BY MR. DAN SLOTCHIVER:
Q. I had asked you if you'd conducted an investigation concerning the trust fund payments of the monies. You were stating that you had looked at it, and you were referring to the order and the language in the order, and then you were going to refer again to the order in the previous order -- or the language in the previous order.
A. Yeah, but it's the same language, and again, the court knows about the language, the court's heard about the language multiple times on this record, because I've seen transcripts, so I don't see that I should have to read it to the court.
THE COURT: Thank you.
BY MR. DAN SLOTCHIVER:
Q. Professor, focusing on the fiduciary obligations, what conclusions do you draw concerning the Cohens' behavior from the facts that you discussed?
A. I believe that as I testified at my

deposition, that what the California court found was correct, that a key issue was visitation, a much litigated issue was visitation, that there was an issue as to ulterior motive on the part of Mrs. Cohen, that the court credited Dan's belief as to that and followed through with it by barring Susan Cohen from participating in the visitation.
The court also, after reviewing the medical evidence, concluded that if anybody was going to be a beneficiary of the visit, it would be the children, who might be able to benefit by being with their mother, and for that reason, limited visitation was permitted.
But in the meantime, as the court is extremely well aware, hundreds of thousands of dollars were spent litigating this visitation issue, and my concern over that is really directed to the court's findings out in California, with the court finding that this was essentially for Susan's benefit more so than anybody else's.
Q. So the record is clear, Professor, do you, as an expert, deem that the Cohens' conduct concerning their hiring and paying the hundreds of thousands of dollars to litigate the visitation issue to be reasonable or unreasonable?

A. Unreasonable.
Q. And would you explain that?
A. Yeah. It's an enormous amount of money being spent, according to the court out in California, principally to benefit -- or an attempt to convey a perceived benefit on Susan Cohen, where she is not a beneficiary of the trust, and she is not the person to receive the benefits at all. It would be Abbie. And any benefit to Abbie, I just didn't see the court focusing on Abbie getting any benefit, in light of her medical condition.
So again, it's a form -- to me, analyzed in that light, it becomes a form of self-dealing where you're spending -- taking money from a trust as a fiduciary, you are a fiduciary, and spending it for personal purposes, and I have a problem with that.
Q. Professor, in South Carolina, in your professional opinion, what needs to be shown to establish a case for breach of fiduciary duty?
A. Duty owed, be in a fiduciary relationship, which clearly the Cohens were, duty owed, duty breached, damages proximately caused.
Q. And do you have an opinion, based on

your investigation, as to whether such a showing has been made on this record?

A. In my opinion, yes.

Q. And what is that?

A. That a showing has been made both as to the Jeffrey Cohen spending and the spending on visitation in light of the findings out in California.

Q. Professor, in South Carolina, in your professional opinion, what needs to be shown to establish a case for removal of a trustee?

A. Severe breach of trust would be such a hallmark.

Q. Do you have an opinion whether the conduct of the Cohens in the payment to Jeffrey Cohen for purported bookkeeping services constitutes a severe breach of trust?

A. Yes.

Q. What is that opinion?

A. The opinion is yeah, because of -- I think it puts the trustees in a very bad light. He's a bookkeeper, okay. Well, let's take a look at that. Well, he's not so much a bookkeeper. He's something else. I just -- money was wasted, and it was grossly wasted, and I don't think

there's any other way around it.

As to visitation, a lot of money was spent on both sides. Susan's wishes evidently were found objectionable by the court. I take that into account. The court made a decision based on the full record in front of it. To me, that shows serious breach of trust.

And there's one other aspect, too, that I'll mention, and that is -- it's in the -- a recent case came down with the James Brown Estate with the issue being the trustees have been removed and whether they should be reappointed or whatever. And Bob Buchanan was one trustee, Adele Pope was another. Quite a lengthy decision. I don't even think it's ten days old. This is recent.

And one of the things the court pointed out about putting these people back in place as trustees, they said the rancor and the kind of -- there's a poisonous atmosphere between the participants, and they're not willing to -- even though they may technically deserve to be reappointed as trustees, in light of kind of a perpetuation of turmoil and bitterness and anger on the part of everybody involved in the trust,

just not going to do it, court refused to do it, and I think that's a factor too.

Q. I think perhaps the language or the word you're looking for may be discord?

A. It was extreme unpleasantness. And I see that same discord here, which is a reason why I believe that, frankly, that Abbie would be better off, her children would be better off, if an independent, competent, first-class fiduciary was appointed to handle the Abbie Dorn trust and maybe stop some of the poisonous atmosphere that has enveloped around this case.

Q. The opinions that you've given today, do you hold the professional opinions you have expressed today to a reasonable degree of professional certainty?

A. Yes.

Q. Thank you, sir. Was there something else you wanted to add?

A. The one other thing I'd want to add is that frankly, under the terms of the trust, particularly famous Paragraphs 10 and 12, as I testified at my deposition, it's my view that prior court approval was needed. It's inconvenient, maybe, it may be frustrating to get

it, but it's just needed before any money is spent.

Q. And having reviewed -- let's go into that for a moment. Having reviewed all the documents that you've testified to, is it likewise your opinion that there was no basis to do -- to have the expenditures related to the litigation that weren't approved specifically by the court at the order of transfer, is it your opinion that they were unauthorized, as such?

A. Fees that have been explicitly approved I think are properly paid.

Q. Other than those explicitly approved.

A. Otherwise, I think the trust document controls, and it was a mistake not to adhere to the trust document.

Q. Thank you, sir.

MR. BOYD: Your Honor, can I request just a short recess of about five minutes to get ready for questioning?

THE COURT: Five minutes.

MR. BOYD: Thank you.

(A recess transpired from 12:07 PM to 12:15 PM.)

THE COURT: We're back on the record

in the Abbie Dorn matter.
Mr. Boyd?
MR. BOYD: Thank you, Your Honor. May it please the court?
THE COURT: Yes, sir.
CROSS-EXAMINATION
BY MR. BOYD:
Q. Good afternoon, Professor Freeman.
A. Good afternoon.
Q. I just have a few questions for you, sir.
Professor Freeman, in your direct questioning by Mr. Slotchiver, you mentioned several areas of expertise, and I just want to briefly review some of the specific items that you mentioned.
You talked about fiduciary duties, money management, I heard about corporate issues, I heard a lot about investment advisers, broker/dealers, dealing with vets, mutual fund cases, lawyers and how lawyers handle their fees, cases against large banks and corporate fiduciaries, we heard about lawyers handling fees in large class-action litigation, but I didn't hear anything about the type of trust that's

involved here.
Let me ask you this question: Have you ever been involved in a case involving a special needs trust?
A. I've been involved in litigation -- well, I've been involved in giving advice concerning the handling of proceeds from a lawsuit and the need for a special needs trust, yes.
Q. Do you consider yourself an expert specifically in the area of d4A special needs trusts?
MR. DAN SLOTCHIVER: Your Honor, he's already been qualified as an expert. Are we now trying to unqualify him as an expert or to further question him on his ability to be an expert, or are we going to address the opinions that he's given? My understanding is once someone's qualified as an expert, we go straight to the opinions.
THE COURT: I think he can delve into this testimony as to his experience in special needs trust matters.
MR. DAN SLOTCHIVER: Thank you.
MR. BOYD: Thank you, Your Honor.
BY MR. BOYD:

Q. So again, sir, I would ask you, have you ever specifically been qualified as an expert in a case looking at the fiduciary activity of the trustee for a d4A special needs trust?
A. This is the first time for a d4A special needs trust, looking at the fiduciaries' behavior.
Q. Thank you, sir. You also in your -- what I'll call your introductory questioning, Professor Freeman --
MR. BOYD: And again, I'm not -- I understand he's been qualified as an expert, I'm not trying to go back on that, but I do just want to clarify a couple of points.
BY MR. BOYD:
Q. You mentioned you spent a significant amount of time at the law school. You spent some time in private practice. You mentioned the courses that you taught. Again, we heard about PR, corporations, various areas.
A. Accounting.
Q. Accounting, yes, sir. Excuse me. Did you ever teach in the area of probate law?
A. Did not teach a probate course.
Q. Did you ever teach in the area of

estate law?
A. Did not.
Q. Did you ever teach in the area of trust law?
A. Not trust law as a field. However, in the PR course, you deal with trust accounts and trust accounting, and there's some of that as well in the other courses.
MR. BOYD: Your Honor, I'm going to hand up -- I've got a copy of Mr. Freeman's deposition, which is a sealed transcript. Without objection, I'll offer it into evidence, and I'm going to open it.
MR. DAN SLOTCHIVER: Your Honor, I do object. I believe the rules are that if you're going to impeach somebody for their testimony in a deposition, first you have to ask them a question, get an answer inconsistent with what they already said, and then you get to open the deposition and talk about it.
MR. BOYD: Your Honor, I'll withdraw the offer. I'll continue with my questioning.
THE COURT: Thank you.
BY MR. BOYD:
Q. Mr. Freeman, in your consulting

practice, is it fair to say that you spend, I believe you testified, approximately 80 percent of your time attacking the actions of fiduciaries?

A. In civil cases, that would be true.

Q. Are there other cases you participate in that would change that percentage?

A. By the way, that's what I thought you were talking about at my deposition. The only -- there are, and the other cases would be disciplinary cases where I assist lawyers on a regular basis in defending grievances, and I do that frequently. Those tend to be small matters. Typically, it's one client that's mad about one little thing, but the lawyer is a fiduciary and oftentimes is being attacked for what, if it were true, would be a breach of fiduciary duty. I consider that separate from consulting work, paid consulting work, because I, as a rule, don't charge for helping lawyers.

Q. Fair enough. You don't charge for representing lawyers?

A. Helping lawyers on disciplinary matters.

Q. I'll keep that in mind.

A. You won't be the only one.

Q. So setting that wonderful work defending the faithful aside --

A. I call it public service --

Q. Public service, pro bono.

A. -- to my brothers and sisters in the Bar.

Q. Understood, Professor, understood, and appreciate it.

Setting that work aside, let me reask or restate the question. Is it fair to say in your consulting practice otherwise that you spend approximately 80 percent of your time attacking the work of fiduciaries?

A. I think that's fair. That's a ballpark. It could be 75 percent, it could be 70, it could be 82 percent. It's in that range. Considerably more on the plaintiff's side than the defense.

Q. Let's turn to Jeffrey Cohen. I'm going to try to adjust my flow here, Mr. Freeman, to follow the course of your direct questioning. Just bear with me one second.

At your deposition, Professor Freeman, you did render an opinion, correct, about whether or not it was appropriate, and you've reiterated

that opinion today, for the Cohens to employ their son Jeffrey in service of the trust. Is that a fair statement?

A. I rendered an opinion about their employment of Jeffrey. It wasn't specifically is it okay for a trustee to employ somebody who is related. It was much more specific to the facts here, under these circumstances, was it appropriate for them to hire Jeffrey and pay him this way.

Q. Would you agree -- and again, I keep coming back, Professor Freeman. We heard a lot about large banks, corporate fiduciaries, business standards. Let me ask you this question: Related party transactions, would you acknowledge with me just for a moment that the facts at issue in this case, that being the life-altering disability of a child, is an intensely personal matter?

A. Yeah. I mean, I've seen -- I've seen her video deposition, and I don't think if you're a parent, and I've got two daughters, that you can look at that deposition and not understand that this is intensely -- an intensely personal matter.

Q. Would you acknowledge with me -- do you understand that there might be things that the

trustee would reasonably need to have done -- first of all, would you understand that these intensely personal issues are taxing upon the family?

A. Yes.

Q. Would it be your understanding that there might be things that the trustee, in this case being the mother and father of the injured daughter, that there might be things that they might reasonably want and need to have done that they wouldn't want to call Bank of America for, that they wouldn't want to call Webster Rogers for?

A. You're going to have to be more specific. I don't want to guess at what the import of your question is. Could you restate it?

Q. Does the nature of the trust involved, the nature of the injury and the nature of the purpose of the trust, does that in any way, in your mind, affect the reasonableness of utilizing family members to assist with the obligations of the trust?

A. It depends on what the assistance is.

Q. If it's something that Mrs. Cohen testified, that she needed, for instance, to call

somebody at 3:00 in the morning, is that something that would influence your opinion?

A. If she needs to call somebody at -- for what purpose at 3:00 in the morning, to have a shoulder to cry on?

Q. Well, can we agree that Webster Rogers is not available at 3:00 in the morning?

A. We can agree on that.

Q. Can we agree that Webster Rogers is not available 24 hours a day, 7 days a week?

A. I'd be willing to agree on that.

Q. And if it was elicited in testimony in this case that Jeffrey Cohen resigned his job to assist his parents, the co-trustees, would that influence --

MR. DAN SLOTCHIVER: Objection, Your Honor. He's asking hypotheticals which are not in evidence, to my knowledge.

MR. BOYD: Your Honor, she testified -- Mrs. Cohen testified under direct examination that that, in fact, occurred, and I'm simply asking him to factor -- if it has an impact, to factor the impact of that --

MR. DAN SLOTCHIVER: Factor the fact that he was unemployed at the time that she --

okay.

MR. BOYD: Objection, Your Honor. That's not the testimony.

THE COURT: Overruled. I'll allow it.

MR. BOYD: Thank you, Your Honor.

BY MR. BOYD:

Q. Professor, if there was testimony in fact that Jeffrey Cohen resigned a position, a paid position, to assist his patients, the co-trustees, with the myriad tasks dumped upon them, would that influence your opinion in any way?

A. It would be an additional fact that I would want to take into account. I can't say whether it would influence my opinion for this reason.

At her deposition, Susan Cohen made it clear that Jeffrey was the bookkeeper. That's what he did. And to the extent that he was available as a family member, just as we all have family members in times of crisis that we may call on, cry on their shoulder, complain about, rant and rave, whatever, to me, that doesn't justify $39,000 a year. That's called being a son.

And so, I mean, to some extent, I'm

mystified about Jeffrey and what he did for this money, because he could not have been doing it -- could not have been as a bookkeeper. Had to be for something else.

And we already have staff there with Abbie, and the fact that he comes in -- just as I may come in and do something for my sister or my nephew or whatever, I don't get paid $39,000 a year. I don't think very many people get paid $39,000 a year for being there for family, so it's a fact, but it doesn't impress me.

Q. But you did say that that would be something that you would want to take into account?

A. Yes, and I mentioned -- you know, that came up at my deposition, and it came up, I think, in my direct here. To the extent that he's a good family member, I salute him. And this thing is tragic for multiple families, not just the Cohens, but I still think there's waste as to the spending.

Q. Were your original opinions in the case -- and by original opinions, Professor Freeman, I mean those opinions that you expressed at your deposition in the matter on February 18th

of this year. Were your opinions in this case based on your belief that Mrs. Cohen was compensating Jeffrey at a rate of $95 an hour or better?

A. No. I was mystified what she was doing, because on one hand she says that she had to get rid of Webster Rogers because they're charging $95 an hour. Then she says he wanted to do it for free. I wanted him to take at least $95 an hour, at least that, is what she says. And I can give you a page, if you want it, from her deposition.

And then -- so then I was interested when I saw her testimony here in court. She said everything's $25 an hour. Okay. All I do then is the math. That's 1,560 hours a year for a thousand checks. That doesn't compute. Entry of a check into a journal and ledger for one check shouldn't take more than ten seconds.

Q. Excuse me, Professor. That's really not my question. My question to you was: Were your original opinions in this case premised on your belief that the Cohens were paying their son $95 an hour?

A. You know, I wasn't sure what she was

paying. She said on one hand she wanted him to take at least that, then she says $95 an hour, and then I see all these numbers that came out exactly to the penny the same. Excuse me. Let me finish.

Q. Yes. Go ahead.

A. From 6/19/2009 to 6/3/2011, which is the better part of two years, everything comes out exactly to the penny $1,500 every two weeks, so that doesn't look hourly in any fashion to me, whether it's $95 an hour or $25 an hour. If it's $95 an hour, it's grossly overpaid, but if it's $25 an hour for what he did, it's grossly overpaid.

Q. Let me ask you a hypothetical, Professor Freeman. If I was alleged to be speeding, I was pulled over, and the officer said -- I'm driving down I-95. The officer says I'm going 200 miles an hour, writes me a ticket, comes back to me later and says: Oh, there was a mistake, you were actually going 50 miles an hour, would that impact the validity of the charges leveled against me?

MR. DAN SLOTCHIVER: Objection, Your Honor. I don't know how that relates to this case at hand. He can ask about his opinions. This is

a hypothetical about speeding tickets.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, I'm asking about if, in fact, the witness had based his initial assumptions in the case by overstating the hourly rate paid to Jeffrey Cohen by a factor of approximately four, if that would impact his opinions in any way.

MR. DAN SLOTCHIVER: Your Honor, this has been asked and answered. Professor Freeman has answered it.

MR. BOYD: Well, I'm about to ask him a little bit more about this, Your Honor, because I think he's testified inconsistently with what he said at deposition.

THE WITNESS: Let me agree with you. I didn't have her testimony in her deposition or available to me when I testified that it's a flat $25 an hour. That came in for the first time in this courtroom, okay. That helps me in my analysis, okay. I was dealing with the facts that I had, and she said on Page 50 of her deposition: I was paying my firm here $95 an hour, so initially, he didn't want to take any money. I wanted him to take at least that an hour.

So, I mean, if you're reading this and trying to understand it, you would think that he's getting somewhere around $95, or something like that, and it's grossly overpaid.

BY MR. BOYD:

Q. Let me ask you about that, Professor Freeman, because here on Page 52 -- and I'm just going to ask you to follow along with me, if you would, beginning at Line 8 in Mrs. Cohen's deposition.

A. I got it. She says: I can't pay $95 an hour.

Q. Exactly.

A. So if she can't pay $95 an hour, then why is she saying: I wanted him to take at least that an hour. It doesn't make any sense, sir. It sounds like somebody who is inventing their own reality and their own set of facts.

Q. Is it possible that you misunderstood and misinterpreted her deposition testimony, and you based your opinions on faulty assumptions?

MR. DAN SLOTCHIVER: Your Honor, the deposition speaks for itself. It's already been admitted into evidence. She's testified about the deposition. This is the exact language. How can

he misunderstand?

MR. BOYD: Your Honor, I'm trying to get to the assumptions that the expert based his opinions on.

THE COURT: I'm going to allow it.

MR. BOYD: Could the court reporter read the question, please?

(The Court Reporter read the question commencing on Page 1522, Line 19.)

THE WITNESS: No. The assumptions that I based my opinion on were assumptions taken from the lips of Susan Cohen, first of all. Those were her statements. Secondly, the numbers -- the numbers don't change. The numbers that I had available are $88,917.41.

Q. But would not --

A. May I please -- without being interrupted. Whether it's $95 an hour or $25 an hour, the issue is are these charges reasonable. Frankly, to some extent, it was more helpful to me when I saw her -- like a bird lighting on a branch, and it's $25 an hour, because that pins it down, and that enables me to figure out how many -- exactly how many hours we're talking about 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

hours worked?
A. Hours worked, allegedly, 42.75.
Q. Allegedly. Does it say 42.75, or does it say something else?
A. Says 42.75.
Q. Let's hit the magic button, and what does the --
A. $25 an hour.
Q. Thank you. Let's turn to the next page. Next page, Professor, what do you see beside Jeffrey Cohen where it says rate?
A. 25.000.
Q. Let's turn to the next page if we can. The next page is a flat rate, Professor, as is the next page.
Let's turn to the following page. Can you identify the amount for me there, please?
A. $1,531.25.
Q. And we're going to divide that by how many hours, Professor?
A. According to this, 61.25. There you go.
Q. 25?
A. Yeah.
Q. 25, fair enough.

Let's turn to the next page of your exhibit, Professor Freeman. Next page, does it reflect a rate beside Jeffrey Cohen?
A. $25.
Q. Let's go to the next page, Professor. Jeffrey Cohen, we have to do a little simple math again on this one. What is the amount? Professor, I believe on this page we've got to do just a little bit more simple arithmetic. What is the amount, if you would, please?
A. $1,527.50.
Q. Divided by how many hours?
A. 61.25.
Q. A little less, actually, this time, $24.93. Would you agree?
A. That's what your machine shows.
Q. I can certify this is an app I purchased online. I'm assuming it's not throwing out false numbers.
Let's turn to the next page, Professor Freeman. If you would, Professor Freeman, please give me the amount.
A. $1,527.15 divided by 61.25.
Q. And the amount, please?
A. 24.938, so forth.

Q. Again, would you give me the amount paid on the next page.
A. $1,368.75, and divided into that, 54.75.
Q. 25?
A. That's what it works out to.
Q. Profession Freeman, in the interest of time, I'm not going to go through the rest of these pages, because there's quite a few, but let me ask you this: Did you see -- and I'll let you look at the exhibit. Can you find any evidence in the pages we have not examined that would support your assumption that Jeffrey Cohen was being paid $95 an hour?
MR. DAN SLOTCHIVER: Object to the use of the word assumption, Your Honor. I believe he testified the basis of why he was using that number.
THE COURT: Sustained.
MR. BOYD: Thank you, Your Honor.
BY MR. BOYD:
Q. Do you find anything in the remaining pages, Professor Freeman, that supports a pay rate in the amount of $95 per hour?
A. Well, here's the problem. You go a

few pages in there, and you see things, salary. About half of these, they just put $1,500 down, with no explanation of anything. So here's what I don't see. I don't see any contract. I don't see Jeffrey's work product.
Q. That's not my question, Professor Freeman.
MR. DAN SLOTCHIVER: He can finish answering, Your Honor.
MR. BOYD: Your Honor, he's not answering my question.
THE COURT: Mr. Boyd can ask him questions.
BY MR. BOYD:
Q. My concern, Professor Freeman, is you testified that there was no indication that Jeffrey Cohen was paid $25 an hour, when, in fact, we've identified dozens of records in your documents that you brought to your deposition that establish exactly that.
A. There are documents that are showing a $25 pay rate, which was the pay rate that I assumed in my testimony here today.
Q. But you did not assume that pay rate in your testimony at your deposition in February.

A. That's right. I didn't have Susan Cohen's testimony at $25 an hour.
Q. But you had dozens of pay records that established the pay rate, Professor.
MR. DAN SLOTCHIVER: Your Honor, now we're arguing with the witness --
MR. BOYD: No, I'm not arguing, Your Honor.
MR. DAN SLOTCHIVER: -- about whether he's allowed to rely on the sworn testimony of Susan Cohen or whether he should rely on documentation which she testified she never looked at to begin with, and I believe we've gone well beyond the scope.
MR. BOYD: We're not going beyond the scope at all, Your Honor. I'm trying to figure out if --
BY MR. BOYD:
Q. I'm concerned, quite frankly, Professor Freeman that you used the same degree of care in formulating your other opinions that you obviously exercised in formulating this opinion.
MR. DAN SLOTCHIVER: Objection, Your Honor. He is now attempting to harass this witness, who I do not think can be harassed, but

it's an inappropriate statement.
THE COURT: I'm going to allow him to explore this testimony a little bit in cross-examining the expert witness.
BY MR. BOYD:
Q. We have established -- Professor Freeman, just tell me if I've misstated anything. We have established that you've testified here today that the first evidence you had that Jeffrey was paid $25 an hour was the testimony of Susan Cohen delivered in this courtroom last week. Would you agree with that statement?
A. That was the first time that I focused on the $25 an hour, and I will agree with you that there are some mentions in some line items in some documents that Jeffrey Cohen was paid $25 an hour in the documents I have, true.
Q. So, in fact, in forming your opinions in this case as you delivered them at deposition, if you overestimated the pay rate by a factor of approximately four, would that influence -- would that have any bearing or impact on your thoughts about Jeffrey Cohen?
A. No. My views, frankly, are stronger when I see a lower pay rate, which would

necessitate more hours which could not have been spent. I testified at the deposition that there wasn't enough work for him to do to justify all of that pay, if you assume fewer hours and a higher pay rate. If you assume more hours and a lower pay rate, the same holding applies. There just isn't that much work for an accountant to do 1,560 hours a year for $39,000 to enter 100 checks -- or a thousand checks. It doesn't work.
Q. It sounds to me, Professor Freeman, like you're putting the trustees in a no-win situation. They pay them low, it doesn't matter. They pay them high, it doesn't matter.
A. Well, here's the thing: I didn't see any way that Jeffrey -- whether it's $95 an hour or $25 an hour, I didn't see any way that Jeffrey Cohen earned that money with his accounting work.
Q. If the trustee paid Jeffrey $3,000 an hour for one hour of work, would that make you feel more comfortable with the work?
A. It would make me feel less comfortable with the trustees because that would be clear-cut waste.
Q. But going cheaper doesn't make it better?

A. Going cheaper means that he had to put in a lot more time, and when he had to put in a lot more time when already -- assuming $95 an hour, assume $100 a hour --
Q. Let's assume what was actually paid, Professor Cohen.
A. Freeman.
Q. I'm sorry. I didn't mean to say that. Let's assume what was actually paid, Professor Cohen, let's work from $25 --
MR. DAN SLOTCHIVER: I would object, Your Honor. He can assume $25 an hour, but there is different testimony about the amount that was paid.
THE COURT: Thank you, sir. I'll allow him to continue.
BY MR. BOYD:
Q. Do I need to repeat the question?
A. Would you please? I mean, it sounded like half a question.
Q. Well, you were about to make an assumption, and I was going to say let's assume what was actually paid, as has been established, which is $25 hour.
A. Okay.

Q. Did you have a thought that you wanted to finish?

A. No. It's waste because you pin it down to $25 an hour. Even though he was being paid for much of this time straight salary, no hourly pay at all, straight salary, $1,500 every two months -- every two weeks, rather. Fine. If it's $39,000 a year, and it's $25 an hour, all you have to do is figure out how many hours that is. That's 1,560 hours. Fine. You've got that number now.

How many checks did we have to enter on the books? Roughly a thousand. So that is roughly an hour-and-a-half to enter one-half of a journal entry because you got to -- it's credit to cash. It's a debit to something. So debit prescriptions, $17.20. That's one entry. You do that for a thousand times or say 1,200 during the year, it doesn't take 1,560 hours. It can't. It takes 20 hours, maybe, to do all that work. So what is the rest of this money being paid for? That's my problem, and that's why I call it waste.

Q. Let me ask you this question, Professor -- I'm just going to call you professor. Let me ask you this question, Professor: If the

testimony of the Cohens elicited at this trial established, to the satisfaction of this court, the myriad tasks that Jeffrey undertakes for them on a daily basis, which would fill up these hours that you're so concerned about, would that be a mitigating circumstance as to reasonableness?

A. The court is certainly entitled to take into account whatever the court wants. This is a case in equity, we've got a highly competent judge here, and I'm not going to second guess.

I will say this: My problem, first and foremost, with the Jeffrey Cohen aspect of the case is this is a son. This is a related party. This is clearly not arm's length transaction. This is where if you're a fiduciary, you dot your I's and cross your T's, and you make a record to establish the reasonableness of your behavior. And you don't have facts moving in. You don't have shadowy facts. It's up front. There's a contract. There's clear-cut performance under the contract. It's an arm's length contract on pricing, and everything's fine. We don't have that here. It's not my fault.

What we do have are sketchy facts that show to me that there was a lot of money paid to

somebody who had a job description of being a bookkeeper for things that couldn't have been bookkeeping and could have been done by other help or -- and paid to a guy who wanted -- didn't want money for doing it, according to Susan's testimony.

Q. And I think we've addressed that. I think we've addressed that.

A. So all in all, I call it waste, and I don't back off that.

Q. Fair enough, Professor. I'm going to move along. I think we've dealt with that issue sufficiently.

Professor Freeman, I'm going to show you what has previously been marked in this case as Exhibit No. 1, and are you familiar with that document?

A. Yes, sir.

Q. Is that what you recognize to be the Abbie Dorn Special Needs Trust?

A. I believe so.

MS. MOORE: Reese, I apologize. What number is that exhibit?

MR. BOYD: Lee, that is Exhibit No. 1, I believe.

BY MR. BOYD:

Q. I believe you just testified, Professor, on your direct examination by Mr. Slotchiver that you felt prior court approval was needed for the expenditure of the legal fees that are at issue in this case. Is that a fair statement?

A. Yes.

Q. Let me ask you to take a look -- I believe you referenced in your testimony Paragraph 10 and 12. If you would refer to those, please, and let me ask you this: Do you find those paragraphs to be in any way ambiguous?

A. No.

Q. Is it clear to you that those paragraphs require prior court approval before a lawyer gets paid, or are those paragraphs subject to potentially multiple readings?

A. I believe prior approval is required. I focus on the words: Shall be subject to prior approval, and that's how I read it.

MR. BOYD: Your Honor, I would like to open Mr. Freeman's deposition, because I would like to ask him about something that he did testify to at his deposition, if I may, without

objection.
MR. DAN SLOTCHIVER: No objection.
THE COURT: Thank you.
BY MR. BOYD:
Q. Professor Freeman, I'm going to hand you a copy of your deposition, and if you'd give me just one second, I will ask you where I would like you to turn for me. If you'd turn to Page 34. Excuse me. I'm sorry. Turn to Page 39, if you would, please.
MR. DAN SLOTCHIVER: Did you say Page 34?
MR. BOYD: 39, excuse me.
THE WITNESS: Yes, sir.
BY MR. BOYD:
Q. I asked you a question about this, Professor Freeman, about what was identified at your deposition as your Opinion No. 3, which was the reasonableness of lawyers getting paid without court approval while the issue was undecided, and I asked you to state in your own mind what that opinion meant, and then I said -- you clarified it for me. Then I said on Line 20: Okay. And would you read your response beginning at Line 21, please?

MR. DAN SLOTCHIVER: Your Honor, I'm not sure this is consistent with what he was asking him. Are we asking him now about the reasonableness of attorneys being paid?
MR. BOYD: Your Honor, I think if the court will allow him to read, it'll be self-evident what I'm asking him about.
THE COURT: All right. Thank you.
BY MR. BOYD:
Q. Would you read your answer, please, Professor?
A. Frankly, I'm not convinced that this court approval prior to payment deal first requirement, assume one exists. On its face in the trust document, if you look at Paragraph 10 and Paragraph 12, there's some indication it could be read that way. Maybe you disagree.
Q. Excuse me. You're going a little bit fast, Professor. I'm not following you. On its face in the trust document, if you look at Paragraph 10 and Paragraph 12, there's some indication it could read that way. And then continuing on Page 40: Maybe you disagree.
Is that a fair statement?
A. Then you went on to say: When you say

them, assuming both could be read that way, what are you referring to? To require prior court approval before a lawyer gets a check from the trust.
Q. That was your answer?
A. That's right.
Q. And then I said: Okay, and then beginning in Line 15, what did you answer?
A. Given that there is doubt over the issue as reflected by the letter to the court September 23, 2010, given that there is doubt as reflected by the lawsuit that was brought on behalf of the trustees seeking to address the issue, given that it is not unknown for a court to sign off on legal fees before they're paid, happens all the time in bankruptcy. For example, you have a class-action settlement --
Q. Let me --
A. You asked me to read it. I want to finish my answer.
THE COURT: Let him finish it.
THE WITNESS: -- the court approves the fees before there is ever a check cut. To me, I was surprised to see money up front being paid to lawyers by the Cohens without a court approval.

BY MR. BOYD:
Q. Fair enough. Was this a bankruptcy action? Is this a bankruptcy action, Professor?
A. It's not a bankruptcy action.
Q. And would you agree with me that you acknowledged in your answer at the deposition that these provisions could be read multiple ways?
A. Yeah, and here's my reason for doing that. I say you've got lawyers on both sides -- I mentioned this more than once at my deposition -- fighting over this language. To me, the language is clear, but there's a fight going on. Your Honor has to make a decision as to how that battle should be reviewed.
I heard when I was at the deposition a view from one counsel that perhaps 12 means that Abbie's lawyer may have to get prior approval, but the Cohens aren't covered by that. That's how -- I never imagined that that was a way of reading it, but that's how it's read.
I don't dispute that there's a fight over this language. I was asked what my view is of this language. My view is in line with Mr. Slotchiver's. I think when you say shall have prior approval, it means shall have prior

approval. That's it.
Q. But you did acknowledge that the provisions are subject to multiple readings?
MR. DAN SLOTCHIVER: I believe that's been asked and answered, Your Honor.
THE WITNESS: Only in the context of having a battle royale over the propriety of doing this without prior court approval.
BY MR. BOYD:
Q. Fair enough. I don't disagree, Professor. I'm just curious because you just testified in your direct examination that the provisions were unambiguous.
A. They're unambiguous to me. I have a feeling Ms. Hedgepath may have a different view, and Mr. Wingate seems to have a different view too.
Q. I tend to generally -- I don't have a copy of Black's Law Dictionary with me, Professor, but I tend to assume unambiguous means unambiguous to all, but fair enough.
A. Not when there's $900,000 at stake.
Q. Let me ask you this question, Professor: In your opinion with respect to the California proceeding, was it reasonable for the

trustee to pursue and pay for the severance of the marital relationship?
A. Yeah. I believe I testified at my deposition as to the divorce, I don't consider that to be improper to pay for the divorce, the pure divorce.
Q. Was it arguably reasonable for the trustee to defend the child support claim brought by Dan Dorn in the California proceeding?
A. Same testimony I gave at my deposition. I don't fault the trustee -- if Mr. Dorn attacks over that, I don't fault the trustee for hiring a lawyer and defending that.
Q. Very good. Professor Freeman, I'm going to hand you what was marked at your deposition as Exhibit 16. Does that look to be an accurate --
A. Yes.
Q. Does that look to be an accurate copy of -- or an accurate representation of the summary opinion document you provided at your deposition?
A. Yes.
MR. BOYD: Your Honor, I assume there's no objection, but without objection, I'd like to offer that into evidence as I guess it's

R-16.
THE COURT: Did we admit his deposition and mark it as an exhibit?
MR. BOYD: Oh, I'm sorry, Your Honor, we did not, so I guess we're at R-17.
THE COURT: His deposition without objection?
MR. DAN SLOTCHIVER: No objection from us, Your Honor.
THE COURT: No. 17.
MR. BOYD: Thank you, Your Honor.
THE COURT: And then this summary opinion, Respondent's --
MR. BOYD: 17.
THE COURT: No. 18?
MR. BOYD: Excuse me, 18.
THE REPORTER: 16 and 17.
THE COURT: I'm sorry. The deposition was what number?
THE REPORTER: 16.
THE COURT: Deposition 16, summary opinion 17, without objection.
(RES. EXH. 16, Deposition of John Freeman, was marked for identification and admitted into evidence.)

(RES. EXH. 17, Summary Opinion of John Freeman, was marked for identification and admitted into evidence.)
BY MR. BOYD:
Q. Professor, I believe you testified at your deposition on February 18 that the amount of improper billings --
MR. DAN SLOTCHIVER: Your Honor, he's not reading from the testimony.
MR. BOYD: Your Honor, I'm reading my notes that I prepared in advance of this examination. I'll be happy to share them with the court if the court would like to read them.
THE COURT: No, sir. You may proceed.
BY MR. BOYD:
Q. Professor, I believe you testified in your deposition that the amount of improper billings that you deemed the trust to have paid to the Meyer Olson law firm was $600,000. Is that consistent with your recollection?
A. It's in that neighborhood.
Q. Is that a yes or a no?
A. It's a yes that -- I don't recall an exact number. I know that I had Exhibit 1 with me, which lists 668. Some of that money was

billed after the Meyer Olson firm. Before the Meyer Olson firm came in, I think 600 is probably a pretty good number, although I think I also mentioned that Mr. Kachmarsky has got some updated numbers, and I think his view is that it's north of that, but 600 is --

Q. Well, I'm interested in your opinions today, Professor.

A. In my judgment, it's in the realm of 600, and I think I said through 12/31/2010, that's what I have.

Q. So you're agreeing with me that the number you offered at your deposition was $600,000?

A. In that ballpark, yes, sir.

MR. DAN SLOTCHIVER: If the record could reflect that's limited to that time period, Your Honor.

THE COURT: So noted.

THE WITNESS: That's what I said at my deposition.

MR. BOYD: Fair enough. Understood. That's fine, Your Honor. I'm fine with that.

BY MR. BOYD:

Q. Then in your summary opinion document

that you provided at your deposition, Professor Freeman, you identified Opinion 4 as -- and I'm going to read from the exhibit -- the reasonableness of expenditures related to the visitation issue of trust funds in excess of $1 million.

A. That's what it says.

Q. What was the source of that number?

A. That was an issue that I was asked to testify on by Mr. Slotchiver, and that's his number.

Q. So you just adopted Mr. Slotchiver's number for purpose of your deposition?

A. That's not an opinion. That is something I was asking to express an opinion on. If you notice, the opinion that I gave wasn't a million dollar opinion, it was a 600-and-some through 12/31/10.

Q. Fair enough. I just wanted to clarify that.

I just want to briefly look through this opinion letter with you, Professor Freeman. We've talked about No. 2, Jeffrey Cohen. We've talked about No. 3, the reason for some lawyers getting paid. We've talked about No. 4, the

million dollar question.

No. 5, as I understood your testimony at deposition -- and just for the record, so the court will know what I'm referring to, your Opinion No. 5 was the reasonableness of using trust funds to prolong litigation and/or defend the trustees in their individual capacities.

A. I don't remember being asked about this on my direct here today at all.

MR. BOYD: Fair enough. I'll withdraw the question, Your Honor.

BY MR. BOYD:

Q. Excuse me, Professor, just one second.

Professor, would you agree with me that if a ward has a legal right, that it is reasonable for a trustee to seek to realize upon that legal right?

A. No.

Q. You would not?

A. No.

Q. Why not?

A. Because you didn't button it down, a trustee acting reasonably in the exercise of due care and in good faith. I won't sign off and give a trustee carte blanche to spend a million

dollars, for example, to achieve a 25-cent benefit for the ward. Things have to be in proportion, and things have to be sensible.

Q. Let's take the extremes off the table. Just in principle, as a fundamental proposition, would you agree with me that if a ward has a legal right, generally speaking, all else being equal, that it's a reasonable thing for a trustee to do to try to enforce that legal right?

A. Is that a question?

Q. Yes, that's a question.

A. To take reasonable steps, operating purely with an eye single, focused purely on the interest of the beneficiary or the ward, and taking reasonable steps, I don't have a problem. I think that's what a fiduciary is obligated to do.

Q. Obligated to do, not just the option, but obligated?

A. I think the fiduciary is obligated to serve the interest of the ward in a reasonable way without self-dealing, without thought of self, but to accomplish what needs to be accomplished for the benefit of the ward, acting in good faith and with due care.

Q. Do you have any evidence, Professor, that the Cohens pursued anything in terms of visitation for Abbie that was unreasonable?
A. Yes.
Q. Okay.
A. Do you want me to explain?
Q. Sure.
A. I crave reference to the California opinion basically says that Dan contends that Susan is manipulating visitation for her own benefit, and the court credits that Dan -- there seems to be something to that, and then the court goes on and makes findings which are very uncomplimentary towards Susan, in line with --
MR. BOYD: Your Honor, the witness is not answering the question.
THE WITNESS: I am exactly answering the question.
THE COURT: Sounds like to me he's answering.
THE WITNESS: I said I crave reference to the opinion, and the opinion is un -- my reading, uncomplimentary to Susan and depicts Susan as self-serving and manipulative and using the supposed visitation right for Abbie for

personal purposes, and that, to me -- you asked whether I saw anything in the record that would suggest impropriety, and that stands out like a sore thumb.
BY MR. BOYD:
Q. Let me ask you this, Professor: Did the court -- and I direct you to Page 8.
MR. DAN SLOTCHIVER: What document?
MR. BOYD: We're looking at the opinion that the Professor has craved reference to.
BY MR. BOYD:
Q. Did the court -- Page 8, Section 3B, did the court grant visitation to Abbie?
A. I have to get the --
Q. I can show you, if I may approach. I would just ask you to read beginning with B, and no need to read the whole paragraph, just through the summary, if you would, Professor.
A. It says: Abbie, by and through her conservators, is granted visitation one time each year for a period of five consecutive days commencing in the summer 2011 and continuing each summer thereafter.
Q. So, again, I would ask you, Professor,

did the court grant visitation to Abbie by this order?
A. Yes and no. The order says what it says, but it also says that the primary beneficiary of the visitation will not be Abbie. It will be the children, if anybody.
Q. But again, Professor, it's a yes or no question.
MR. DAN SLOTCHIVER: It's been asked and answered, Your Honor. He gave a yes and no.
BY MR. BOYD:
Q. But you don't disagree with the statement that the court granted visitation to Abbie?
A. I agree with the fact that there is language in there that talks about Abbie receiving visitation, but there's also language in there that says that the beneficiary of the visitation will not be Abbie. It is perceived by the court, based on the record in California at that time, that the beneficiaries would be the children and not Abbie.
Q. You characterized this opinion as painting the trustees as self-serving and manipulative. Is that what I understood you to

say?
A. Susan.
Q. Susan. Did I misunderstand you, Professor?
A. No. That was accurate.
Q. Let me ask you to read, Professor Cohen -- Professor, let me ask you to read the last sentence on Page 1 of this next-to-last paragraph. Would you just read the last sentence, beginning with: The children's grandparents?
A. The children's grandparents, who have been appointed as Abbie's conservators and who have transformed their home into a virtual hospital to accommodate Abbie's special needs. Abbie is unable to function as --
Do you want me to keep reading?
Q. No.
A. Fair enough.
Q. I'm going to ask you to read one more provision.
MR. DAN SLOTCHIVER: Your Honor, I would object. I don't know why he's being asked just to read the record.
MR. BOYD: Your Honor, this witness has characterized this opinion, issued by a court

in California, as a smear on my client, characterizing her as manipulative, and I think he's mischaracterized the document, so I'm asking him to comment on other provisions of the opinion.

MR. DAN SLOTCHIVER: He's actually not being asked to comment.

MR. BOYD: Yes, I am asking him to comment.

MR. DAN SLOTCHIVER: Actually, if I may, if I may, he's not being asked to comment.

MR. BOYD: You Honor, if I can have a little --

MR. DAN SLOTCHIVER: If I could finish, please. He is being asked to read certain sections. That's not commenting.

MR. BOYD: I'm going to ask him to comment, Your Honor.

THE COURT: If you can go down that road, Mr. Boyd, I'll allow you.

MR. BOYD: Thank you.

BY MR. BOYD:

Q. I've got one more sentence I'd like for you to read, Professor Freeman. Page 4. It's the second full paragraph, the third line, at the end of the line, beginning with: Abbie, and

continuing down two more lines.

A. Abbie has already outlived the life expectancy given to her by her treating physicians because of Susan's extremely persistent and devoted attention to every detail of Abbie Dorn's life.

Q. So is it fair to say that the document in question, the opinion, is not universally derogatory toward Mrs. Cohen?

A. No, only in terms of trying to manipulate visitation for personal purposes, which is what I've been talking about, the visitation issue.

And I said it at my deposition. I'll say it in this courtroom.

Q. There's no question on the floor.

A. I want to finish. This thing, there's good on both sides of the aisle here, and I don't deny that there's good to the Cohens and that they have been selfless in wanting to care for their daughter. There have been some problems and friction between the parties that is most lamentable, and hopefully, this proceeding will lead on the path to resolving things, as opposed to exacerbating things.

THE COURT: Thank you.

BY MR. BOYD:

Q. Professor Freeman, I want to ask you a couple of additional questions about the trust. Do you still have that document?

A. Somewhere.

Q. Do you find any reference in the trust, Professor, that would provide or establish a duty on the part of the trustees to preserve the trust corpus or income for the minor children?

A. And the question is whether I find anything in here explicitly stating that the trust is somehow to serve the interests of the children?

Q. Yes, sir, that's correct.

A. Only inferentially insofar as it states that the trust is for the primary benefit of the plaintiff, Abbie Dorn, and there are others out there, but clearly, this is for her -- to address her, quote, special needs.

Q. Anything else?

A. That's what I have to say, unless somebody -- unless you want to point me to some other language.

Q. Let me ask you to read, Professor, Paragraph 17 at the bottom of Page 11, if you

would?

A. Do you want me to read it out loud?

Q. Yes, sir.

A. In the administration of management of the trust, including, without limitation, the investment or reinvestment of the trust estate, the trustees shall consider solely the interest of the beneficiary, Abbie Dorn.

Q. Solely?

A. That's what it says.

Q. Solely the interest of the beneficiary, Abbie Dorn.

So let me ask you this question, Professor: If the facts and evidence elicited at this trial were to establish that the Cohens undertook to pursue visitation on Abbie's behalf in California, would that impact your opinions in this case?

A. No. It's a given that they purported to pursue visitation on Abbie's behalf. The question is whether they manipulated it, as the California court seemed to find, specifically Susan.

Q. It's purported. I'm not asking you what's purported. I'm asking if this court, in

its equitable jurisdiction, finds that the Cohens, as trustees, undertook to pursue visitation on Abbie's behalf, would that impact your opinions in this case?

A. Only if the court also finds that in pursuing visitation, they did so purely on Abbie's behalf without any thought of self or personal benefit.

Q. You're placing a lot of weight on that California order, Professor. Let me ask you this question: The trustees set out on a course of conduct in this case, originally suggested by Dan Dorn, by the way. They set out on a course of conduct in this case, and in that course of conduct, they pursued visitation on behalf of the ward. The order that you rely upon came later, after the fact. Aren't you armchair quarterbacking the decisions of the trustees in this case with the benefit of 20/20 hindsight?

A. Absolutely not. I'm looking at the record that's in front of me and the evidence that's in front of me and giving an opinion. Then I'm going to go to my car and go home. That's all I'm doing is giving you an opinion.

Q. And I'm wishing you safe travels, sir.

A. Thank you.

Q. Let me ask you this question -- I have nothing further for this witness, Your Honor.

THE COURT: Thank you.

MR. BOYD: Thank you, Professor.

THE COURT: I suppose Ms. Hedgepath, Ms. Moore, and Mr. Kachmarsky all want to examine the witness. I'm inquiring as to whether we want to break for lunch or keep going.

MR. DAN SLOTCHIVER: I'd like to go forward, if we can. I think we're probably almost done.

THE COURT: If there's no objection, then I'll keep going.

MR. DAN SLOTCHIVER: If Mr. Freeman's okay.

THE WITNESS: Fine, go. Let's go.

THE COURT: Ms. Hedgepath?

CROSS-EXAMINATION

BY MS. HEDGEPATH:

Q. Of course, I represent Abbie Dorn. We met at your deposition. And I will try to get through this as quickly as I can.

The majority of your work as a lawyer or as consulting has been for attorneys, or you

have acted for plaintiffs against the wrong-doer, the person who breached the fiduciary duty. Is that correct?

A. Typically, yes.

Q. Do you or have you ever represented the wrong-doer, the person that's breached the fiduciary duty?

A. Well, you know, they, as a rule, don't admit to it, but I have defended cases, sure.

Q. For the one that was accused of breaching a fiduciary duty?

A. Yeah, sure.

Q. But is it fair to say that's a rare occasion?

A. As I stated on cross with counsel, most of the time, it's on behalf of plaintiffs, except when I'm -- and that's in civil cases, setting aside where I'm representing a lawyer who's being accused of some wrongdoing by another lawyer or judge or client or something like that.

Q. Then your number's going to be in my desk drawer.

And we talked briefly about the special needs trust, and you indicated that you had helped to establish a special needs trust

because of an award that was received as a result of litigation.

Have you ever had to litigate issues concerning a special needs trust?

A. No. I haven't been involved in litigation.

Q. Have you ever served as a trustee in a special needs trust?

A. No.

Q. Have you ever or do you serve frequently as a trustee?

A. No.

Q. Have you ever served as a trustee?

A. I am sure at some point or another, I have, but I can't give you a specific.

Q. And if you addressed this with Mr. Boyd, I apologize to you, but do you have an opinion as to what, if anything, Jeffrey Cohen should have been paid?

A. For 20 hours of work, $25 an hour, a maximum of $500 a year.

Q. $500 a year?

A. Yeah, maximum.

Q. Now, do you have the trust agreement there in front of you? Professor, do you mind if

I look over your shoulder? I want to talk about the infamous Paragraphs 10 and 12, okay.
A. Sure.
Q. Do you agree with me that the beneficiary and the trustee are two separate entities or individuals?
A. Yes.
Q. And in this particular case, Abbie was a beneficiary, and the Cohens were the trustees?
A. I agree.
Q. I want you to look with me at Paragraph 10, where it says: The trustee may employ and compensate, so forth and so on, including attorneys -- excuse me, attorneys in fact, attorneys at law, or other assistants and advisers deemed by the trustee needed in the proper administration of the trust estate, okay.
A. Yes.
Q. Now, that says the trustee may employ and compensate those people that are necessary for the administration of the trust. Is that correct?
A. Yes.
Q. But it goes on further to say that if an expert or if anyone is hired for the benefit of the trustee, then prior court approval shall be

necessary, does it not?
A. No. It only refers to attorneys, and so it's more narrow than the previous, which refers to any kind of agent. It says: Compensation shall be subject to prior approval of a court of competent jurisdiction.
Q. So do you agree with me if the trustees hired an attorney to represent them, maybe they had done something wrong, then they could not pay themselves from the trust without prior court approval?
A. No. I don't -- I read it more broadly, saying that any lawyer hired by the trustee needs -- in order to be paid, needs to get a court order authorizing the payment. That's how I read it.
Q. But is that wording specific in Paragraph 10 where it says that the trustee may employ and compensate? It doesn't say that the trustee must get court approval to employ and compensate.
A. No, but it qualifies down below that when you're talking about compensation for attorneys, you need prior court approval. That's how I read it.

Q. But it refers to compensation for the trustees' attorney.
MR. DAN SLOTCHIVER: It's been asked and answered, Your Honor.
THE WITNESS: In my view, it requires compensation for whatever attorney the trustee hires.
BY MS. HEDGEPATH:
Q. Even though it says trustee's attorney, that is your opinion?
A. Yes.
Q. And I assume your opinion is the same on Paragraph 12?
A. It is.
Q. Now I want us to go to the litigation in California. Is it your opinion that it was proper for the Cohens to bring the dissolution action on behalf of Abbie?
A. Yes.
Q. And is it your understanding that Dan asked them to bring that dissolution?
A. I read testimony to that effect.
Q. And have you seen the petition wherein Susan filed the dissolution action?
A. I don't remember seeing that exact

document. I've certainly read about it, but I don't remember reviewing that exact document.
Q. Well, let me represent some facts to you, and give me your opinion based on my facts, of course.
If Susan filed the dissolution action, the petition, filed it with Abbie as the petitioner and Dan Dorn as respondent, in that petition, she sought dissolution, visitation, equitable distribution -- excuse me, she sought dissolution, custody, child support, and visitation, and Dan filed a response seeking the same thing, do you think that was proper on her to do that as trustee?
A. I don't think it was improper to do that on its face.
Q. Now, I think you have indicated to us that the issue of child support, that you don't think that that's wrong for the trust to pay to defend the issue of child support?
A. Not to defend it on the theory that it's hard to criticize -- if you start a fight, it's hard to criticize the other side trying to defend themselves, so that's my view.
Q. Now, keep in mind -- let's talk about

visitation. Dan, in his response to the petition, also asked for visitation in Abbie, and then there was a big dispute about that visitation: Is it improper for the trust to pay a reasonable amount -- is it proper for a reasonable amount to be paid from the trust to establish visitation in Abbie?

A. I think that it is proper to pay a reasonable amount under the circumstances as to the visitation issue. The problem that I have with that is that it seems, based on the record in California, at least the opinion that I read, that the visitation became manipulated into a wedge issue and a personal struggle between Susan and Dan, with an astronomical amount of money being spent to resolve something that is hard for me to imagine couldn't have been settled for a whole lot less a whole lot easier.

Q. But you will admit that you don't know all of the fact -- I'm sorry. Bear with me. I hope you can hear me. I'm going to get through this. That we don't know all of the facts and circumstances surrounding that fight for visitation?

A. And I'm not claiming to know all the

facts and circumstances over the history of the litigation. I am claiming to understand what the judge wrote down in the order.

Q. Was it okay for funds to come from the trust to pay for the equitable distribution of the property of the parties?

A. I think if you've got a divorce case and that's part of the divorce case, that that limited amount of money, spending that would be proper.

Q. And the bifurcation that Mr. Dorn wanted so he could go ahead and get his divorce, prior to the other issues being settled, was it proper for an amount to come from the trust -- a reasonable amount to come from the trust to pay for that?

A. For his divorce, the divorce segment, divorce kind of leg of the journey? Is that what you're talking about?

Q. Yes, sir.

A. Yeah. I think I testified the same way at my deposition, yes.

Q. And discovery as well, reasonable discovery?

MR. DAN SLOTCHIVER: Objection, Your

Honor. I don't know if the discovery's referring to the dissolution of marriage action or the everything action.

MS. HEDGEPATH: Everything.

MR. DAN SLOTCHIVER: After the dissolution's completed?

THE COURT: I'll let her --

THE WITNESS: Rephrase your question.

BY MS. HEDGEPATH:

Q. There was discovery, depositions taken in this action in California, an action that encompassed the dissolution, the custody, the child support, the visitation, the equitable distribution. There was discovery. There were depositions. Was it proper for the cost of that to come from the trust?

A. Not insofar as visitation is the issue. And the testimony that I've seen is to the effect that that was the real issue that was being litigated, and the reason I have a problem with spending money on visitation the way it was spent is because of the objectives being served. So I don't agree that you had a bundle, including visitation, and you spent money on the bundle, and that's all reasonable. Now, the big elephant in

the room is visitation. Carve that out, and I have much less of a problem with spending money, but it turns out that most of the money was spent on visitation, it appears to be.

Q. So everything was okay, except the issue of visitation?

A. I think that's where the taint is in the spending.

Q. And is your opinion based solely on the wording in that order?

A. Well, no. I mean, it's based on the wording in the order, but it's also based on fiduciary duty law, which says that you are to operate with an eye single to the interest of the beneficiary and not for personal gain, and what the judge is saying in that order is essentially that the visitation struggle, which was a mammoth, expensive struggle, was a ruse cooked up to try to get Susan control of the -- as much control as she could get of those kids, which is an improper -- to me, improper objective, and that's where the court had a problem. That's where I have a problem.

Q. And I, as I said, represent Abbie. I need you to help me understand this. If Susan

and/or Paul did not pursue the issue to try to establish as much visitation for Abbie, who would? Who would be fighting for that visitation if it were not her mother and father?

A. Well, it would be whoever the trustees were. Frankly, we wouldn't be here if the trustees had been independent and made decisions independently, as opposed to being conflicted, which they were.

Q. Can you tell the court, then, how much should have been spent -- how much time overall was spent on the ancillary issues other than the visitation?

MR. DAN SLOTCHIVER: Your Honor, I believe he's been asked to opine an opinion on something that he has not been qualified to do, and if she wants to do it, I'd like an opportunity, when it's my turn, to examine him on that issue, because that's not what he's testified to.

THE COURT: You can certainly -- if he feels like he can answer it, then I'll allow it.

THE WITNESS: I've given that opinion before that it looks to me like around $600,000 was spent related to the visitation issue.

And I've read the transcript as this thing has been rolling along, and there's been talk about standing. It was all about -- it wasn't about visitation, it was about standing. And I have 341 pages of bills, and they've been OCRed, and so I can word search those bills, and I did, to see how much of this deals with standing, and there were 13 references to standing in those 341 pages, and the amount of time spent on standing, if you cost it out, is around 23.8 hours. So standing, this big bugaboo issue, turns out to be two eight-hour days, at least according to those bills.

MR. BOYD: Your Honor, I'm going to object. The bills that the witness purports to have OCRed were redacted, so I'm not sure there's any foundation for the testimony he's giving.

THE WITNESS: That's what I had. But standing wasn't redacted on -- don't tell me standing was redacted, because I saw standing plenty of times.

MR. BOYD: It's not clear that --

BY MS. HEDGEPATH:

Q. Maybe I can wrap this up, Professor Freeman.

THE COURT: I'm going to allow this.

BY MS. HEDGEPATH:

Q. I know we need to move on.

If I understand your opinion, it was proper for everything to have been paid from the trust in connection with the California domestic action, except visitation?

A. Except for all the struggle and bitterness, acrimony over the visitation issue.

Q. But you cannot tell me exactly how many hours were spent on the visitation?

A. Only a rough number, and the number that I've given repeatedly is around $600,000.

Q. And you base that on your bills that have been redacted?

A. Through 12/31/10.

Q. The bills that are redacted, am I correct?

A. The summary -- including -- yeah, some of them are redacted, but the summary documentation that I referenced in my deposition and having gone through those bills.

Q. But Abbie did get visitation, did she not?

A. In a sense, yes.

Q. Do you have any knowledge of what the average rates are for domestic attorneys in the state of California?

A. No. I haven't researched that.

Q. So you don't have an opinion on whether or not what this California attorney that represented Abbie, by and through the Cohens, if her rate was reasonable or not?

A. Ms. Meyer, you're referring to?

Q. Yes, sir.

A. I do have an opinion that $700 is a whole lot of money per hour, and it's off the charts here for South Carolina, but for Beverly Hills, I am not expressing an opinion.

Q. Thank you, sir.

THE COURT: I'm going to take five. Are you going to go next, Ms. Moore?

MS. MOORE: Yeah, but I won't take long, Judge.

THE COURT: Can I take just five minutes?

MS. MOORE: If you must.

THE COURT: That's all. It will be limited to five. Thank you.

(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

order that included findings where the court likewise did not believe all of what Dan Dorn had to provide.

A. Well, what you're referring to is a legal argument.

Q. Wasn't that a finding in the case?

A. Yeah, but it's also -- but the court prefaces that by saying he doesn't agree with the concept of the children having visitation on his terms, and he's the father. And it goes on to say that his view was that he should control, and not Abbie, because Abbie is totally disabled.

Q. But Professor Freeman, doesn't the order specifically state: The court does not agree with Dan that Abbie's profound and permanent disability alone makes Abbie an unfit parent which should disqualify her conservators from seeking visitation?

A. And you are where?

Q. On Page 2 at --

A. I mean, look, the court gave some visitation, and that court order is being, as far as I know, honored.

Q. I understand that, but what I'm looking into is the reasonableness of the trustees

in pursuing this action for visitation and that it just wasn't a one-sided fight.

A. Well, first of all, most fights are two-sided, number one, and secondly, I agree that, as is usually the case, neither party got 100 percent of what they wanted. What I do find very obvious, though, about this opinion is that when you started to talk about self-serving motivation and selfishness and kind of weird behavior --

MR. BOYD: Objection, Your Honor.

THE WITNESS: Let me please finish.

MR. BOYD: He's using words that are -- selfishness, weirdness. He's using words that are not in the opinion.

THE WITNESS: Well, let me explain.

THE COURT: Yes, sir.

THE WITNESS: The bottom of three and top of four is where we have the famous Susan's ulterior motive and so forth, and it goes on to talk about what Susan wants, and then on Page 4, it says: Dan is outraged by these unrealistic ideas, and the court is referring to Susan's positions as being unrealistic ideas, which I think they were.

So criticize Dan all you want, but he's the dad of these kids, he's got to raise these kids, and he's fighting for the privacy of his opinions in wanting to raise the kids, at least that's how I looked at it, which he absolutely had a right to do.'

BY MS. MOORE:

Q. I understand your position, Professor, but what I'm asking you is to look at areas of the order that address problems that may have been caused by Dan Dorn in the litigation that may have then resulted in the necessary actions of the trustee to pursue the litigation further. For example, didn't the court, in the final order, state that they did not agree with Dan's desire to delay the visitation until the children were ages six or seven?

A. It did, sure.

Q. Now, Professor Freeman, do you have an opinion as to whether or not the trustees' authority to continue to retain the attorney in California, whether or not that authority terminated upon the issuance of the marital dissolution status only?

MR. DAN SLOTCHIVER: I'm sorry. I

didn't follow that question. Can you repeat that?

BY MS. MOORE:

Q. Do you have an opinion as to whether or not the authority of the trustees terminated at the point of the issuance of the decree of marital dissolution, and the order specifically says status only?

A. Yeah, I have an opinion.

Q. What is your opinion?

A. It didn't terminate.

Q. So as far as -- strike that.

Do you have an opinion as to whether or not there's a distinction between being authorized to hire the attorney versus authorized to compensate the attorney?

A. Well, first of all, yeah, there's a bifurcation in the trust agreement which requires prior court approval if you want to compensate.

Q. So is it your opinion that in this particular case, the Cohens may have had authority to hire the attorneys in California, but did not have the authority to compensate them without a further court order?

A. I believe they needed a court order. I believe that -- look, everybody in the room

should know this. I believe that the trust means what it says about prior court approval for fees. I may not like that, but that's what it says.

Q. Is it your opinion that the original order, after the conservatorship in California, as well as the order of transfer that was ordered here in Horry County, is it your opinion that those orders do not provide the Cohens with both authority to hire as well as compensate the attorneys in California?

A. Yes.

Q. Your opinion is that that does not give them the authority?

A. Right, that they need -- they need -- as bills, as they want to pay or come in for interim pay or come in and petition the court for an advance, ability to pay in advance, that's right.

Q. To make sure I'm clear, the orders that exist, the order of transfer as well as the California order of probate orders, that does not give them the authority to pay the attorney in California?

A. Yeah, that's my testimony, that the trust means what it says.

Q. And is there any distinction between an attorney being hired for the trustee versus an attorney being hired for the ward?

A. I don't -- that goes to that Paragraph 12 issue. I don't see any distinction. Regardless of how you want to play it, the same thing. The trustee is going to do the hiring. That person is going to represent the trustee, and I think that you need approval.

Q. And the number that you testified to earlier, the 600,000-some-odd number, that is based on simply you OCRing the billing statements that you had and then calculating a figure, the $600,000?

A. It's the best that I can do.

Q. But is that how it's based?

A. You know, it's also based on what I've seen, you know, the testimony that I've seen.

Q. But how did you calculate the number?

A. We have an exhibit that lists the 660 whatever. If you knock around $60,000 off that for the divorce and custody, that gets you to the $600,000 number.

Q. So whatever the number is that's reflected on the exhibit attached to your

deposition, you took that number and just knocked off $60,000?

A. I think it -- yeah. I think that it's in -- it's roughly $60,000 of that number also before Ms. Meyer's firm got involved. That's where I get that number from.

Q. And I'm sorry, Professor, are you saying there was $60,000 with an attorney before the Meyer law firm, and that's where you get the $60,000?

A. Yeah, I think so.

Q. So you don't believe any fees that were generated by the Lisa Meyer firm are reasonable and should be paid by the trustee?

A. Well, I heard about the standing issue, but that turns out to be nothing.

Q. My question is: You don't believe that there's any fees incurred with Lisa Meyer's firm that should have been paid by the trustee?

A. No. My understanding is that virtually -- that what was on the griddle when the Meyer firm was involved was a struggle over visitation. I've told you what I think about visitation.

MS. MOORE: That's all the questions I

have, Your Honor.

THE COURT: Thank you.

Mr. Kachmarsky?

CROSS-EXAMINATION

BY MR. KACHMARSKY:

Q. Just one question, Professor.

As you're aware, South Carolina law imposes duties of loyalty, impartiality, prudent administration, and prudent investment on trustees. Are you aware of any reason that these duties should not apply to the trustee or co-trustees of a special needs trust?

A. No.

MR. KACHMARSKY: Thank you.

MR. DAN SLOTCHIVER: Very briefly, Your Honor, if I may.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Professor, does any of the testimony elicited in cross-examination today change your opinions that you've given earlier as to waste, breach of trust, or self-dealing?

A. No.

Q. Professor, you were asked earlier if

you were familiar with any medical testimony other than Dr. Mamelak. You said you haven't read it, but would it be fair to say you have read reference to it in the court's order as it applied to Dr. Hays?

A. Yes.

Q. Professor, are you aware of any case law in South Carolina or otherwise which weighs fiduciary responsibilities when you're dealing with family members?

A. No. They're intensified.

Q. You were asked earlier about the amount of money that you considered to be the damages in the case, and you testified that you believe that the fees generated by the Meyer firm were related to the visitation issue, and those weren't appropriate. You also were asked to give a number as to your damages, and you testified, I believe, that the number that you have to date is based on the numbers you were provided at that time.

Instead of giving a particular number, would it be fair to say that whatever the number of bills created relevant to the visitation issue would not be appropriate, whether that's $600,000

or a million dollars, whatever that amount would be?

A. Yes.

Q. You were asked by Ms. Hedgepath if the court in South Carolina found that the action in California was done by the trustees solely for Abbie's benefit.

A. Could you slow down, please?

Q. Yes, sir, I will. I apologize.

You were asked by Ms. Hedgepath if the court in South Carolina, Judge Edmonds here, found that the action in California was done by the trustees solely for the benefit of Abbie, what effect would it have. My question to you is: Regardless of if they assert or the court found it was done for Abbie, would it still have to be authorized and/or reasonable?

A. Yes.

Q. Are you aware that the Cohens in this case actually consented to the language or to the final finding of the court in California?

A. Yes. It was discussed in Ms. Meyer's -- when Ms. Meyer was on the stand, I believe.

Q. Thank you, sir. Nothing further.

THE COURT: Mr. Boyd?

MR. BOYD: I don't believe I have anything further for this witness, Your Honor.

THE COURT: Thank you.

Ms. Hedgepath? Ms. Moore?

MS. HEDGEPATH: No.

MR. DAN SLOTCHIVER: May he be excused, Your Honor?

THE COURT: Any objection to excusing the witness?

MR. BOYD: No.

THE COURT: Thank you. Appreciate you coming, Professor Freeman.

THE WITNESS: Thank you, Your Honor.

THE COURT: Do we want to consider breaking for lunch at 2:10?

MR. DAN SLOTCHIVER: Your Honor, I would propose that when we come back, I'll call Julian Walker, and if we could, if we can try to work until we finish him.

THE COURT: I'm not opposed to that.

MR. DAN SLOTCHIVER: Thank you. That way he can drive back. Thank you, Your Honor.

MS. HEDGEPATH: Doctor, I hate to hold everybody up, but the doctors that we were

anticipating calling, I need to let them know. I know that I think Mr. Slotchiver is going to call another expert and Dan Dorn. Is that correct?

MR. DAN SLOTCHIVER: That's correct.

THE COURT: You're trying to get some idea of when to call your doctors, your witnesses?

MS. HEDGEPATH: I'm trying to get some time frame.

MR. DAN SLOTCHIVER: I'm not sure, Your Honor, that we're going to -- and I guess part of the basis -- I guess part of the question is are we on track to finish this tomorrow, and if we're not on track to finish this tomorrow, how much do we want to rush through it.

As I understand it, I've got to call -- I'm going to call Mr. Walker, and based on what's occurred just now, my guess is by the time I'm done with Mr. Walker, it will be 6:30. Afterwards, I want to call Dan Dorn, but after I call him, I understand that Cohens' counsel will, at the very least, call Mr. Wingate, then I understand that the guardian ad litem and/or the attorney for Abbie will then call whatever witnesses they have.

I'm happy to work as much as you want,

but if we're not going to be able to realistically finish it today, then I would ask that after the testimony of Mr. Walker's concluded, depending on how late it goes, that we actually end before 8:00 tonight and start in the morning, and I would call Dan Dorn at that point.

MR. DAVIS: If we can get Dan Dorn in, we can get Wingate.

MR. DAN SLOTCHIVER: I'll do what you want, Your Honor, but it's been 12-hour days, and it's --

THE COURT: I know.

MR. DAN SLOTCHIVER: I understand the rush -- not the rush, but I understand the court -- and I appreciate the court working with us if we think it's realistic to end it. I don't know how many witnesses they plan to call, but if it's not realistic to end it, then I don't see any reason to beat ourselves up.

THE COURT: I understand.

MS. HEDGEPATH: We have five.

MR. DAN SLOTCHIVER: I don't see, Your Honor, how we would possibly finish this case tomorrow. Assuming that we finish Dan Dorn tonight, we had Wingate tomorrow, who I would

assume is going to take close to half a day, at least three hours, and then they have five witnesses, I don't see how it's -- and they have medical witnesses, and we're going to have objections. I don't see how it's conceivable. Maybe we could take that up later on, but --

MR. DAVIS: We still have the outstanding --

MR. BOYD: There remains the issue, Your Honor, of another witness that we would like to call. I state that merely to say I agree with counsel. I don't think it's realistic that we're going to finish this case this week.

MR. DAVIS: And also, the motions that we've made that we're asking to be heard about on conforming the pleadings to -- amending the pleadings to conform to the evidence I think is important as well.

MR. DAN SLOTCHIVER: I understood that would be heard later on after this trial is concluded, or after this part of the --

THE COURT: I think y'all were going to submit briefs on that.

MR. DAN SLOTCHIVER: Yes.

THE COURT: What I would like to do is

to be able to get as much concluded before we break tomorrow, because the difficulty is if we only have to come back for one day to finish up, that's much easier than two or three or four days, and so whatever we can finish up, I would like to do. I'd like to go 7:00, 8:00 tonight.

If we could try to get Mr. Dorn in, then I would at least like to start him. So I think if Reese is going to be calling Mr. Wingate tomorrow, and then we move on to Ms. Hedgepath or Ms. Moore's witnesses, I would think we could get some of them in tomorrow.

MR. DAN SLOTCHIVER: I'm only speaking for myself.

THE COURT: I know everybody's tired.

MR. DAN SLOTCHIVER: Once it starts, I'm actively involved in a case for 12 hours a day, and it's a little taxing, and if we need to do it, that's fine, but honestly, Your Honor, it's a little longer day. Actively involved in litigation in a courtroom, an hour is four hours of being involved in my office.

THE COURT: I understand.

MR. DAN SLOTCHIVER: And this is the third day. If we're going to go 'til 8:00 tonight

again, tomorrow -- I'm worried that it starts to create a little bit of an unfair disadvantage to probably everybody in the courtroom.

THE COURT: Well, everybody would have the same disadvantage.

MR. DAN SLOTCHIVER: True, but our clients deserve the best advantage they can have.

MR. BOYD: And if I can agree with Mr. Slotchiver, Your Honor.

THE COURT: Now, this is your fault, Reese.

MR. BOYD: I know this is my fault, but I have to say I don't know if I have 8:00 in me tonight, Your Honor. And under our informal understanding concerning witnesses, we were not advised yesterday that Mr. Dorn would be appearing today, and quite frankly, I'm not prepared to question him today.

THE COURT: And I thought we might just get through Mr. Slotchiver's questioning of him. Why don't we do this --

MR. DAN SLOTCHIVER: Can we see what time it is when we finish with --

THE COURT: Let's do that. Let's see what time we finish with the next witness, and if

we think we have enough time to at least get the initial direct examination of Dan Dorn in, then we'll try to do that. I understand if you weren't prepared today, Mr. Boyd.

MR. DAN SLOTCHIVER: And I apologize. I haven't -- I guess I thought I was announcing the experts. I thought I had mentioned Mr. Dorn. If I didn't, I certainly apologize. It wasn't intentional.

THE COURT: I think you may have mentioned that late yesterday evening.

So Ms. Hedgepath, I'm not sure what to tell you. You know, we might be in a position to get to a couple of them. I mean, I was still hoping to push this, but I don't want to push people too hard.

MR. DAN SLOTCHIVER: Back at 3:30, Your Honor.

THE COURT: 3:30, please.

MR. DAVIS: What about the order? You've got five total witnesses? And then we got -- do you want to try to do Wingate before they do any of their witnesses?

THE COURT: Yes, sir.

MS. HEDGEPATH: What if we do --

MR. DAN SLOTCHIVER: Your Honor, I can't hear.

THE COURT: I can't either.

MR. DAN SLOTCHIVER: We're not conversing about which doctors we're going to call between counsel. They're not supposed to have any conversations at all about the doctors.

MS. HEDGEPATH: No. We're just talking about order. Is that okay?

THE COURT: Yes, ma'am. I think we had talked about Mr. Slotchiver finishing his witnesses, maybe getting to at least the cross for Dan Dorn, see what time that is. I understand that Mr. Boyd and Mr. Davis would then call Mr. Wingate after we finish with Dan Dorn, and then whatever witnesses Ms. Hedgepath, you and Ms. Moore, would call would be next.

MR. DAVIS: How late are we going to go tomorrow?

MS. MOORE: I don't mean to be hesitant, but --

MR. DAN SLOTCHIVER: Could we discuss this later on and take a little break, Your Honor? Would that be okay?

MR. DAVIS: I'd like to call Ken and

let him know that you're probably going to get him in tomorrow afternoon.

MR. BOYD: I think that's a safe assumption, Your Honor. We should be able to do that.

MR. DAN SLOTCHIVER: Either way, absolutely.

THE COURT: Yes. I think you can call Ken.

MS. MOORE: So maybe we could have one or two on stand-by instead of everyone.

THE COURT: I think so. I mean, I was hopeful things were going better, that maybe we would finish up tomorrow, but from what I'm hearing from counsel, it's probably not going to happen. I still would like to get in as much as possible, because if we come back, I'd rather not come back for three days. It's just going to be very hard for everybody.

MR. DAN SLOTCHIVER: I agree. Thank you, Your Honor.

THE COURT: And my calendar to get in more than a day.

MR. DAN SLOTCHIVER: Are we excused, Your Honor?

THE COURT: Yes, we are. We're off the record. We're excused until 3:30, and we'll start back promptly.

(A luncheon recess transpired from 2:18 PM to 3:33 PM.)

THE COURT: We're back on the record in the Abbie Dorn matter.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: Ready to call my next witness, if I may.

THE COURT: Yes, sir.

MR. DAN SLOTCHIVER: Julian Walker.

Mr. Walker, if you'll please come up to the box.

JULIAN W. WALKER, JR.

being first duly sworn, testified as follows:

THE COURT: Good to have you, sir.

DIRECT EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Mr. Walker, would you please state your full name and address for the court?

A. Julian W. Walker Jr., 211 South Edisto Avenue, Columbia, South Carolina, 29205.

Q. And if you would please provide the court with your educational background.

A. I attended public schools in Charleston, where I was born and raised. I then went off to college, University of the South, Sewanee, graduated in 1956, and immediately went to Duke University Law School, where I graduated with an LLB degree -- in those days they didn't give JDs -- and that was 1959. I've attended many conferences and seminars over the years, but those are the -- that's the formal education.

Q. I was going to ask you, do you have any distinctions as to your educational background?

A. I'm sorry. What?

Q. Any special distinctions?

A. I was fortunate at Sewanee to be chosen or elected to Phi Beta Kappa my senior year, and I graduated what we call there, which would be the equivalent of summa cum laude, I think it was optime merens was the Latin terminology at that time.

Q. Tell us a little about your work career, if you would.

A. After I got out of law school, I went in the Air Force for a while, a short time, and when I came out of the Air Force, I was hired by a

law firm in Norfolk, Virginia, became a member of the Virginia Bar, practiced with that firm from 1960/1961 to 1967.

I started out thinking I'd be a litigator, but I ended up moving more into the trust and estate field, which I had studied at Duke Law School and had an interest in. Because of that, I ended up doing a lot of work with the trust department of a bank in Norfolk, Southern Bank of Norfolk, which was a member bank of a multibank holding company, First Union Bank Shares. We didn't have state-wide branching in Virginia then.

I was there for just less than a year as the head of that small trust department in Norfolk when I was contacted by the First National Bank of South Carolina to come back home to Charleston and take over the management of the Charleston trust department. I did that for basically three years, when I was contacted by the president of First National Bank in Columbia to come to Columbia and head up the statewide trust division of First National Bank.

I held that position until South Carolina National Bank bought First National Bank

in 1984, and I was one of the fortunate members of First National, the bank being acquired, because I was given the job of managing, the executive trust officer, of the merged South Carolina National trust division.

I held that position until Wachovia bought us in 1990/1991. I was the trust executive officer of still South Carolina National. The name hadn't been changed, but we were owned by Wachovia. I held that position until I retired effective March the 1st, 1994.

After that, actually, because of Professor Alan Medlin at the law school in Columbia, he suggested that I should make myself available to do just what I'm doing now, expert witness, having spent all those years in the trust business, being a trustee of a bank, but being in charge of the trust operations.

And I did that for about six months, and then I was -- I got into law practice with the old firm of Haynsworth, Marion, McKay & Guerard, had an office in Columbia, Charleston, Greenville. I was there for about a year, and then I changed and went up the street, went with a firm Rogers, Townsend & Thomas.

And I was there for a few years, and then I decided to get out of that large firm world and basically open up an office at home and hang out a shingle, and so that's what I've been doing ever since, and essentially doing a lot of this type of what I'm doing right now.

Q. Thank you, sir. Based on your statement, it's obvious you've testified as an expert before in the field of trust management, I take it, trust administration?

A. Yes. I've done this quite often. I've served in the capacity of a consulting expert, which quite often leads to a testifying expert, and I have testified in depositions many times, and fewer times actually in trial, because so many of the cases are settled.

Q. Nature of the business, right?

A. Law famous compromise.

Q. Mr. Walker, you've also testified with reference to fiduciary accounts, as well as trust accounts?

A. Generally, most of my work has been as an expert, consulting expert, a testifying expert, has been in the field of trusts, but I have been involved in decedent's estates, guardianships,

conservatorships on a few occasions, but mostly trusts.

Q. Thank you, sir.

MR. DAN SLOTCHIVER: Your Honor, at this time I would submit Julian Walker as an expert in the field of trust administration as it relates to the handling of monies and the decision-makings affecting the Abbie Dorn Special Needs Trust.

THE COURT: Mr. Boyd?

MR. BOYD: Your Honor, if I may, I believe it'd be proper for us to have an opportunity to question this witness before we designate him as an expert.

THE COURT: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. BOYD:

Q. Mr. Walker, good afternoon.

A. Good afternoon.

Q. I am Reese Boyd. I represent the trustees in this action, Dr. Paul and Susan Cohen.

Let me ask you -- I didn't really hear you specify a number of cases. Approximately how many cases would you say you've served as a testifying expert in?

A. I don't have the exact number, but I would say probably at least 30.

Q. Let me ask you this: Have you ever had your qualifications as an expert denied by a court?

A. No.

Q. Of those 30 occasions, Mr. Walker, where you have been admitted or deemed to be an expert for purposes of trial, approximately what sort of time frame, over how many years are we talking about?

A. Well, as I testified a moment ago, my original work began shortly after I retired from what had become Wachovia. As I recall, I was perhaps involved in a couple of cases then, but when I went into law practice with Haynsworth, Marion, McKay & Guerard, that type of work pretty much ceased with being a -- working with a law firm, and that continued to be the case up until I finished my law practice with Rogers, Townsend & Thomas, and that was probably a hiatus, if you will, for the better part of three years.

So after -- that would have been, let's see, '94. Probably in '97, early '98, I began to be contacted again by litigators who had

cases involving fiduciary duties and fiduciary -- breach of fiduciary duties, and so that's when it started up again, and it's continuing through today.

Q. So from '98 to the present year would be, round numbers, approximately 15 years?

A. A round number, yeah.

Q. Approximately 30 cases over 15 years.

Of those 30 cases, Mr. Walker, how many of those cases would have involved special needs trusts?

A. I don't recall any of them being specifically special needs trusts. The special needs trust, as I understand it, as I recall, probably came into existence back in the early '90s, perhaps 1993, and so I'm contacted by those who have the problem, and I don't recall any special needs trust problem coming to me.

Q. So you've never been an expert in a case where a d4A special needs trust for Medicaid purposes was involved?

A. Not technically, that's true, but I will say this: A special needs trust really, basically, is another trust. The duties of the trustees are exactly the same. In fact, one of

the very significant things about the special needs trust is a very important provision that is often hard to find in the normal trust that's prepared by estate planning attorneys, and that is the purposes of the trust.

I've examined carefully the special needs trust instrument in this case, and the purposes of the trust are very clearly spelled out. No question to what those purposes are. Once you get past that, it's essentially any other thing for trust, in my opinion.

Q. In your opinion. Would you agree with me that there are requirements imposed upon that trust that are incorporated by statute?

A. There are certainly provisions that come into play that -- because it is a statutorily-created concept that's been used primarily to protect those who are seeking to have their Medicaid benefits protected.

MR. DAN SLOTCHIVER: Your Honor, do we need to continue, or are we ready to --

THE COURT: No, sir. I think we're trying to focus on the issue of Mr. Walker's qualification as an expert.

MR. BOYD: Your Honor, and I thank the

court for the opportunity. I would object to the admission of this witness as an expert, Your Honor. I'm not sure that he -- I believe his testimony is going to be duplicative. It sounds like he's being admitted in the same area for which Mr. Freeman testified, so I would say that the testimony is duplicative, and I'm not sure that he has expertise in a specific area related to this trust that's going to add any probative value to his testimony.

MR. DAN SLOTCHIVER: Well, Your Honor, I think he will have a lot of testimony with reference to this trust. His testimony will not be duplicative. Mr. Freeman was clearly called based on his experience as a fiduciary and on the management of monies. We delineated those. Mr. Walker is not being called for those purposes.

I believe Mr. Freeman was called for the purpose of testifying and was deemed an expert in the field of fiduciary obligations and handling of monies and making business decisions affecting the Abbie Dorn Special Needs Trust. Mr. Walker is being called as an expert in the field of trust management, having had some 30-plus years in the field and having testified in over 30 cases in the

field.

I assure Your Honor that the questions I plan to go over with him and the issues that I plan to address with him will deal with a completely different look at this matter than what we addressed with Mr. Freeman.

THE COURT: Thank you.

Ms. Hedgepath, Ms. Moore, anything on this issue?

MS. MOORE: No.

MS. HEDGEPATH: No.

THE COURT: Mr. Kachmarsky?

MR. KACHMARSKY: Nothing, Your Honor.

THE COURT: Anything else, Mr. Boyd?

MR. BOYD: Your Honor, I would restate my objection. I think the probative value of this witness is going to be outweighed by the prejudicial impact of the testimony.

THE COURT: Thank you.

I'm going to qualify Mr. Walker as an expert in the field of trust management. Thank you.

MR. DAN SLOTCHIVER: And administration. It might be a more appropriate word.

THE COURT: Trust management, trust administration. Thank you.

MR. DAN SLOTCHIVER: I believe that's what he's been qualified as before, so I just wanted to have -- that's okay, Your Honor. Thank you.

THE COURT: Trust management and administration.

DIRECT EXAMINATION

BY MR. DAN SLOTCHIVER:

Q. Mr. Walker, one more background question that I wanted to ask you, just for clarity on the record. Do you ever teach? Do you ever teach in the field or give CLEs or give anything like that in the field of trust administration, or have you ever written anything on the field?

A. Well, going all the way back to my law practice days in Norfolk, I have taught trust administration courses quite frequently to trust -- bank trust personnel. I had continued to do that when I actually got into trust banking in Norfolk for the short time I was there, maybe almost a year. I've taught these courses in Charleston, and I've taught them in Columbia.

Now, these are the courses that are essentially sponsored, if you will, primarily by banks with trust powers in the trust field, and they're designed to bring their trust personnel to better inform them, better educate them.

In more recent years, I have actually developed and have conducted a day-long course on administration of discretionary trusts, particularly with an emphasis on the Prudent Investor Act that became law in South Carolina in 2001 and certain aspects of the Uniform Principal and Income Act, which became law the same day, July the 18th, 2001. I began that course for attorneys, trust officers. I've had some individual trustees come and attend to be better informed to acquaint themselves, which, of course, is an absolute obligation on a trustee, to acquaint reasonably well himself or herself with the responsibilities and obligations of a trustee, once they have accepted the trusteeship.

So I've taught that course a number of times in various locations around the state. I haven't done it in the last year or so because we've run into a bit of a problem trying to -- we, the Bar, of which I'm very active with legislative

efforts, a bit of problem with the legislature in getting these most recent changes, which I think are on a pretty good track now. Maybe the judge -- the court knows better than I exactly what track they're on, but once that all comes to rest, I will offer this course again.

Q. Thank you, sir. Understanding that you've got experience in the trust administration world and also with reference to banks, I'm going to ask you today -- the bank trust and having run the bank trust, I'm going to ask you, in giving your opinions, to address matters relative to trust administration, as opposed to those areas that only would affect bank trust administration, if you see the distinction, if there is one, and if there's not one, then we can just go globally.

A. That's fine. I'm prepared to answer that.

Q. Thank you, sir.

A. If that's a question now, I'll proceed forward.

Q. Well, I'm just going to ask that when I ask you questions such as if I ask you a particular question, that the response be with reference to trust administration, as opposed to

limited to bank trust administration. If it doesn't apply to both, you'll let us know. Otherwise, I'm going to assume, if it's fair for you, that it deals with trusts.

A. Well, I mean, the basic point is that a trustee is a trustee is a trustee. Now, the acid test, the standard which all trusts are put to, whether it's a bank, a corporate trustee, a stand-alone trust company, or some individual, the standard is stated very clearly in our statutory law now. A trustee shall administer the trust as a prudent person would. And the test is, and what I believe I will be asked to opine upon, is my opinion as to what a prudent trustee would have done in certain circumstances that will come forward as we move into my testimony.

Q. Thank you, sir. Mr. Walker, what's the first thing a trustee should do when appointed a trustee?

A. Well, I think that any trustee should immediately focus on what have I got? What am I accepting? What am I now called upon to do? What are my obligations? What does it mean to be a trustee? Lawyers use the term acquaint. A trustee must acquaint himself/herself/itself with

the obligations, responsibilities, duties, and powers that the trustee has in this particular trust.

Now, that means, in my opinion, and, in fact, in my knowledge, that means that the trustee must go to the terms of the trust, must acquaint himself/herself/itself with the terms of the trust, which, of course, you always go first to the document, the governing document, the trust itself, whether it's a testamentary trust set up in a will or a trust agreement in the standard type of estate planning document or whether it's a trust of the type that's set up here under the particular parameters and requirements of the special needs programs that are now a matter of legislation.

You should have that trust document. It's almost a road map, because all of the legislation that we have, most of it, practically all of it, that essentially has come to us now in the form of legislation, but which has evolved over hundreds of years of courts, equity courts, chancery courts in old England where this thing all got started, equity courts. In Norfolk, Virginia, we had a court -- specifically an equity

court. That's all it did was equity jurisdiction. Some courts sit as law or they sit as equity. It's the courts which, over hundreds of years, have evolved these rules, these duties that the trustee has. Being a trustee is a very serious business.

Professor Scott, one of the authorities -- now deceased, but one of the foremost authorities on trust law in the United States, has said that while there are all kinds of fiduciary duties, all kinds of fiduciary relationships, partners to partners, board members of corporation to the shareholders, an agent to the principle, the most intense fiduciary duties are those of a trustee to the beneficiaries of the trust. Now, let me make sure that I repeat that, not some duty to the trustee, it is the trustee who has these fiduciary duties to the beneficiaries, all beneficiaries of the trust.

Q. You stated earlier that it's important to find the purpose of the trust, and I believe you stated that it's oftentimes hard to find this, it's rare, but in documents such as this one that we're dealing with today, there is a purpose. Can you tell us what the purpose of the trust is?

A. Could I have the trust document to refer to?
Q. You certainly may.
A. I have looked at it many times, but I'd like to have it, if I may.
Q. There you go, sir.
MR. DAN SLOTCHIVER: It's Exhibit No. 1, Your Honor. Would you like a copy?
THE COURT: I have it.
THE WITNESS: Let me elaborate just a moment on that. My point is that -- and it's interesting. It's expressed in a restatement of trust. It's interesting, because I have taken lawyers to task, because I can do that now, because I'm not engaged in estate planning -- I used to do that -- but I take lawyers who are engaged in estate planning to task sometimes because every trust has a purpose, at least one purpose, maybe more, and you will find, if you look at the probate -- if you look at Uniform Trust Code in South Carolina, and you go into the first five or six or seven sections, you'll find purposes of the trust mentioned in that legislation five, six different times.
The purposes of the trust are

important, but I take these estate planning lawyers to task because my point is they should be determining at the time the document is drafted, at the time that the client is there and everything is being put together, they should take the time to explore carefully what the settlor, the creator of the trust that wants that trust to do, what those purposes are. But unfortunately, and as the restatement says right here in black and white, says it's difficult to find sometimes. You have to cobble together, from reviewing the language, what the purpose is.
In this case, in this case, all one has to do is to go to Page 2, under recitals, Section C: The intent and purpose of this trust is to provide a discretionary spendthrift trust to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the special needs of the beneficiary.
Now, that purpose -- our statute says that a trustee must administer the trust in good faith in accordance with the terms and the purposes of the trust, in good faith. There must be a demonstrated, bona fide, concerted effort to

administer that trust in accordance with the purpose.
I won't go any further on that now, but I think that will come up later.
BY MR. DAN SLOTCHIVER:
Q. Did you find any overriding directive here?
A. I'm sorry. Overriding what?
Q. Overriding directive to the trustee. Was there any overriding directive to the trustee based on the language, or is that the language you're talking about that's --
A. Well, I think that overriding directive really begins with the purpose. Now, the purpose is found among the terms of the trust. The terms of the trust, in the broader sense, are very important, because as the court well knows, the duties that are now codified in, our case, the South Carolina Trust Code, which became effective in South Carolina January 1, 2006, about six months before this terrible event that injured Abbie Dorn so terribly. The Uniform -- the South Carolina Trust Code became effective January 1, 2006.
But none of that -- all of that

legislation, almost all of it, is what is referred to as default legislation. In most cases, not all, but if the terms of the trust provide differently from the codified law that has been developed by the equity courts down through the ages, if the terms of the trust provide differently, and they don't require something illegal, immoral -- maybe that's not even a proper -- illegal against public policy, et cetera, then the terms of the trust will trump the code, will trump the statute.
So I've taken a very strong position over the years with my trust officers and my personnel, make very sure that you understand well what the terms of the trust provide, because you could find that where you think a particular statutory provision governs, the terms of the trust have trumped that provision.
Q. Can the terms of the trust override the duty to act and exercise good faith?
A. No. One of the -- this mention earlier that I made of the obligation of the trustee to administer the trust in good faith in accordance with the terms and purposes of the trust is one of those fundamental foundational

responsibilities/obligations of the trust which even the trust instrument, the terms itself, cannot disavow.

Q. Mr. Walker, are you aware who signed the trust document in this case?

A. Who signed it?

Q. Yes, sir.

A. It's here in front of me, but if I remember, it's Dr. and Mrs. Dorn.

Q. Have you formed any opinions about the conduct of the trustees with regard to adhering to the purpose of the trust and protecting the trust in this case?

A. Yes, I have, as a result of reviewing many of these documents that are all designed a standard part of the record here that's being built in this case, starting with the terms of the trust in this instrument that we're talking about.

To come back to the point about the purposes, it's very clear to me, in my opinion, that this purpose is focused on providing the discretionary spendthrift trust the supplemental funds that will be there to benefit, to be available, when the funds are otherwise not available, if and when they are. That's that

primary purpose.

Q. Did you have an opinion or an understanding as to whether or not the trust, at its creation, set up enough funds so there would be excess, there'd be more than ample amounts?

A. Well, as I understand the background of the creation of the trust, and it's all part of the settlement of the malpractice action that was brought as a result of those terrible injuries to Abbie Dorn, the whole process here was designed to come up with an amount of money, including this substantial annuity, that would -- as they could reasonably project, would be -- would not exceed what would be necessary. That's stated in the order of the court, and so that gets back to the purpose of the trust. The trust -- the trustees -- prudent persons serving as trustee would be acutely aware of the need to adhere to this purpose as reasonably as they could.

Q. Is the language that you're referring to about not exceeding the amount necessary to meet the special needs of the beneficiary, is that the language at the bottom of Page 1 on the trust? I believe it's the last two lines.

A. Let me see. Yeah. This is where it

appears. And this is, of course, a recital of the background, including the settlement itself which gives rise to this trust, and it says all of this that's described above, that it will not be met without this trust, and this trust means not only the $31,000, or the 32, whatever it is, coming in every month on the annuity, which, as I understand it, from the way this is written and from other aspects of this case that I've read, the annuity payments monthly flow into the trust. This is what is said, flows into the trust. And so you have the annuity payments coming in monthly, and you have this amount that started out at $910,000 or so as the lump sum funding of the trust at the front end, and it's all designed to provide the funds that are reasonably projected at that time that everybody signed off on, and it was a part of the settlement, and it says: Do not exceed the amount that appears reasonably necessary to meet the special needs of the beneficiary. That's both the annuity payments and the $910,000 in the trust, plus whatever earnings could be realized on that $910,000 over the years of management.

Q. Mr. Walker, do you agree with -- and I believe the record speaks -- the fact that this

trust was signed on November 2nd, 2007? Is that correct?

A. I'm sorry. I missed your question.

Q. Do you agree with the fact that the trust was, in fact, signed in November of 2007?

A. Yes. That was -- yeah, right here.

Q. And would you -- based on your review of the records and your understanding of this case, is it your understanding that the monies spent or even the contemplation of monies to be spent in the visitation act could not have been known at this time?

A. You mean the amounts that were spent for Abbie's needs?

Q. No, the amounts that would be spent in the visitation action. They hadn't started yet, correct?

A. No, that's right, absolutely.

Q. So based on the language here, do you believe that it was contemplated that money would be set aside here to pay for an action that had not yet even begun?

A. No. You know, you've got to recognize, we all have to recognize, I have to recognize, that there are provisions in the trust

that give the trustee discretion with regard to certain use of the funds for certain needs that Abbie may have in the life of the trust, and that is --

For example, and I think I followed in the record that counsel for the petitioner, Mr. Slotchiver, who is now questioning me, you really have not questioned the amounts that were spent by the trustees to make repairs -- I mean not repairs, but to certain things that needed to be done with the home. I mean, that is regarded as a reasonable expenditure of funds.

And so what I'm saying is that there are numerous -- there could be any number of things that could come up that would impact this, but let me make sure that I make this point: Every power -- and it's right in our statute. Every power that a trustee has, every power, is subject to the duties of the trustee to exercise reasonable care, skill, and caution.

Q. You used the term earlier prudence. Is that correct?

A. Prudence means the exercise of reasonable care, skill, and caution.

Q. What does that mean in the real world?

What would be the exercise of reasonable care?

A. Well, you'd have to -- you'd have to come up with a particular fact circumstance, but let's just pursue your question a little further here the best way I can answer it. Let's go back to these -- let's go back to these -- the remodeling, or whatever it's referred to in the record, that Dr. and Mrs. Cohen undertook.

Q. For example, the renovation where they closed in the patio?

A. To make their home more appropriately suited and an appropriate facility to treat their daughter, to keep her in the condition she was in so long as she lived. That would have to be -- in order to deal with the reasonable care, skill, caution, prudence, that would involve the trustees acting jointly, which this requires, the trust itself, acting jointly, to consider relevant circumstances, the cost of the renovation, what sort of professional advice they were getting about how this ought to be done and basically put all of that on the table as part of their decision-making. That's an example of reasonable care, skill, and caution.

Q. So even if, in their mind, they

believe that this would be of a benefit to the ward, they would still have to exercise this prudence?

A. They are required to -- let me put it this way: The restatement says it beautifully, and we use the same language, in effect, in two or three places, two anyway, in our South Carolina trust code. In deciding -- let me start over. A trustee, in deciding whether and how to exercise a power, is subject to and must follow, must comply with, the duties -- the fiduciary duties of the trustee.

Now, think about that. At the time of the decision-making -- at the time of the decision-making, a trustee, when deciding whether to exercise the power and how to exercise the power, is subject to these duties of exercising reasonable care, skill, and caution. I've often said for many years that if there is to be prudence, it must be in the process. This is the process. This is the process. This is how --

If you were asked, after you made a decision to let your teenage child drive an automobile under certain circumstances that was later questioned when she was injured or he was

injured, and somebody really wanted to know did you make -- did you act reasonably in letting that child drive that car, the only way that can be answered is to go back to that point in time when you were trying to decide whether to let the child drive the car or not, and how did you make that decision? What circumstances did you consider that led you to make the decision to let the child drive the car?

It is then -- and the law says that's when prudence must be exercised, if it is to be exercised at all. It doesn't make any difference what happens three, four, five years down the road. That particular decision, which is the decision in question, has to be dealt with. The ultimate decision says nothing about whether it was reasonable or not. The ultimate distinction is just she was given the keys. She drove it.

In this case, the money was spent for the renovation. What does that tell you about whether it's reasonable or not? You've got to go back in, and you've got to find out what went into the decision-making. That's the process.

Q. Have you -- in your review of the deposition transcripts and the testimony of this

trial, have you had the opportunity to follow occasions wherein the Cohens were asked, both Dr. and Mrs. Cohen, what prudence, what process they had with making decisions as trustees in this case?

A. I observed a number of occasions where I could not find any evidence of an exercise by the trustees of reasonable care, skill, and caution. Not as the parents of Abbie. I'm not here to express judgment about their actions, their love, their interest for their child, but I'm here to talk about when they put their trustee hat on.

And I'm here to say, in my opinion, that little, if any, evidence is in the record. To the contrary, I find that Dr. Cohen was obviously or has been and still is an extremely busy physician, and I think by much of what he has himself testified to that I have read, he has essentially said that much of what was done in the way of decision-making was essentially, if there was decision-making, if decisions were made, they were made by Mrs. Cohen.

Q. Did he have the authority to do that?

A. A prudent person acting as a

co-trustee must not -- must participate reasonably in the administration of the trust. Any reasonable person serving as a co-trustee would not seek to delegate away any function. Any fiduciary function that was anticipated at the time the trust was put into existence, became active, that each co-trustee would jointly perform. That would not -- a prudent person serving in that capacity would not do that.

Q. Based on that standard and based on your review of the testimony and the deposition of Dr. Cohen, do you have an opinion as to whether or not he acted in a prudent manner as trustee?

A. Prudence meaning the exercise of reasonable care, skill, and caution, in my reasoned opinion, little -- I could not really find anything that said to me, that showed me, that Dr. Cohen was engaged actively in the exercise of reasonable care, skill, and caution himself as a co-trustee acting jointly with Mrs. Cohen as co-trustee.

Q. So your opinion would be no?

A. Opinion is no.

Q. You did not make a finding that he acted prudently?

A. Yeah.

Q. How about with regard to Mrs. Cohen?

A. Mrs. Cohen, for her part, I found many, many statements about her confusion about the details, not being able to continue to do certain things that involved her role as trustee, not her role as mother of Abbie, although I'm sure that was very trying at times, but I've found in my review, in my opinion, a situation where the co-trustees were not really engaged and aware of their obligations/responsibilities/duties as co-trustees.

Q. Is that a finding that, in your opinion, they breached their duty?

A. I put it in terms of, again, they have a duty to administer the trust as prudent persons would, and in my opinion, they did not do so.

Q. Thank you, sir. Mr. Walker, what is your opinion about the success of the trustees in administering the trust for the benefit of the beneficiaries versus their own interests?

A. That's a tough one, because -- and I looked at that quite thoroughly. I don't really know how far I can go to get inside their heads. I do know what the court said in California, and

who just happened to be a lawyer. I think that court decision deserves a great deal of respect and acknowledgment. I mean, that's a decision in California. And there are things in that decision that deal with interests that Mrs. Cohen, Dr. Cohen, interests that they had as grandparents, and I don't know that it's my role to get inside their heads, but I will say that a reasonable -- that a prudent person serving in this particular situation as co-trustees, prudent persons serving as co-trustees, would have acquainted themselves with one of the most fundamental duties of a trustee, and that is to never put the interest of anyone else, anyone other than the beneficiaries, ahead of the beneficiaries, most importantly, the interest of the trustees, and a prudent person caught up in this situation I think would have to acknowledge that somewhere mixed up in all of this is not only my interest for Abbie, but my own interest, and maybe I shouldn't be serving as trustee.

Q. Mr. Walker, what would a -- let's put yourself a little bit in this position as a trustee. If you were a trustee in this matter, and you were approached by a guardian asking to

spend money to litigate the issue of visitation in California, what would you do? What would a prudent person do at that point?

MR. DAVIS: Your Honor, I object, Your Honor. And just for the record, we're not aware of what he was going to be testifying about, we did not know he was going to be called 'til recently, so I'll be the one making the questions and making objections.

He is opining about trusts. He's made it clear that he does not understand or does not have a lot of experience, rather, with d4A trusts, and he's asked -- Mr. Slotchiver's asked him to put himself in the position of the Cohens when he has not been -- does not have experience to warrant that, so I think that would be prejudicial and not helpful to the court, Your Honor.

THE COURT: Mr. Slotchiver?

MR. DAN SLOTCHIVER: Your Honor, he has been deemed by the court to be an expert with reference to trust administration. He's talked about his knowledge with reference to trusts in general, including the special needs trust. He's talked about the vast amount of experience not only testifying in court, but also in his role as

trustee for many, many years.

The question I'm asking -- he's talked now about the issue of prudent persons, what they would do, the process they would go through, and I'm asking him now what the process would be for a prudent person, were they faced with the same situations, instead of being what happened -- instead of looking at what's happened, looking at what a prudent person would do with the same set of facts.

THE COURT: Overruled. I think it's inappropriate. I think it's something you can cover in your cross, Mr. Davis.

MR. DAVIS: Thank you.

BY MR. DAN SLOTCHIVER:

Q. Once again, Mr. Walker, assuming you were the trustee, but you're a trustee in this particular matter, or placing yourself in that position.

A. Yes, sir.

Q. What would a prudent person do, the same set of circumstances, and the guardians come to you, and they say: We want to use trust funds, we want you to fund litigation in California relative to visitation?

A. Prudent person would go right back to the purpose of the trust. There's a great deal here said about how much concern there has been by the trustees with regard to custody claims, because that might take some money out of the trust. Now, of course, it also, quite properly, might jeopardize the Medicaid, but there was concern that it could diminish the trust because of the -- the child support is what I mean, child support, I'm sorry, child support.

But the same concern to adhere to the purpose of the trust, which is to keep that fund as well preserved, and plus earnings, reasonable earnings as possible, same reasoning applies to the visitation expenses. So what a prudent person would do with regard to visitation, having had the opportunity, the crucial time of Dr. -- what is it, Mallinax? I read his deposition, if I've got that pronunciation.

BY MR. DAN SLOTCHIVER:

Q. Mamelak, yes.

A. Mamelak. The crucial time of what he -- of his involvement, as far as I'm concerned, is back in those days not too far removed from the horrible injuries to Abbie --

Q. Why don't you tell us --

A. -- when he was trying to communicate with not only the petitioner, but Dr. and Mrs. Cohen. And at least in Mrs. Cohen's case, she basically didn't want to hear what he had to say at that time. Now, this was not four years later at the time of the deposition; this was then.

And what I'm saying to you is that a prudent person put in the same position would have listened to what that physician said, would have taken that into account, would have considered it, and if there were issues, would have then and there gone forward to get more competent, qualified medical advice, testing, whatever, then and there, to try to deal with the question of is visitation, is it reasonable for that to be something that we are pursuing as trustees, because we've got to satisfy ourselves as prudent persons that this makes sense. If it doesn't, then they have a duty to stop the expense.

Q. Does authority -- is that something to be considered, the authority to do something, as a trustee?

A. Well, the authority -- the

authority -- if you're referring to some of the language in the trust, those are powers.

Q. The fact that you have a power, does that --

A. Those are powers, okay. You know, a power, which we recognize in the comments in our trust code, a power is not a duty. A power makes it -- it's allowable, it's allowable, but it is not -- it's not a duty. It's not something that the trustee has to do. The power is trumped by the duty of the trustee to exercise reasonable care and skill and caution when deciding whether to exercise the power and, if so, how.

Q. I think I've seen it said differently where I've seen reference to the power -- or the authority to do something does not necessarily mean that the exercise of that authority --

MR. DAVIS: Your Honor, I object. Is he testifying for the expert, or is the expert testifying?

MR. DAN SLOTCHIVER: I'm just asking a question.

MR. DAVIS: It sounds like he's giving expert testimony, Your Honor.

THE COURT: Thank you. If you could

move on, Mr. Slotchiver.

MR. DAN SLOTCHIVER: I will, Your Honor.

BY MR. DAN SLOTCHIVER:

Q. Understanding your testimony a moment ago, that, I understand, dealt with, I take it, the mental ability of the person to enjoy the benefit. Is that correct? Does that apply, in part, to the mental ability of the ward, in this case Abbie, to enjoy the benefit?

A. Well, you know, I refer to the language that appeared in the order, or the statement of opinion, I think, from the California court that -- and I would have to get the document to put the exact language on the record here, but there's a statement, a very simple statement, at the bottom of one of the pages that says that visitation -- here's the point: It expresses a strong doubt as to whether visitation by the children with Abbie would really provide any benefit at all to Abbie.

Q. How about cost? Is cost ever a consideration? Is that something a trustee should consider?

A. Cost?

Q. Yes, sir.

A. Always. The trustee, a trustee, is only authorized to pay out of the trust, to pay expenses that have been -- that are reasonable.

Q. So there might be something --

A. And it's reasonable not only in the amount, but it's reasonable in the -- as our statute says, certainly the restatement, in the prospects of success. In other words, it says clearly that -- and I think it's in the comment on our code, that a trustee has to decide and has to go through the process of deciding what is the probability of success here. I can't be -- I can't be just -- a prudent trustee, a prudent person, would say: I can't be spending this money month after month after month on something that objectively, which is the standard, objectively doesn't appear to be very likely to be successful.

Q. Mr. Walker, you mentioned month after month after month, and that brings me to the next question. Is the process a one-time deal, if it's a decision, you make the decision once, and you never look back at it?

A. I think that a prudent trustee -- and one of the things that I noticed early on in

looking at this is -- and it is perhaps something that bothered counsel for the trustees way down the road much later is the -- a prudent person -- and I'll get to this point of how I see myself dealing with it, albeit in a corporate trustee environment, but we used to have a committee that met. And we had a long table. And I was the chairman of that committee from March of 1971 until February of 1994, and we met at least monthly, and issues -- I can guarantee you that if this case -- if this case were being administered by us, it would have been in front of that committee, okay, and we would have wrestled with a lot of this, because of what we were aware of, what was already coming out. And would we have turned our back on Dr. Mamelak? No. We would have wanted to know what Dr. Mamelak was really trying to say to us, and that would be one of the considerations that we would use in making decisions.

Now, with regard to the visitation specifically, it's a question not of what the trustee subjectively believes or hopes for or wants. That's not the test. A trustee shall administer a trust as a prudent person does or

would. The standard is the prudent person in the shoes of the trustee. As the comments say, it is equivalent to the reasonable person in tort law, which we're all familiar with if we've ever had an accident out there on the highway. It is an objective standard. It is not what the trustee personally, subjectively wants. That's fine for the parent, but not the trustee.

Q. Mr. Walker, there's been some -- I will ask you: Are you familiar with language within the trust document that talks about the word solely?

A. Yes.

Q. Can you please, from a trustee perspective, tell me your understanding, in your discretion, what the word solely would mean in this particular matter?

A. It has to be read in conjunction with the entire document. It must be read in conjunction with the purpose of the trust, which certainly has the state in mind as a potential -- if there are any assets there after Abbie dies, whenever Abbie dies, this trust will provide some reimbursement, and ultimately, of course, Abbie's children, and you've got to read it in that

context. In fact, you've got to read it in the context that the trust repeatedly says of Abbie, primary beneficiary. It is only when you get to the matter of powers that the solely comes up. Well, there may be one other place that it ties into.

But during Abbie's lifetime, Abbie is the primary beneficiary, but during her lifetime in the administration of the trust, she is the -- will be the one who would benefit solely during her lifetime, but she is not the sole beneficiary. It's different. In fact, if you look at the prefatory language to the powers, it says to carry out the purposes of the trust, purposes of the trust, and subject to any limitations elsewhere in the instrument, the trustee is vested with the following powers. And I believe it is maybe the last power. In the administration and management of the trust, including, without limitation, so forth, the trustee shall consider solely the interest of the beneficiary.

I interpret that -- even with all of these qualifiers about the purposes for the trust and other provisions of the trust and limitations and so forth, what this is really referring to is

in the day-to-day administration of the trust while Abbie lives. While Abbie lives.

Now, there's another provision in here somewhere, I think -- I'm not sure, I'd have to review it a little more closely, but I think that it does -- and maybe this is where I was thinking about. It does say -- it probably does speak to the question of just exactly how much discretion the trustee can have to pay expenses of others, other than what would really be like the renovation expenses at the Cohens' home for Abbie's care.

During her lifetime, she -- I mean, the reimbursement to the state, any leftover at the end of the trail that go to Abbie's children, that's all after her death. Clearly, it's in there. I mean, it speaks for itself. They are beneficiaries of the trust. They're just not beneficiaries during Abbie's lifetime.

Q. Thank you, sir. As a trustee, is there any separate prudence that must be made if you're going to hire a family member of the ward? Are you familiar with the issue that's come up in this case?

A. A prudent trustee, in my reasoned

opinion, would be very mindful of the requirements and obligations of a trustee, the requirements, the duties of loyalty, which means no self-dealing, no conflicts of interest.

A careful reading of our statutes here, which involve the duties and powers of trustees, tell us a trustee who has acquainted herself or himself, as they have a duty to do, acquainted himself with that duty, is that when you arrange for a service like this with a child, Jeffrey, you've stepped into a potential self-dealing conflict of interest situation.

Now, what a prudent trustee, in my opinion, would do, recognizing that, would approach the court and would seek to get the -- either get the court's approval or don't do it.

As I understand the statute is if it turns out to be fair and necessary, since it is the child and not the trustee herself/himself, that the taint or the problem could be removed, but I think a prudent trustee, not having an answer to that, would up front avail himself/herself/themselves of the court. That's a pretty serious move on the part of the trustees.

Q. Having reviewed the depositions and

the testimony at trial, do you have an opinion as to whether or not the trustees violated their responsibilities and engaged in self-dealing with regard to the hiring of Jeffrey Cohen?

A. In my opinion, there's no question but that there's a violation, per se, because of the relationship, and so I guess that's the answer to your question.

Q. And do you have an opinion as to whether the Cohens breached their duty as trustees by spending a considerable amount of funds -- I know you haven't calculated funds, to my understanding, but by spending a considerable amount of funds in the litigation in California over the issue of visitation?

A. Yes, I have developed an opinion on that. I, of course, have already spoken to this subject here today in my testimony earlier. I find no -- I find no record -- no evidence on the record that Dr. and Mrs. Cohen or either of them individually, independently, made timely efforts, reasonable good faith efforts, to explore objectively the question of whether the -- that Abbie could get any benefits from the visitation by the children. The court expressed itself --

MR. DAVIS: Your Honor, I object. Is he opining as to whether Abbie gets a benefit from visitation? He's certainly not qualified to do that.

MR. DAN SLOTCHIVER: That's not what he opined to, Your Honor.

THE COURT: I don't believe he said that.

MR. DAVIS: Ask the question again. I'm also wondering if what he's asking is beyond what he's pled in his pleadings, Your Honor.

MR. DAN SLOTCHIVER: It is not, Your Honor.

THE WITNESS: I can't understand what counsel's saying, so either speak up, please, sir, or repeat it for me.

MR. DAN SLOTCHIVER: Well, I'll move on, if I may, Your Honor.

THE COURT: Yes, sir.

BY MR. DAN SLOTCHIVER:

Q. Assuming, hypothetically, that there was some testimony to support some amount of prudence as to some benefit, some benefit that Abbie would receive --

A. On the visitation?

Q. -- on the visitation, would the costs incurred still be an issue?

A. Yes, absolutely.

Q. Are there any other opinions that you can offer or you're here to offer today that we have not discussed? I know we've discussed a lot.

A. Well, we've been from one to the next. As I say, my -- as I said earlier, my purpose, the reason I was called to testify today, was to express my opinion as an expert, as somebody that's been engaged in this business of being a trustee for such a long time, to basically testify as to what a prudent person serving in these positions, either of these positions, would have done or not done, and I think that I have covered most of what I wanted to say.

One thing that I did plan to say, Your Honor, is that I have been asked many times by either co-trustees that we've worked with as the corporate trustee, and we've had many situations where we've had individual co-trustees, and I always told them that they needed to not only try to get an attorney who could at least talk with them about -- help acquaint them with their duties, but they would be well advised to get a

copy of the South Carolina statutes at that time on trustees' duties and powers and also get a copy of the volume of the restatement that deals with duties and powers of trustees. In my opinion, these two documents, these two publications, are extremely helpful to have at your fingertips, and if you don't understand what you're reading, then get back to your attorney.

My point in all of this is that since January 1st, 2006, we've had the South Carolina trust code, and Section or Part 8 of that code, which I was instrumental in working on when we had our bar committee who dealt with the whole trust code, as Your Honor remembers, I was responsible for the section that dealt with duties and powers of trustees. It's an excellent, excellent road map for any trustee to have to help that trustee discharge that duty of acquainting herself or himself with those duties.

Ignorance of these duties is absolutely no defense, clear, and advice of counsel -- I want to make sure that I go on the record as saying I read in the transcript that there were comments about trustee not having made the decisions, all of them, or not having made

them alone. Make no mistake about it, unless the trustee has effectively delegated away the duties of trustee, the ultimate decisions are the trustee's, and the advice of counsel merely assist the trustee in coming to whatever decision the trustee decides to come to.

That's important to remember, because going out and obtaining advice of counsel really is a prudent thing to do, but what you do with that advice, how -- again, whether you follow it and how you follow it and how much you follow it, that all is subject to reasonable care, skill, and caution as you are deciding, as trustee, what to do with that advice you got.

Q. So even if you follow the advice of counsel, you're not necessarily shielded?

A. You are not. You are not shielded. Now, you may have a good strong argument against counsel, but that's a whole 'nother ball of wax.

Q. Are all of the opinions that you have given today, are they to a reasonable degree of professional certainty?

A. Yes, yes.

Q. Thank you, sir.

A. I would say that -- to just kind of

summarize here, I think it's come through, I hope it's come through, that my assessment as an expert, with the experience I've had and so forth, I just see two very busy people, very, very involved in the care of their terribly, terribly injured daughter, having taken on and accepted the trusteeship, and with no -- I mean, there's no malintent or evil or anything. They just -- in my impression, my opinion, they just never got -- they never got it. They never realized what they had and what being a trustee was all about.

Q. In your experience, I know you've had 30-some-odd years, would it be fair to say that you've overseen -- or interacted is perhaps a better word -- with thousands of trusts?

A. Over my years of experience, I couldn't tell you how many, but there are thousands of trusts that were administered under my watch, and many of them, when problems were arising or tough decisions had to be made, came to that table that I just told you about that I was sitting at the end of as chairman.

Q. In that capacity, in your interaction capacity, whether as an expert or in your trust capacity at the bank, have you seen -- would it be

your opinion that the abuses that you've testified to in this case are more than not, in other words, you've seen more here, and are they clearer here?

A. Well, I'd like to try to answer that this way, and I don't have to say it in a whole lot of words. I mean, I've already said it.

MR. DAVIS: Your Honor, I object.

THE WITNESS: Almost every --

MR. DAVIS: I object, sir.

Is he going to recite what happened in all of his thousands of cases? Are we saying as an expert, he believes they have not acted prudently? I mean, he's asked him a large question. He said: Out of the thousands and thousands of trusts that you've administered or you've seen violations of a duty, how is this? I mean, I'm not exactly sure. That's kind of broad, Your Honor. I'm not sure if that's a fair question or a fair response.

THE COURT: I'm going to let him answer it, and you can go over that on your cross, Mr. Davis.

MR. DAN SLOTCHIVER: Coming up very shortly.

BY MR. DAN SLOTCHIVER:

Q. If you can answer the question.

A. What was the question?

Q. In the thousands of trusts that you've interacted with over your career, either as a trustee or as an expert, would you classify this as more clearly abusive or abused than most or less than most or somewhere in the middle, the actions that you said you were going to answer it --

A. The way I started out to try to answer it is that if you look at the duties of a trustee, the responsibilities that I've tried to point out here that, in my opinion, a prudent person, which is the standard, would have done or not done, there are one right after the other where the prudent person would have done differently or would not have done that was done, and so the answer to your question is that there are not many. There can't be many that would be -- would have more shortfalls or more examples of the actual trustees not meeting the standard, or standards.

Q. Thank you, Mr. Walker. If you'll answer any questions that other counsel has.

A. Be glad to.

CROSS-EXAMINATION

BY MR. DAVIS:

Q. I hazard to say good evening, Mr. Walker.

A. Good evening. You folks have been down here a lot of evenings, haven't you?

Q. I know. I was going to say good afternoon, but it is after 5:00. Great goodness.

First of all, I want to thank you. I'm a trust guy as well, an accounting guy, so I sort of smelled you when you came in, I recognized it, I'm a familiar mindset, so I appreciate your contributions.

I think that Mr. Slotchiver said 30-something years. It seems like this is like 50-something years. It's 54? Did I calculate that right?

A. Well, I mean, I guess it depends on when you get started. I know that I have already been noted as one of the Nifty Fifty here in South Carolina and also in Virginia.

Q. Well, I do -- I'm not being -- I'm not saying it for any other reason than I mean it, but thank you for your contributions to the trust code. We needed some help here.

A. Thank you.

Q. I want to go back to -- I've got a number of things, and I also will ask yours and the court's indulgence.

MR. DAVIS: As everyone knows, we have not had an opportunity to prepare any questions for him. We did not know if he was coming or haven't had a chance to depose him, so we're going to do our best to piece this together, so I would certainly beg the court's indulgence in that regard.

BY MR. DAVIS:

Q. Mr. Walker, you really don't work a lot with d4A trusts, right?

A. I'm sorry? Can you get that -- I don't what?

Q. You really don't work with d4A trusts, do you?

A. With special need --

Q. With d4A trusts.

A. I'm having trouble understanding you.

Q. D4A.

A. Well, you're asking me the terminology that the special needs trust comes under? Are you trying to trick me?

Q. Are you familiar -- I'm trying to -- I'm not trying to trick you. I'm trying to expose your lack of experience with regard to special needs trusts and how they're different than the normal trusts that you've worked with for all these 50 years or so.

A. I don't see them as very different at all, Counsel. As a matter of fact, I don't see much difference in them whatsoever, except for the fact that the purpose is unusually -- and maybe you could share with me some of your experience with how well you set up the purpose of the trusts that you draft, but they are -- the purpose, or purposes, the intent and the purpose, is something that is very clearly drawn, and I understand why, and I think I've tried to make -- I've tried to speak to why I think that's so important here.

But in terms of what the trustees are responsible for and what their duties are, there's nothing new under the sun here. If you want to take me through some litany of what you think are different and let me comment on them, I'd be glad to. What is so different?

Q. That was my question to you. I've been doing them since --

A. I don't see any difference, other than the fact that these particular trusts have a genesis, have a reason for being, that is unique.

Q. And so it is different than a regular trust?

A. Well, I mean, in terms of its reason for being, why they come into existence.

Q. Have you reviewed the statute regarding special needs trusts and the --

A. Yes. I pulled out the federal statute, and I pulled out the California statute, and I pulled out what I could find in South Carolina, and I repeat, there is nothing new under the sun when it comes to the duties of the trustee.

Q. What did you review as far as the statutes for d4A trusts?

A. I don't remember exactly. I pulled up what I could find that was under the federal law. I pulled up what I could find under California. And I didn't bring them with me, and I don't really know what the sites are.

Q. So basically, you're saying a normal trust, say a QTIP trust, is the same thing as a special needs trust? Is that what you're saying?

A. Insofar as the duties of the trustee to administer the trust in good faith with regard to or in accordance with the purposes in terms of the trust, no different.
Q. No different?
A. Loyalty, no difference. Prudence, no difference.
Q. Duties and powers, no difference?
A. Duties and powers are set out here. There may be a power here or a power there, whatever, but they all take the back seat to the duties of reasonable care, skill, and caution. I don't know what you're getting at, Counselor. I've answered your question. There isn't that much difference.
Q. No difference between that and, say, a credit shelter trust that provides part for a spouse during her life, and then when the spouse dies, it goes on to --
A. Distributional requirements. I mean, there could be some differences on when the distributions come or how discretion -- on standards for discretion, yeah.
Q. Like obligations of a trustee to look after the different beneficiaries.

A. Look, let me put it to you this way: I've looked at this, and if I was still at the bank, and I was still sitting at the end of that table, we'd administer that special needs trust, wouldn't be anything to it, just like -- we would just take into account the particular circumstances of that trust, just as we would in the case of a QTIP trust versus a credit shelter trust or some trust that had generation skipping.
Q. And treat the beneficiaries just the same?
A. I'm sorry. The what beneficiaries?
Q. And treat the beneficiaries just the same. Is that what you're saying?
A. I don't know what you mean by that. Explain yourself, Counsel.
Q. Look after the interests of the beneficiaries just like you would in any trust.
A. Well, as they're provided for in the trust, absolutely.
Q. And you testified earlier that the beneficiaries here all -- and I think you emphasized the word all -- all the beneficiaries have to be looked after?
A. They have to be dealt with fairly in

accordance -- you understand the duty of impartiality, Counsel.
Q. I certainly do.
A. Yeah. And I'm saying that the duty of impartiality applies to this special needs trust in the context of the special needs trust, just as it does in any of these other trusts you're talking about. Now, if you're asking me whether a special needs trust is verbatim a QTIP trust, I'd say no.
Q. Tell me about how -- say, for instance, you've got a trust, a credit shelter trust or a QTIP trust, and you had to balance --
MR. DAN SLOTCHIVER: Your Honor, I think he --
MR. DAVIS: This is very important.
MR. DAN SLOTCHIVER: May I object? Your Honor, I think he's covered this territory. He has asked about the differences. The witness has testified repeatedly to the same answer over and over, and he can keep on throwing different examples. I think we're going to keep on getting the same answer. I would ask that we move along.
THE COURT: I'm going to give him a little bit of latitude.

MR. DAN SLOTCHIVER: Thank you, Judge.
BY MR. DAVIS:
Q. Can you explain to the court how do you handle the balancing act with a QTIP trust or a credit shelter trust between the primary beneficiaries and the contingent beneficiaries? How would you handle that balancing act?
A. Counsel, what does that have to do -- respectfully, what does that have to do with what you're trying to learn from me?
Q. I'll be happy to --
A. Are you questioning my ability?
Q. Yes, I am, with regard to d4A trusts, absolutely.
A. Then ask me about the QTIP. I mean, ask me about the special needs.
Q. Well, sir, that's what I'm attempting to do. I'm attempting to do that.
A. Well, I would appreciate it if you would stick to the subject. I mean, what are you going to do, go off -- the next thing you know, you're going to be talking to me about generation skipping.
Q. Would you like to?
MR. DAVIS: Your Honor, I would ask

that you instruct the witness to just answer the questions.

THE COURT: Sir, if you could answer counsel's question.

MR. DAN SLOTCHIVER: And Your Honor, I would ask that you ask counsel to refrain from being argumentative.

MR. DAVIS: I'm certainly not intending to be argumentative, Your Honor. Actually, the witness, I believe, is the one being argumentative.

THE COURT: Thank you.

BY MR. DAVIS:

Q. Please explain -- there's two -- there's a different balancing act between primary beneficiary and contingent beneficiary, and this is a critical part of this case, and the balancing act between a primary beneficiary and contingent beneficiaries.

Can you explain how, in your corporate setting as a corporate trustee, you handle the balancing act between a primary beneficiary and contingent beneficiaries?

A. Generally?

Q. You're the expert.

MR. DAN SLOTCHIVER: Your Honor, he has not been called as -- he has not been called as an expert to talk about the difference between these two types of trusts. He has been called as an expert to talk about trust administration.

THE COURT: Which I think goes directly to this question.

THE WITNESS: Ask your question again, please, Counsel.

BY MR. DAVIS:

Q. Yes, sir. Please describe for the court the mechanics of the balancing act as trustee you go through when you balance the interest of a primary beneficiary versus the interest of a contingent beneficiary.

MR. DAN SLOTCHIVER: Your Honor, I do believe he's hitting on the difference between distribution rights and trustee responsibilities.

MR. DAVIS: Your Honor, I think you're well aware of what I'm doing. There's a difference in a d4A trust, and he's obviously exhibited that he's not aware of the differences between the balancing act between primary beneficiaries and contingent beneficiaries, and I think that is very critical to his credibility

with regard to a d4A special needs trust, based on the language in the trust, and that is what I'm establishing. I believe I've clearly established that, Your Honor.

THE COURT: I'll allow it.

THE WITNESS: Counsel, I'm going to answer your question this way: I'm going to look to the special needs trust, okay, and I'm going to say to you what I said earlier. During the lifetime of Abbie, there are no benefits that flow, no distributions that are to be made, to the estate or to the children of Abbie.

During the administration of the trust, good faith adherence to the purpose of the trust is required of the trustee, and therefore, the trustee must be very mindful of what gets paid out of that trust for anything other than what the trustee, in the exercise of reasonable care, skill, and caution, that is to say, in the decision-making process before the distribution decision is made, the protection of those assets that remain in that spendthrift trust must be protected. The distributions, the discretionary distributions, are subject to the same sort of -- the reasonable care, skill, and caution exercise

that must be made on any discretionary distributions.

Now, the balancing of the interest I would say to you is -- let's move into that a bit. I would have expected to see in this record a definite set of records, a definite portion of the records, that would deal with how the funds were invested and managed. I found none, none that really discharged the duty of the trustee to invest and manage the trust assets as a prudent investor would.

So I'm answering your question. We would concern ourselves mightily with how to prudently invest those assets so as to protect not only the interest of the current beneficiary during her lifetime, Abbie, but also to protect those remainder interests, to the extent that they deserve protection, after Abbie's death.

BY MR. DAVIS:

Q. So there should be a certain level of the deference given to the remainder of beneficiaries. You need to protect -- is what you're saying you need to protect some corpus and trust assets for the remainder beneficiaries? That would be a fair and reasonable --

A. Well, the duty of impartiality, Counsel, says you have to be not equal, but fair.
Q. Fair to the remainder beneficiaries?
A. Yeah, uh-huh.
Q. Are you aware that this trust does not operate that way, that this special needs trust was not set up to operate that way? Are you aware of that?
A. That's not what I understand from the document.
Q. We'll go on to that. Before we do that, I would like to ask you, what all have you reviewed before you came in here today to testify with regard to this case?
A. What have I reviewed?
Q. What have you reviewed, sir?
A. I've reviewed most of the deposition transcripts. I've reviewed the order from the court in California. I reviewed the document -- the one-page document that announced or proclaimed the dissolution of the marriage. I have reviewed the petitions that have been filed here in this court. I reviewed the temporary restraining order transcript, the entire transcript. I've reviewed the documents that were sent from this court to

Mr. Slotchiver. I've reviewed the -- I have read the streaming of the testimony in the court. I've also read hard copy of that copy since Day 1 of this trial. I have reviewed the South Carolina Trust Code, particularly with regard to the duties and powers of the trustee, and I have reviewed certain sections of a restatement of trust, which I referred to here today.
I don't know that I've covered everything, but most everything that I've covered, except the code and the restatement, are all in the record. I've reviewed everything that Mr. Slotchiver has sent me.
Q. Have you reviewed Lisa Meyer's affidavit with the attachments that's been admitted in the record here? Do you know who Lisa Meyer is?
A. She's the attorney in California.
Q. She did a very large declaration -- we filed it with this court -- and it went into great detail about the action in California and the different parts that went on in that action. Have you reviewed that?
A. I don't -- I don't recall that, an affidavit.

Q. That's called a declaration. I guess it's the same thing. If that declaration pointed out that the costs in California -- well, first of all, that the marital action in California was actually suggested by Dan Dorn, to start with, and that the costs in California were actually driven higher because of Dan Dorn, would that influence your opinion at all?
A. Well, I'd want to know why? How? What did she say about why?
Q. In great detail, sir, and we've also --
A. Well, I haven't read it, so either get it for me and let me read it so I can speak to it or read it to me.
Q. That would have some influence on your opinions?
A. I don't know until I've read it. How can I answer it until I've read it?
Q. That's fair. I agree. I understand. I believe you testified that you've read Paragraph 17 of the --
MR. DAVIS: We've got the declaration here. We are all on sort of the fast-track, the Disney fast-track, trying to speed this case

along. I understand, Your Honor.
THE COURT: I'm happy to take a few minutes.
MR. DAVIS: If you would like to read that declaration of Lisa Meyer that we have, we would be more than happy to provide it to you. It is somewhat large.
THE COURT: Shall we take ten minutes?
THE WITNESS: I can tell you, Counsel, that I have not read this, okay. This is one thing that I did not review. Now, I'm looking at the declaration itself, and I'm looking further. I haven't seen this, so in order to respond at all, I will have to -- I will have to read it.
BY MR. DAVIS:
Q. We can work off of some assumptions, or you can have an opportunity to review it. Assuming that that provides the information I told you, that Dan Dorn actually suggested that the dissolution action be commenced, and that he actually, through his attorney, did things to drive the cost up and to keep it from being resolved. There's also a claim for child support, as referenced in there, and the various other documents that would have disqualified Abbie from

Medicaid benefits.
MR. DAN SLOTCHIVER: Your Honor, I would object to the extent that he's representing these facts to the truth of the matter asserted, as opposed to the reality, which was it was an affidavit submitted by the Cohens' attorney.
THE COURT: Yes, sir.
MR. DAVIS: No problem, Your Honor. I'll be happy to do whatever you instruct me to do. Do you want to give him time? I mean, the information's in the record, on the record.
THE COURT: If you're going to question him about it, I would certainly recommend that we give him an opportunity to review it.
MR. DAVIS: Yes, Your Honor. He was in -- yes, I'll be happy to. He apparently was indicating to me that he may not want to take the time to read it, but I'll be --
THE WITNESS: No, no. I did not say one word, Counsel. I'm ready to stay here all night.
BY MR. DAVIS:
Q. No problem.
A. I haven't been through what you folks have been through. I got four hours sleep last

night, but I'm ready to stay as long as you want me to stay. Now, I don't know how to make it any clearer.
Q. That's perfectly clear. Our question to you is: Do you want to take some time to review that declaration?
A. If you want to ask me any questions about this at all, I must read it.
Q. That's fine.
THE COURT: We'll take about ten minutes, and if you need more than that, you can let us know. Thank you.
(A recess transpired from 5:23 PM to 5:46 PM.)
THE COURT: We're back on the record. Mr. Davis?
MR. DAVIS: May it please the court?
THE COURT: Certainly.
BY MR. DAVIS:
Q. Mr. Walker, have you had the opportunity to review the declaration of Lisa Meyer?
A. I have read it.
Q. Did you briefly familiarize yourself with the exhibits attached to the declaration?

A. Well, let me make sure. I see a declaration, which I've read. Then there's a follow-up detailed declaration. That's what I read.
MR. DAVIS: May I approach, Your Honor?
THE COURT: Yes, sir.
THE WITNESS: Are you talking about anything beyond that?
BY MR. DAVIS:
Q. That's correct. This is the declaration, and these are the supporting exhibits that go along with it.
A. I'm sorry, but I didn't know that all of these were supporting.
Q. Well, I don't know that it's necessary to read all of them, though.
A. May I ask a question, Counsel, just for clarification?
Q. Sure.
A. I've read it. I have not been through all these supporting. As I just said, I didn't realize they were all there to be reviewed. I'm afraid we'd be here for a while, which is fine with me, but I certainly haven't been through all

of these.
But is this a declaration -- just to clarify, is this a declaration that says it's in support of petitioner's ex parte application requesting the relief set forth in Exhibits 4 and 9, which I have not looked at -- well, I guess they're up here. I'm trying to get this -- I'm trying to get this in context.
Q. I was just advised that it would probably help you to start on Page 4.
A. I mean, I've read all of this, okay.
Q. So starting on Page 4, that declaration there. This is -- I don't think this is --
A. Well, I've read all of this. I've read all of this.
Q. That would be enough to answer the questions that I've got, and if we need to refer to those documents --
A. Not heavily, but there's a good bit of this, or some of it, anyway, that's been like that, but anyway, you go ahead, and let me just -- what I was trying to figure out for myself is whether this is part of a pending proceeding.
Q. Yeah. I can explain that.

A. Okay.
Q. As you know, there was a California marital action that went on for a long time, and it has been completely resolved, and we got a final order of judgment.
Have you reviewed the final order of judgment and the statement of case?
A. Shaller?
Q. From Shaller, Judge Shaller.
A. Yeah.
Q. What that declaration does is indicate the litigious nature of Dan Dorn through his attorney, Vicki Greene.
MR. DAN SLOTCHIVER: Your Honor, I object. He is mischaracterizing a statement. He is putting into it the words he wants. He can ask him to read it so he can ask him what it means to him, he can ask him what it says, but I do not believe he can testify to this.
THE COURT: Yes, sir.
MR. DAVIS: I wasn't intending to testify. He actually asked me --
MR. DAN SLOTCHIVER: Well, your Honor, I believe it's an objectionable misconduct. It's mischaracterizing what the document states.

MR. DAVIS: Sure, Your Honor. Whatever you'd like for me to do. Would you like for him to direct the question to the court, instead of direct the question to me?
THE COURT: No, sir. He can direct the question to you, but he asked in what context this declaration, I believe, was submitted.
MR. DAVIS: In the context of this South Carolina action, to give us information about the California action.
THE WITNESS: So this does not -- is not in the action that Judge Shaller --
BY MR. DAVIS:
Q. Right. That's just our action. That was prepared for this action, to indicate information about the California action.
A. Even though the dates precede the dates of Shaller's --
Q. Yes.
A. Judge Shaller's statement of opinion?
Q. Yes, yes, yes. That's a good question, but yes, you're correct.
Assuming that the information you reviewed there is correct and is accurate, and assuming, if you can for a moment, that -- well, actually, you don't have to assume.

MR. DAVIS: Your Honor, we've had testimony from Dr. Cohen that Dan Dorn contributed, through Vicki Greene, to the escalation of fees. We've got testimony in the record, and I believe those documents support that. To the extent they do, he can rely on those.
MR. DAN SLOTCHIVER: Your Honor, I object. The testimony of the Cohens does not mean that it is necessarily the law of the land or that it's credible. He said you can assume, and then he goes no, don't assume. We have testimony. He may have testimony, but it doesn't mean that it is credible testimony or correct testimony or reliable testimony.
THE COURT: Sustained.
MR. DAVIS: I didn't say -- I said testimony, and we all agree it's testimony, but okay.
BY MR. DAVIS:
Q. So Mr. Slotchiver, Dan Slotchiver, asked you to come in here and provide your opinion, but did not provide you with that important document. Is that correct?

MR. DAN SLOTCHIVER: Your Honor, once again, I object. I didn't provide him with that document. It's Mr. Davis's opinion that it's an important document in this case. There's no legal conclusion that it's an important document in this case.
THE COURT: Thank you. So noted.
THE WITNESS: I have not read this document before today.
BY MR. DAVIS:
Q. Don't you think it would be important to read that document and have that information before you actually made a formal opinion?
A. As I read it, it is a statement of the attorney for the trustees, for Dr. and Mrs. Cohen. That's what I understand this long thing to be.
Q. Is it fair to say, from your review of that, that that gives a depiction of what happened in California and why the costs were as high as they were?
A. It says what it says, but I have no way of knowing whether this is the end-all and the be-all. I mean, there's no reply to this.
Q. But you mentioned that the payment of fees was not prudent solely because of the amount.

Is that what you testified to?
A. I said that I could find no evidence of reasonable care, skill, and caution by the trustees in the process of deciding whether to pay a particular fee or not, and if to pay, how much to pay. It is the absence of the prudence which is in the process of making the decision.
Q. I recall that. So you're saying there was essentially no due diligence made whatsoever and nothing done on their part before they undertook this action in California. Is that what you're saying?
A. I'm saying that if I'm following your question, and I'm trying hard to, bills came in for attorneys' fees, and they were paid, and they were paid, as I understand it from the record, on the position or the assumption or whatever you want to call it by Mrs. Cohen -- by Dr. and Mrs. Cohen -- that this language in the earlier order from this court, that that was for all time, that that was a blanket approval, prior approval, before the bills were ever submitted.
Now, I don't -- it's my opinion that a prudent trustee would not have continued to rely upon that bill after bill after bill, that this

was a new decision each time the bill came in, and there was absolutely no consideration of due diligence, as you referred to it, or what would be prudent or what was the exercise of care, skill, and caution that was required. It was just simply -- and by Mrs. Cohen's own testimony, she just believed, she accepted, she thought she had that authority, and I'm saying subjectively that's what she did, but she fell to the standard of what a prudent person would have done.
Q. And I've been to law school and accounting school and all that kind of stuff, and I understand a prudent --
A. It ain't stuff. I mean, it's the law.
Q. It's the law, but it's troublesome, it's troublesome, and I want to get your opinion on this. You say the prudent man, the reasonable man?
A. Huh-uh. I said --
Q. Reasonable person.
A. I said prudent person. Our statute says a trustee shall administer the trust as a prudent person would acting as trustee in those circumstances.
Q. And can you explain a little further

what, exactly, a prudent person is? Who is a prudent person? You said objectivity.
A. A prudent person is a person, by the language in the statute and the restatement, who exercises reasonable care, skill, and caution. Reasonable care, skill, and caution. And that's why I'm here, I think. All I can do is express an opinion, and I'm giving you my opinion.
Q. And I'm not -- thank you. When you were in your committee, when you were chairing your committee and sitting at the end of that long table, you had to come up with what you believed to be reasonable, correct?
A. Many times.
Q. But you testified that it was an objective standard and not subjective?
A. We applied objective standards, that's right. That's what we had to do.
Q. Apparently, you were trustee, and you were determining whether it was reasonable or not?
A. Because we took into consideration all relevant circumstances that applied to the situation. That's what a prudent person does. You better believe we were prudent.
Q. Aren't you aware we've got testimony

that in this case, the Cohens did the same thing?
MR. DAN SLOTCHIVER: Objection, Your Honor.
THE WITNESS: I didn't find any evidence of that. They didn't sit down and debate it or consider it. Don't you understand from their testimony, they said, Mrs. Cohen: I didn't have to go back and consider it or regard it because I had standing approval, $115,000 bill.
BY MR. DAVIS:
Q. Let's take a look at the letter of these orders, Mr. Walker.
A. I'm sorry. What letter?
Q. We've got Plaintiff's 101 and Plaintiff's 87.
THE COURT: Can you state for the record what those are, Mr. Davis?
MR. DAVIS: Yes, Your Honor. Plaintiff's Exhibit 87 is the order of transfer of jurisdiction, and Plaintiff's 101 is the California letters of conservatorship.
THE COURT: Thank you.
THE WITNESS: I'm familiar with this.
BY MR. DAVIS:
Q. Let me point to the section that I'm

talking about, and if I get too close, let me know. I'll be happy to step back. I'm not trying to intimidate you, I promise.

A. You're not.

Q. The conservators are granted the independent power, et cetera, to compromise or settle any dissolution actions.

Now, in this case, there's been a lot of discussion about a bifurcation of a marriage and a dissolution, and apparently, Dan Dorn's position, I believe, is that the authority ended when the bifurcation took place and the marriage was dissolved or the marital union was severed, but yet we've got language from California that says: Compromise or settle any dissolution action between Dan Dorn and Abbie Dorn, and it makes it clear any.

And then we go to the -- that's from California, excuse me. We go to the South Carolina order of transfer of jurisdiction, and this order actually references that same document there in Paragraph 7 that says -- references --

MR. DAN SLOTCHIVER: Your Honor, is he testifying right now or asking a question? I'm not sure.

THE COURT: I'm assuming he's going to get to a question very soon.

MR. DAVIS: Absolutely. I'm just laying a foundation. I think it's obvious what I'm doing, Your Honor.

MR. DAN SLOTCHIVER: I wasn't sure.

BY MR. DAVIS:

Q. This order of transfer of jurisdiction, in Paragraph 7, references this document here, so it incorporates it. And you, being a lawyer, are well aware, and an expert, are well aware how you incorporate information into an order.

MR. DAN SLOTCHIVER: Your Honor, once again, I think he's advising him as to what the documents do, what they say, as opposed to asking a question.

MR. DAVIS: He's an expert. He can speak on his own, Your Honor.

MR. DAN SLOTCHIVER: But he's saying to him as a given, this is what it does, this is what it says.

THE COURT: Mr. Davis, if you could move on, please.

MR. DAVIS: And I would ask for a

little room, him being sworn as an expert and an attorney. He can disagree with me if he wants to. He's certainly qualified and capable of doing that, much more experience than I've got, so I believe he can take care of himself, Your Honor.

THE WITNESS: This is dated --

BY MR. DAVIS:

Q. This was dated after this, yes. We can look at the dates if you'd like to.

A. April the 24th, '08, the actual date it was filed. So all of these are attachments. I'm trying to deal with your question about incorporation. This says compromise and settle any dissolution action. That's, I think, a word of art in California, but in any event, let's see what this says. The dissolution of marriage --

Now, where are we? What is it you're asking me about here?

Q. I was just saying where it references, it says: Pursuant to the California court order, and the court order that it referenced here is this one here, is all I was saying. And that's not the actual main point I want to get to, but I want to just indicate that to you.

A. Why don't you go ahead -- I'm not

really quite sure, but why don't you go ahead and get to what you're asking me.

Q. Okay. Let's get to the question.

A. And I reserve the right to come back and wrestle with that a little bit further if I have to.

Q. I understand. Paragraph 9 has been one we've talked about in great detail. It says: The sums and amounts referred to hereinabove previously paid and disbursed, and then there's some prospective language, not stuff -- not language about actions that happened in the past, but it's actually prospective, things that will happen in the future. It says: And those to be paid --

MR. DAN SLOTCHIVER: Your Honor, I disagree. Mr. Davis, at this point, is advising him as to what the language means, and I believe the witness can read it and understand it as he understands it.

THE COURT: Thank you.

Mr. Davis, if you'll maybe point out -- either read it to him or have Mr. --

MR. DAVIS: I'll ask him.

BY MR. DAVIS:

Q. Does that appear to be prospective language? The to be paid, does that appear to be prospective, or does that appear to refer to something that has already happened?

A. I read this earlier, and I must say to you that as I read it -- let me read it again here -- the sums and amounts referred to hereinabove and previously paid and disbursed and those to be paid at the conclusion of these matters, I said to myself that really doesn't make it clear whether we're talking about expenses or fees incurred at a point in time, some of which were paid and disbursed, and others to be paid at the conclusion. In other words, sometimes you can have a situation where you pay 50 percent at the front end, and when the matter is concluded, you pay the balance.

In other words, it's a perfect example of lack of clarity, which is what our statute says you go to the court to clarify when it's not really clear, and I'm saying that a prudent trustee is looking at this, trying to figure out just what the court has authorized the trustee to do with regard to items that haven't even been -- services that haven't even been performed.

Q. This part here also, it says: To the conclusion of these matters. What was matters referring to? Is it fair to say that matters was referring to Paragraph 7, which we read earlier? Is it fair to say that matters included Paragraph 7 in the same order?

A. Well, let me read seven again. When I read that, I said that's got to have a finite point. There's no way that -- now, you see, it's not so much what the court said that you're now looking at later and trying to decide. You say: Judge, what did you mean? Clarify this for me, because quite frankly, I'm not comfortable paying $115,000 to a law firm, or $80,000, whatever's come in, without having -- particularly since the document says prior approval, so --

Q. Would it be prudent for --

A. So let me look at seven again. You asked me that question, and I kind of interrupted myself. Is that right here? Is this the one you're talking about?

Q. Yes, the one we read earlier.

You testified earlier that --

MR. DAN SLOTCHIVER: Your Honor, can he finish? He asked him to review the question

and then respond. If he can have an opportunity, please.

THE COURT: Let him look at that, Mr. Davis.

THE WITNESS: I mean, you know, all of this language is dissolution, and while I just said to you it's not all that clear to me one way or the other, but when they talk about dissolution, dissolution, particularly since it's bifurcated in California, it seems to me that the magic language is dissolution, and that's what the context of the court order is. You can't be talking about -- I mean, maybe it is, but if it is, I want the judge to tell me that again.

BY MR. DAVIS:

Q. Yeah. No problem. I just want to remind you that what we read here said any dissolution action, and that in California, that one of the documents in record has got -- let me see if it's in here. It's got the caption. It's got three ways that something can be captioned.

A. Other than a divorce.

Q. It's got -- and I'll just read it. I don't want to testify.

A. They seem to recognize with some

specificity different ways in which marriages can be ended, and this would be -- this is a dissolution, not a divorce in California.

Q. They don't have a place for divorce.

A. I mean, I think you take that up when -- you get another form or --

Q. Look at this. They've got -- see, this was --

MR. DAN SLOTCHIVER: Your Honor, I believe this was asked and answered. Mr. Walker has testified as to his knowledge about this. He's talking about the forms and his understanding of them.

THE COURT: I'm going to let him go.

THE WITNESS: I've read this form very carefully.

BY MR. DAVIS:

Q. If you look, you'll see there's three boxes here. We've got dissolution of marriage, legal separation, and nullity of marriage, and then this was also assigned a certain case number, right?

A. Yeah.

Q. Are you aware of the fact that that case number remained the same and the case was

ongoing continuously until it was completely concluded with a judgment?

A. Well, I mean, I noticed that, but I'm also quite aware of the bifurcation process.

Q. Well, if it ended at the bifurcation, why didn't they --

MR. DAN SLOTCHIVER: Let him finish in his response, Your Honor. I believe he was still responding when he got cut off.

THE COURT: I thought he was finished.

MR. DAVIS: I thought he was finished.

THE WITNESS: I mean, my point is that this form appears to me -- I mean, I'm not a California lawyer, and I haven't gone out to California and researched this, but it appears to me that this is a form used by the California courts to deal with the marriage as it is coming apart or ending, where the marriage is dissolved or it acknowledges a legal separation or it basically -- when it says nullity of marriage, I tend to think that that's equivalent to an annulment. Now, I mean, that's just the way I read it.

Now, if you've got an old-fashioned divorce, it seems to me that form wouldn't even be

used. I mean, there's nothing about the fact that that's the only form. That just happens to be the form here because it was a dissolution. And somebody would have to speak to this with more knowledge than I about the California law and procedures, but I do say that with regard to the number, the case number --

BY MR. DAVIS:

Q. Yeah, but, I mean, that was my --

A. I mean, maybe under California law, when you bifurcate, you basically maintain the same case number. I mean, I don't know the answer to that. That's a good question.

Q. Well, that was my question. If, when it was bifurcated, that it actually ended the dissolution action, then why didn't they close that and set up a whole new file?

A. Well, I'm telling you what -- this is the way -- the only way I know how to answer this. If this all came before me or one of my guys, one of my officers, one of my department heads, one of my region heads, somebody brought that up, put it on the table, and put it in front of us, we'd say: We don't have the whole story. None of us are California lawyers. We got to get more

information here. We got to find out why is this thing -- what's happening in this -- why the case number? I mean, in other words, a prudent trustee is charged with the duties to be inquisitive.

Q. Maybe like an --

MR. DAN SLOTCHIVER: Could he finish, Your Honor?

MR. DAVIS: I thought he did.

MR. DAN SLOTCHIVER: He clearly didn't finish, Your Honor.

THE WITNESS: To be reasonably cautious, to be reasonably careful, to be -- in other words, you can't -- here's the problem trustees have: It's tough being a trustee.

BY MR. DAVIS:

Q. Amen.

A. Tough. And when you come to make a decision as a trustee, you can't make it the way you make it when you let your child drive the car. You are under a duty to stop, be careful, be reasonably careful, cautious, and be that way while you're trying to decide what to do.

Q. So you're suggesting that they should have court supervision and come back to court and have some continuing involvement with the court?

A. Oh, no, man, no. What I'm looking for is some -- a note to a file.

Now, here's what you'll find in a corporate situation. You got a committee. There will be minutes of that meeting. I was hell-on-wheels about documenting, documenting, documenting, because I knew that somewhere down the road, somebody was going to have us in a courtroom, and we were going to have to show the affirmative duty that we had, the affirmative duty to exercise care, skill, and caution in making our decisions, okay, so we would document.

But that doesn't mean that only banks document. What you should have is a prudent trustee would make a note to the file, or there might be an email to the file, or in this case, there might be an email to the co-trustee confirming what they just decided, what they just did.

Q. Thank you. Do you realize we've got testimony in the record, and you can review it and it'll speak for itself, but I will make the point that Dr. Cohen testified he did consult with Mrs. Cohen, and they did discuss things?

MR. DAN SLOTCHIVER: Objection, Your

Honor.
MR. DAVIS: I'm asking if he is aware.
MR. DAN SLOTCHIVER: It is inappropriate, I believe, to make a reference to something that is not substantiated, in an effort to see what the witness says.
MR. DAVIS: Your Honor, what I --
THE COURT: I believe he -- I'm sorry. You go ahead Mr. Davis.
MR. DAVIS: If you were going to rule in my favor, I'll just be quiet.
THE COURT: I believe he said that Dr. Cohen testified to this way.
MR. DAN SLOTCHIVER: He said: Do you believe that we have documents in the records that the testimony that Dr. Cohen said this, but I don't believe Dr. Cohen did testify. In fact, I don't want to -- I don't believe that's what the testimony shows. There were questions of Dr. Cohen. And maybe the witness knows what the testimony shows, which might be a first question, but other than that, just to ask him, I believe, is inappropriate.
MR. DAVIS: Your Honor --
THE COURT: I will allow it.

BY MR. DAVIS:
Q. I believe -- may I ask you, you've been -- you said you've been receiving the transcripts, and I believe you testified that you've been reading the transcripts?
A. I have been doing my best to read them, but I must ask -- I must make this observation, that I have not seen, I mean, in terms of looking at what I read, noted any of that sort of thing. If you can point in the --
Q. Sure. Assuming that -- well, assuming that Dr. Cohen consults with his wife about trust matters, and assuming that they discuss medical matters, and Mrs. Cohen, assume that she testified she generally defers to Dr. Cohen about medical treatment or matters for the daughter and expenditures for those types of treatments, assuming that they have those communications, wouldn't that be prudent?
A. Why would I make that assumption when there's nothing on the record that I found that supported that? I mean, I'm not going to sit here and agree with you on an assumption that I absolutely found no evidence of.
Q. Well, I would encourage you to go back

and read the transcripts, because it speaks for itself, and I'm making that assumption based on information I received in this courtroom, but you can corroborate that yourself. But hypothetically -- and I believe, of course, it to be true in testimony, but if you can assume with me for a minute that they actually did that, would that show prudence?
A. You'd have to give me a great deal more detail on the assumption. I cannot begin to opine on the question as you've asked me. I mean, what am I -- what are the details of what I'm assuming? I mean, what have they talked about? I mean, I know one place in Dr. Cohen's deposition, somebody asked him -- I guess it was Mr. Slotchiver -- something about when he communicated or how and so forth, and Dr. Cohen's answer was: Well, how many times do you speak to your wife a day? Nothing wrong with that, a husband commenting on -- particularly a busy husband and a busy wife commenting on it, but that does not smack of -- it doesn't rise to the level of two trustees sitting down with their -- consciously and deliberately with their trustee hats on, saying: Let's review this and consider

it, and let's make a decision about this trust matter.
Q. Sort of like a corporate trustee with a committee?
A. Well, but you're asking me a clever question, Counsel, but it's no different with individual trustees. They wouldn't call it a committee as we do, but believe me, two co-trustees like Dr. Cohen and Mrs. Cohen have the duty to act jointly, and the trust instrument says it.
Q. And we can move on. I believe that's been established in testimony.
One last paragraph on the order of transfer of jurisdiction regarding the continued supervision by this court. Can you read that and tell me what your understanding of that paragraph is?
A. Now, this is the one in Paragraph 15?
Q. That's 16, sir.
A. 16.
Q. This is the South Carolina --
A. You asked me to read it. Let me read it. 16. This court's acceptance of jurisdiction of the Abbie Dorn Special Needs Trust shall not