

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.

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NOV 30 2015

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

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NOV 30 2016

S.C. SUPREME COURT

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

**RECORD ON APPEAL
VOLUME III**

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1 result in continuing supervisory proceedings by
2 this court.

3 Of course, Counsel, I might comment
4 that that is the way trust law works now in many
5 states, including South Carolina, okay. You
6 don't -- the objective is to avoid the court being
7 tied up with ongoing supervisory functions. The
8 court is on call as the court is needed, okay, so
9 that's just a statement of the law.

10 Now, the management and distribution
11 (mumbling) shall proceed consistent with the terms
12 of the Abbie Dorn Special Needs Trust, free of
13 judicial intervention, but subject to the
14 jurisdiction of this court as invoked by
15 interested persons or as provided by law or by the
16 terms of this trust.

17 What I said to you on a number of
18 times today is that -- and I got the code right
19 here. We can pull it out. In the case of the
20 need for clarification, go to the court. Get the
21 benefit of the court.

22 If they had gone to the court and
23 taken this prior approval to mean -- to be more
24 seriously concerning to them as co-trustees, not
25 as parents, but co-trustees, if they had taken

1 A. No.

2 MR. DAN SLOTCHIVER: Objection, Your
3 Honor. This has gone beyond the scope of his
4 expertise.

5 THE WITNESS: Why would you ask me
6 that, Counsel, when it clearly says it's not a
7 support trust for the children?

8 BY MR. DAVIS:

9 Q. So is it fair to say that that --

10 A. You're trying to trip me up, Counsel.

11 Q. Absolutely, and you are tough.

12 A. You're trying to trick me, Counsel.

13 Q. That's my job, sir.

14 A. I read the instrument, Counsel.

15 Q. We're working this thing out So back
16 to that. You mentioned that the trustee could not
17 pay child support?

18 A. Permit me for a minute. I'm
19 looking for --

20 MR. DAN SLOTCHIVER: While he's
21 looking, Your Honor, I just object to the
22 relevancy of this question. I'm not sure how it
23 applies to his testimony as an expert in this
24 case. If you want to allow it, I understand, but
25 there's been a lot of latitude given with

1 that to the court, I would venture to say that a
2 whole lot of this would not have come up.

3 Q. You testified earlier about reliance
4 on counsel. You actually brought that up, and it
5 was in your discussion. So if the Cohens actually
6 had counsel that provided information that they
7 could rely on and said they had authority, would
8 that not be prudent?

9 A. I told -- I answered by saying to go
10 and obtain professional advice.

11 Q. And what if they did?

12 A. To seek it out, to seek it out is
13 probably prudent, but what the trustee does with
14 that advice and the degree to which the trustee
15 relies on it is subject to the duty of prudence,
16 which is the duty to exercise reasonable care,
17 skill, and caution, and my point, Counsel, is
18 there's no evidence that that was attempted, that
19 that was done.

20 Q. Let me ask you this: We've got a d4A
21 special needs trust, as we talked about. Can a
22 trustee of a d4A trust pay child support for the
23 ward's children from the trust?

24 A. No.

25 Q. They cannot?

1 reference to questions about particular trust
2 instruments and what they can and cannot do, but
3 his testimony is on the administration issue and
4 the due diligence and the prudence. That's what
5 he's testified in his opinions.

6 MR. DAVIS: Your Honor, I think it's
7 obvious --

8 MR. DAN SLOTCHIVER: The
9 cross-examination on this, while he has latitude
10 to go into it, it's irrelevant to what he's been
11 offered for.

12 THE COURT: I will allow it. Thank
13 you.

14 BY MR. DAVIS:

15 Q. So back to my question: Did you just
16 testify that it would be improper for a trustee to
17 pay for child support for the ward's children from
18 a d4A special needs trust?

19 A. Well, let me back up on that, because
20 you're talking about the support of the children,
21 not Abbie.

22 Q. The support of Abbie's children.

23 A. Yeah, okay. I will back up. I
24 thought you were asking me about support for
25 Abbie, and that's what this trust clearly says.

Page 1700 1 It is not a support trust for Abbie. 2 Now, with regard to the children, the 3 reason that it would not, in my opinion, be 4 appropriate is that there is language in here that 5 says: All payments -- this is Section C: All 6 payments made under this trust must be reasonably 7 necessary in providing for this beneficiary's 8 special needs, as defined herein. All payments. 9 Now, that can be read pretty 10 restrictive in terms of no payments whatsoever to 11 anybody, anywhere, while Abbie's alive, except 12 those reasonably necessary in providing for this 13 beneficiary's special needs. Now, that, of 14 course, is subject to the trustees getting their 15 heads together before they decide what to do about 16 those particular expenses, even for Abbie. 17 Q. Let me see if I can move us along. So 18 you're saying -- 19 A. Did that answer your question, though? 20 It limits -- it limits any payments. It limits 21 that any payments under this trust must be 22 reasonably necessary in providing for this 23 beneficiary's special needs. Now, there have been 24 payments that have been authorized out of this 25 trust for different things, and some of them may	Page 1702 1 again as to the relevancy of this line of 2 questioning. 3 THE COURT: Thank you, sir. 4 Overruled. 5 THE WITNESS: I don't understand the 6 question, really. 7 BY MR. DAVIS: 8 Q. I guess my question, the same 9 question -- 10 A. Why would I -- 11 Q. I'm trying to get a yes or no answer. 12 Should the trustees pay child support for Abbie's 13 children from the trust? Yes or no 14 A. This trust, this language, you know, 15 I'm saying that I would be -- my answer would be 16 no, unless I decided to go to the court and have 17 the court instruct me or clarify it for me. I 18 mean, my reading of this language in this 19 instrument would cause me to say no. 20 Q. Thank you. Assuming that if you went 21 against your judgment and paid, it would 22 disqualify Abbie for Medicaid? 23 A. Well, you're saying -- it's my 24 understanding of the way Medicaid works is that if 25 Medicaid became aware of that, those payments,
Page 1701 1 or may not be for the beneficiary, Abbie's special 2 needs. 3 Q. What about child support? Can the 4 trustees pay for child support for Abbie's 5 children? 6 A. If I had to deal with that question at 7 the end of the table or if I was an individual 8 trustee, I wouldn't touch it without going to the 9 court. 10 Q. So you don't know as a matter of -- as 11 an expert whether you have the latitude to pay 12 child support or not pay child support. Is that 13 what you're saying? 14 A. I didn't say that. I said because of 15 that language in this trust -- that's what I'm 16 dealing with, this trust -- I would take it to the 17 court, if I even would go that far. It's so 18 clear. 19 Q. Well, assuming that if the trustees 20 did pay child support and assuming that that would 21 disqualify Abbie, the ward, from receiving her 22 Medicaid benefits and, in essence, her Medicaid 23 insurance, should it be paid? 24 MR. DAN SLOTCHIVER: Your Honor, I 25 just want to place an objection on the record	Page 1703 1 that it would put Medicaid in jeopardy, would put 2 the trust in jeopardy as far as -- it would put 3 Abbie's Medicaid in jeopardy. 4 Q. Correct. What if somebody attacked 5 that trust and said you got to pay child support, 6 and you knew if you paid it, you would disqualify 7 the ward for Medicaid benefits and create a lot of 8 damage to her long term? 9 A. I think that that would be -- that's a 10 very -- it's an interesting question. I've 11 wrestled with it as I've reviewed this because the 12 Medicaid benefit to Abbie, it's important, and I 13 would say that if Abbie didn't have the Medicaid, 14 then the trust would be depleted that much faster. 15 And so the question, of course, is are 16 the expenses incurred to defend against an effort 17 to get the trust to pay child support, are those 18 expenses, particularly attorneys' fees, because 19 this -- you don't find trusts every day that say 20 prior approval is required for payment of 21 attorneys' fees. 22 Q. That's unusual? 23 A. Well, it may not be unusual in special 24 needs trusts. I don't know why it would be 25 something special, unless maybe California has a

1 problem with attorneys' fees, but it is -- with
 2 the language -- regardless of that, the language
 3 is in there, special prior approval, and so I
 4 would say that you would probably -- the trustee
 5 would be justified in treating this as an attack
 6 on the trust that could damage Abbie, but as is
 7 true with any expense that's being incurred to
 8 defend or to prosecute a claim, you always have to
 9 keep in front of you -- the trustee always has to
 10 keep the question of reasonable care, skill, and
 11 caution, because at some point -- and the trustee
 12 has a duty to do this, to consider it. Is it
 13 costing more? Is it more -- is it more beneficial
 14 to continue to defend or to continue to pursue
 15 visitation?

16 See, this is one of the problems that
 17 I want to make sure I get this out here. The
 18 pursuit of visitation is 180 degrees from the
 19 concern of the defense against the child support.

20 Q. Let me show you this exhibit.

21 A. And they wiped the trust out, which is
 22 absolutely against the purpose of the trust.

23 Q. Point your attention to this part
 24 here where it --

25 MR. DAN SLOCHIVER. Which exhibit,

1 A. Well, it can be a duty, it can be a
 2 duty, but a duty subject to ongoing reasonable
 3 monitoring, conscious and deliberate monitoring.

4 Q. And supervision?

5 A. Supervision.

6 Q. Well, let's go back to Paragraph --

7 A. And you don't prove that. See, that's
 8 an affirmative duty, and you don't prove that by
 9 simply saying that's what we did long after the
 10 fact, okay.

11 Q. So they've got this duty. They better
 12 jump on it, and the court -- they better go back
 13 to the court and have supervision?

14 A. You're saying jump on it. I'm saying
 15 if they -- if they pursue the question consciously
 16 and deliberately, and they do so in the exercise
 17 of reasonable care, skill, and caution, in the
 18 process of deciding whether to defend and how to
 19 defend, if all of that's done, and there's enough
 20 evidence of that to satisfy the court that the
 21 affirmative duty that I just spelled out was done,
 22 then that duty comes into play, but that duty may
 23 not last indefinitely. There must be an ongoing,
 24 conscious, deliberate monitoring, supervision, or
 25 whatever, by the trustees.

1 please?

2 MR. DAVIS: I'm sorry. This is R-10
 3 BY MR. DAVIS:

4 Q. This is where the petitioner is
 5 listed, Vicki Greene, the attorney, and the box is
 6 checked for child support. That was in reference
 7 to the attack for child support that I was talking
 8 about.

9 So if they have an attack on the
 10 trust, is it fair to say the trustees have a duty
 11 to defend that?

12 A. I think that it is -- I would accept
 13 the fact that if the analysis is consciously made
 14 that on balance, on balance, now, today, when
 15 we're making this decision today, it's reasonable
 16 for us to go forward with a defense of this. But
 17 that's something that's got to be kept in front of
 18 them. That's not something you decide today and
 19 you ride with forever. That's something you
 20 monitor and you look at, because at some point, it
 21 may become -- it may not become prudent. It may
 22 not become reasonable to continue to defend. I
 23 mean, I'm not saying it is or it wouldn't.

24 BY MR. DAVIS:

25 Q. Is it a duty or not a duty?

1 Q. Let's go back and look at Paragraph 16
 2 of this court's order. As you read, the court's
 3 acceptance of jurisdiction of the Abbie Dorn
 4 Special Needs Trust shall not result in continuing
 5 supervisory proceedings by this court.

6 A. But you see, I'm telling you, Counsel,
 7 what that means, and I'm telling you the way I
 8 would interpret it as a prudent trustee -- any
 9 time somebody like me gets in here and starts
 10 talking to you about the administration of a
 11 trust, it's hard as heck to not talk about legal
 12 duties or equitable duties. That's the nature of
 13 trust administration.

14 But I'm telling you that in this case,
 15 in this case, the duty that you've talked about is
 16 a duty that comes with further duties of the
 17 monitoring, because it's very clear, when you read
 18 the restatement, that -- and maybe it's in the
 19 comments to our code, that it may become
 20 unreasonable to continue to defend against
 21 something or to continue to prosecute something
 22 and the way the trustee deals with that.

23 You see, sometimes it's not the
 24 ultimate decision that's so important. It's
 25 what -- I'm here to -- my belief is this: If a

1 trustee exercises reasonable care, skill, and
2 caution in the process of making a decision, then
3 that decision probably will be regarded to be
4 reasonable, okay.

5 Q. You testified earlier --

6 A. Even though it may turn out to cause
7 some damage, okay.

8 Q. I understand. Thank you.

9 You testified earlier that this
10 language was confusing, if I'm not mistaken,
11 Paragraph 9. And you can maybe refresh my memory.
12 You said it was -- you read it, and you were a
13 little perplexed when you read it.

14 A. That the sums and amounts referred to
15 hereinabove and previously paid and disbursed and
16 those to be paid at the conclusion of these
17 matters. That doesn't tell me when the services
18 themselves were actually -- had to be performed
19 and whether this is part of the payment plan that
20 was entered into when the services were rendered
21 earlier.

22 All I'm saying, Counsel, again,
23 process. A prudent trustee should take that and
24 demonstrate on the record, their minutes, their
25 notes, their emails, whatever, that they've really

1 A. I didn't say that this -- I said that
2 this language is unclear to anyone.

3 Q. What if it was clear to them, and what
4 if their attorney told them it was clear?

5 A. Then they got a problem, I suggest,
6 because it wasn't prudent, and the attorney, if he
7 gave them the advice and said do it, and I hope it
8 wasn't you --

9 Q. No.

10 A. -- they've got -- the attorney has got
11 a problem. They cannot get out from under their
12 trustee duties because of some advice that an
13 attorney gave them that they just followed.

14 Q. But you testified earlier that that
15 does include prospective language, and it does
16 incorporate the order from California, so is it
17 not reasonable to --

18 A. I never -- you never got around to --
19 you talked about what I thought was incorporated
20 and what I didn't. We never got to that point.

21 Q. Oh, I'm sorry. I thought we did.

22 A. No, we didn't. I mean, we were in the
23 middle of it, and we never got to it. I don't
24 know what was incorporated and what was not
25 incorporated. You know, I think that the essence

1 wrestled with it and why. The question is why did
2 they end up deciding to do what they did? Either
3 they do that or they bring to it court, and they
4 put it in front of the court and let the court --

5 Q. Well, sir, you've testified that this
6 language is a little bit confusing, and you are a
7 sworn expert in trust administration and 54 years
8 in trusts. How --

9 A. I said it's confusing --

10 Q. I haven't finished. Let me just
11 finish my question.

12 A. I'm sorry.

13 Q. How in the world could the Cohens be
14 held to a standard to understand language that
15 they believe they understood if you yourself, as
16 an expert, have questions about it?

17 A. Let me say this to you.

18 Q. How can they be held to a standard?

19 A. I think you've opened up something,
20 Counsel. If I can't understand it, I would say to
21 you that the Cohens certainly could not be
22 expected to understand it if they were acting as
23 prudent trustees.

24 Q. What if they did believe they
25 understood it?

1 of what my testimony is is simply that I cannot
2 find in the record the kind of reasonable care,
3 skill, and caution that is required of trustees.

4 Q. Let me ask you this --

5 A. Of prudent persons acting as trustees.

6 Q. Let me ask you this: Say that you
7 have got multiple entities, and you've got a lot
8 of accounting activity that's going through the
9 entities. Would it be prudent, as a business
10 person, to hire a licensed CPA to do the
11 accounting work for you and to help you with the
12 accounting for those businesses? Would that be
13 prudent?

14 A. This is where when I'm running a
15 business?

16 Q. Running a business, yes. You're
17 running a business.

18 A. We're not talking about a trust.
19 We're just running a business.

20 Q. Or a trust. Say you've got a trust,
21 and say you've got a business. Say you've got
22 some accounting needs, and it's little bit
23 complicated. Would it be prudent to hire a
24 professional CPA to handle that for you?

25 A. It depends on the amount, but, I mean,

generally speaking, I would agree that you either got to get a CPA or a very, very good accountant.

Q. You say that would be prudent?

A. I would say that it would be prudent unless -- unless -- the trustees didn't take into consideration, that they just did it without really thinking about it, they didn't really go through any decision-making process. I mean, I don't know whether a particular business, whether it's reasonable, prudent to go pay a CPA to do the business. It depends upon the circumstances in that particular business.

Q. Exactly, and I've tried to outline circumstances. So you've got two or three corporations and a partnership and maybe a trust thrown in there that you're kind of taking care of, and it just seems to be a little overwhelming. Would it be prudent then to seek professional advice and to get a CPA firm to handle that for you?

MR. DAN SLOTCHIVER: Your Honor, I would object insomuch as now we're talking about his knowledge of what to do if you own a business.

THE COURT: I'm sorry.

MR. DAN SLOTCHIVER: I think we're

decision-making process that involves the exercise of reasonable care, skill, and caution before they come to their decision.

Q. So they need to consider whether they are able to handle the accounting --

A. Whatever the circumstances are, whatever the relevant circumstances are.

Q. And I agree with you. Assuming they do that, the trustees do that, and they come to the conclusion that: I'm unable to adequately provide these services, I need to get an outside professional, then in that case, would it be prudent for them to go hire a competent CPA firm?

A. If you are asking me to assume that they have considered the appropriate, relevant circumstances, and it's been a conscious and deliberate decision-making process, yes.

Q. Are you aware of the fact that --

A. I didn't see any evidence of that, but --

Q. Are you aware of the fact that the Cohens -- let me back up.

You just said you have not seen any evidence that the Cohens have hired a CPA firm to help with the accounting for the trust?

getting beyond -- I think if he'll just ask him about it with reference to a trust, it's certainly appropriate.

THE COURT: I thought he did

THE WITNESS: It would be prudent for the trustees, if they're -- or let's get back to the business owner.

BY MR. DAVIS:

Q. Or trustee, either one.

A. It would be prudent for them to engage themselves in a decision -- conscious and deliberate decision-making process where they considered all the relevant circumstances and came to a decision to hire the accountant.

Now, you may say what's the difference, but I'm tempted to ask the court to pull the restatement out, but the point is this is exactly what -- see, a business owner -- let's say he runs his own business. You talk to me. I'm a sole owner of a business, okay. I can make any decision I want to make, okay, but trustees, they can't -- they're not allowed to do that.

Q. They need to consider the facts and circumstances?

A. Trustees need to engage in the kind of

A. I didn't say that.

Q. I'm sorry?

A. I didn't say that.

Q. Are you aware that the Cohens have, in fact, had that decision-making process and have hired Webster Rogers to handle accounting matters for them?

A. All I know -- all I know, Counsel, is that they used Webster Rogers. I know nothing whatsoever about any process that they went through to determine to hire them. I don't know whether they put it out on -- I know they didn't do it -- it's not -- it's something they didn't do when Jeffrey came along, but I don't know whether they put it out for bids when Webster Rogers or whatever it was were hired. There's nothing I found in the record about that.

Q. But there's nothing that you found in the record to indicate that that didn't happen either?

A. Yeah, but the point is I don't think that the beneficiary has to prove a negative. I think what I'm looking for is evidence -- is evidence of their -- is evidence of their discharge of their affirmative duties.

1 Q. I'm sorry. You just -- I believe the
2 burden of proof is on the person who's attacking
3 the trust.

4 A. I think the burden shifts. I think
5 the burden of persuasion shifts, myself. I
6 think -- I was a litigator once. I think it
7 shifts. I think at some point, the court is going
8 to want to know, well, Mr. Trustee, what did you
9 do about that decision? How did you make that
10 decision? And I'm telling you there's nothing in
11 the record that tells me that they went through
12 any kind of process.

13 Q. In your documents, your limited
14 documents, because you testified earlier that you
15 were missing a good part --

16 A. The only document you found that I
17 didn't see is one, so I don't know what you're
18 talking about limited. That's an inference that I
19 have a little problem accepting. I read a heck of
20 a lot of documents. I can't let you get away with
21 that one, Counselor.

22 Q. Well, you're quite clever, too.

23 MR. DAN SLOTCHIVER: Objection, Your
24 Honor, and I ask that you caution Mr. Davis again
25 in this trial about using this kind of derogatory

1 Q. Well, not that part, but they
2 specifically did not exercise prudence. Did you
3 testify to that?

4 A. But you've got to put that -- yes, I
5 said that, but you've got to -- are you saying in
6 many different respects? Because that's a general
7 duty. A trustee shall administer a trust as a
8 prudent person would, and that standard is met by
9 the exercise of reasonable care, skill, and
10 caution. A trustee is not permitted to administer
11 the trust with his personal subjective, as opposed
12 to objective, hopes, wishes, desires.

13 Q. Sure, sure. Let me get back -- let me
14 kind of streamline it back to the question. Did
15 you testify that they have not exercised prudence
16 in the discharge of their trustee
17 responsibilities?

18 A. I did, in a number of different
19 occasions.

20 Q. But now you're saying that their
21 hiring of the Webster Rogers firm could be an
22 incident where they did, in fact, exercise
23 prudence?

24 A. I did not say that. I said I found no
25 evidence of that. I found no evidence of any

1 language towards any witness in the court. I
2 believe it inappropriate.

3 MR. DAVIS: Your Honor, I'll be happy
4 to receive an admonishment if one is warranted.
5 We clearly have a friendly exchange going on. He
6 called me clever, I called him clever, there was
7 absolutely no malintent, and I want the record to
8 clearly reflect that, Your Honor.

9 THE COURT: Thank you. So noted.
10 BY MR. DAVIS:

11 Q. Mr. Walker, you clearly were not
12 offended by my statement, were you?

13 A. Listen, I got thick skin. And let me
14 say this, Counsel, I know you got a job to do. I
15 got a job to do. Let's just get it done.

16 Q. Okay. Let's move on.

17 Back to the idea of prudence.
18 Whenever you testified earlier, you said --
19 correct me if I'm wrong, but apparently, you said
20 that they have not exercised prudence in a
21 discharge of their responsibilities as trustees.
22 Is that what you said?

23 A. Well, I said that with regard to a
24 number of the occasions of that, I mean, yes. I
25 mean, that is a general duty that --

1 such -- of any such conscious and deliberate
2 decision-making process that involved reasonable
3 care, skill, and caution, okay.

4 Q. I think I understand. Would it be
5 prudent for trustees to negotiate and settle fees
6 for services for less than -- for a lower amount
7 and try to save money for a trust? Would that be
8 prudent?

9 A. I'm sorry, Counselor. What was the
10 question, the first part of it?

11 Q. Would it be prudent for trustees of a
12 trust to negotiate a settlement so that a lower
13 amount of fees were paid from the trust for
14 services rendered?

15 A. For any services?

16 Q. Professional services. I believe you
17 mentioned a minute ago that had they sent out bids
18 to different accounting firms, had they tried to
19 get lower fees and that kind of information.

20 A. I just said, Counsel, that that would
21 have been some evidence of an effort to come to a
22 decision that could rise to the level of the
23 exercise of reasonable care, skill, and caution.
24 I didn't see any of it. I just gave you that as
25 an example.

1 Q. Well, are you aware that we have
2 testimony from Lisa Meyer, Dr. Cohen, and Susan
3 Cohen that there were negotiations to reduce legal
4 fees for the Meyer firm?

5 A. I'm not aware of that. I do know that
6 Mrs. Cohen was able to get them -- based upon what
7 I read, was able to get them to agree to a monthly
8 payment, I think, of \$5,000 or \$6,000.

9 Q. And then also --

10 A. Based upon what's left in the bill, I
11 guess.

12 Q. And also, just some of it being
13 written off completely. Were you aware of that?

14 A. Now, that part of it I don't remember
15 reading. I don't say it didn't happen; I just
16 don't remember reading it.

17 Q. If they were able to accomplish that,
18 would that be an act of prudence on their part?

19 A. Well, it would be -- it would be an
20 act of -- yes, it would be an act of addressing
21 the issue of costs, and, you know, costs at that
22 point. It would be -- it would be reducing the
23 cost if I can accept your statement. It would
24 have nothing whatsoever to do with what went on
25 when the original retention occurred.

1 Q. You mentioned also that the
2 probability of success in a litigation matter
3 should be considered, probability of success?

4 A. Well, I mentioned that in the context
5 of what is stated in the restatement and I think
6 maybe in the comments to our code sections that
7 basically says that in the process of the
8 continuing monitoring of an effort to defend
9 against a claim or to prosecute a claim, that what
10 could be -- could have been consciously and
11 deliberately considered, exercise of reasonable
12 care, skill, and caution on the front end and
13 appropriate defense to enter into after -- in the
14 course of monitoring, could, at some point -- and
15 this is in the restatement, it's in our code, it
16 could become, the reasonable decision could be to
17 back off from the defense or to back off from the
18 prosecution, because, for example, the visitation
19 payments, the attorneys' fees --

20 Q. Let me ask you this --

21 A. The attorneys' fees -- let me finish,
22 please.

23 Q. Sure.

24 A. The attorneys' fees are wiping out the
25 trust, and that is not in accordance with the

1 purposes of the trust.

2 Q. Purposes of the trust are to benefit
3 Abbie solely?

4 A. The purposes of the trust -- let me
5 say it one more time, because it is so critical.
6 The purpose of this trust is to provide a
7 discretionary spendthrift trust to supplement
8 public resources and benefits when such resources
9 and benefits are unavailable or insufficient to
10 provide for the special needs of the beneficiary.
11 It is that thrust that the trustee has to exercise
12 good faith to maintain, to pursue that purpose.

13 Q. So we use Medicaid first, and then
14 anything that Medicaid won't pay, we go to the
15 trust. Well, let me ask you this question: Would
16 Medicaid pay for Abbie to obtain visitation with
17 her children?

18 A. Medicaid?

19 Q. Would Medicaid or some other
20 governmental assistance pay for her to obtain
21 visitation with her children?

22 A. I don't think so.

23 Q. Then apparently, according to the
24 purpose of the trust, that is what the trust is
25 for, correct?

1 A. I don't follow you, Counsel.

2 Q. I believe you just said that first,
3 there's going to be government benefits, and then
4 whatever government benefits don't pay for that is
5 for the benefit of Abbie, the trust is supposed to
6 pay for it as a discretionary spendthrift trust.
7 Is that what you said?

8 A. I said just what the document says.
9 The purpose of the trust is to provide a
10 discretionary spendthrift trust to supplement,
11 that is to say, to have in place a spendthrift
12 trust, a discretionary spendthrift trust, to
13 supplement the public resources and benefits, when
14 and if such resources and benefits are unavailable
15 or insufficient. That's the only purpose that's
16 stated in the trust document.

17 Q. Well, who should pay to get visitation
18 for Abbie?

19 A. That's the question, isn't it? Isn't
20 that the question?

21 Q. That is the question.

22 A. Yeah, yeah.

23 Q. Isn't it the trust that's supposed to
24 pay it, Mr. Walker?

25 A. No, no. I'm telling you that the

1 question is --

2 Q. Let me show you --

3 A. The question is this, first of all:
4 Does the visitation by the children with Abbie,
5 does it or does it not benefit Abbie. Big
6 question here. That's what we've -- big question.

7 Q. Yes, if you're asking me, yes. Are
8 you asking me?

9 A. Well, no. I'm saying -- I'm giving
10 a -- okay. I'm giving a rhetorical. That is a
11 big question, okay. All right. If that
12 question -- if we can assume that that question is
13 answered yes, then the next question is how long
14 is it reasonable to continue to pursue those
15 rights that we are assuming benefit Abbie when we
16 are in the process of emptying the trust, which is
17 absolutely against the purpose of the trust.

18 Q. What if they didn't have any control
19 about the litigation? What if Dan Dorn was
20 driving it and driving the costs up?

21 MR. DAN SLOTCHIVER: Your Honor, I
22 object. He is now interjecting facts which are
23 just not supported by the evidence or the
24 testimony of the witnesses.

25 THE COURT: I'm going to overrule. I

1 A. And what they've got to keep an eye on
2 is even if we assume that the visitation by the
3 children does provide benefits to Abbie, which is
4 the big question, even if we assume that, it still
5 is an issue that the trustees have to deal with
6 with their trustee hats on as to how far do we
7 continue to pursue that benefit to Abbie, and
8 they -- I don't know what you mean when you say
9 they can't get --

10 Q. What I meant was what we talked about
11 in that previous document where the child support
12 claim was brought, where I showed you that
13 exhibit, and it was not removed until the end, and
14 they requested that it be removed, and it was all
15 linked together and tied together with that same
16 marital dissolution action, and they testified
17 that they were on a merry-go-round or trapped in a
18 box and were unable to get out of it and
19 desperately wanted to and made 60 emails I believe
20 Susan Cohen testified to to try to resolve --

21 MR. DAN SLOTCHIVER: Now Mr. Davis is
22 testifying.

23 MR. DAVIS: I'm not testifying. I'll
24 do whatever you want me to do, Your Honor.

25 THE COURT: Get to the point,

1 think there was some testimony by Lisa
2 Meyer that --

3 MR. DAN SLOTCHIVER: Lisa Meyer
4 actually, Your Honor, testified they could have
5 stopped the action on the visitation.

6 THE COURT: I understand that.

7 THE WITNESS: Well, that's my point,
8 isn't it?

9 BY MR. DAVIS:

10 Q. Let me restate the question, because
11 we were interrupted with an objection.

12 A. I'm sorry.

13 Q. If Dan Dorn is found to have
14 contributed to the escalating costs, and the
15 Cohens were unable to get out of the lawsuit,
16 wouldn't it be prudent and reasonable for them to
17 take it to conclusion if they really had no other
18 choice?

19 A. I guess I'm having trouble accepting
20 the fact that they had no other choice. That
21 really is not the point. The point is that the
22 trustee -- you got to bear in mind, Counsel, that
23 this position that I'm talking about the trustees
24 being in is with their trustee hats on.

25 Q. I understand.

1 Mr. Davis.

2 BY MR. DAVIS:

3 Q. Let me get back to the point about
4 probability of success. This is kind of where we
5 went off course a little bit. You mentioned in
6 your testimony that one of the items to consider
7 was the probability of success. You specifically
8 said that. Is that correct?

9 A. Well, that's -- I mean, that's
10 obviously one of the things that goes into the
11 reasonable care, skill, and caution.

12 Q. Well, let me show you something here
13 that you've mentioned for the court's edification.
14 This is Petitioner's 86. It is a statement of the
15 case in California that we've been working off of.
16 I'm sure you've got a copy of this. You've
17 reviewed it.

18 A. Yeah. I've read it.

19 Q. This paragraph here on Page 8,
20 Subsection B, 3B, can you read that first sentence
21 there?

22 A. Dan is granted sole legal --

23 Q. No, this one here, 8B.

24 A. I'm sorry. Abbie, by and through her
25 conservators, is granted visitation one time each

1 year for a period of five consecutive days,
2 commencing blah, blah, blah.

3 Q. Let me ask you this question: The
4 conservators, Dr. and Mrs. Cohen, and also as
5 trustees, were handling this action seeking
6 visitation, and this statement of the case here
7 grants Abbie visitation. Would you call that a
8 success? If they got what they were seeking for
9 Abbie, is that a success?

10 A. Versus what? What were they seeking?

11 Q. Visitation for Abbie.

12 A. How much?

13 Q. What they got.

14 A. I can't -- I don't know how to answer
15 that.

16 Q. So you don't have an expert opinion
17 about --

18 A. It's got to be relative to something.

19 Q. Let me ask you a little more clearly.
20 Would it be a success if Dr. and Mrs. Cohen were
21 seeking visitation for Abbie and, in fact,
22 obtained that? Is that a success? It's not --
23 I'm not attempting to make it a hard question.

24 A. Well, if you say that they were
25 awarded something that they were asking for

1 problem. I just have to tell you.

2 Q. Sure. And I'll make it simpler for
3 you. You've already testified that you read
4 Paragraph 17 in the trust. It says: In the
5 administration and management of trusts,
6 including, without limitations, the investment,
7 reinvestment of the trust, the trustee shall
8 consider solely the interest of the beneficiary,
9 Abbie.

10 And you also testified that it would
11 be a duty to protect the trust -- protect Abbie's
12 Medicaid. And what I'm saying, and you also
13 testified that one of the factors that you look at
14 on prudence is the probability of success, and
15 we've just established that they succeeded in both
16 counts. They defended -- successfully defended
17 the child support attack, and they obtained
18 visitation for Abbie.

19 A. It's all -- excuse me, Counsel.
20 You're saying we settled it. I mean, I don't know
21 what you're talking about with regard to relative
22 to what. I mean, that same -- may I look at that
23 statement of opinion again?

24 Q. This is my copy, so I need to get it
25 back.

1 without any explanation of what they were really
2 asking for, just if you -- your question is
3 phrased in the context of visitation, okay. If
4 that's it, I mean, and they got visitation,
5 whatever it is, I mean, how could anyone answer
6 it, other than the fact that it was something they
7 achieved.

8 Q. Okay. That's all I need. And how
9 about the --

10 A. I would love to know why you asked me
11 that question, Counsel. That's probably not
12 appropriate, so --

13 Q. Well, because of your testimony, and
14 I'll just leave it at that.

15 They were also charged, as we've
16 established, with the duty to defend the child
17 support claim, and they were -- they prevailed and
18 did not have to pay child support from the trust.
19 Is that considered a success in the defense of
20 that attack?

21 A. Counsel, I'm having trouble dealing
22 with your questions. I don't want to be
23 difficult, but I'm not quite sure where all this
24 success stuff is really going. I mean, I want to
25 be very responsive, but I'm really having a

1 A. Okay. I just take you to this page
2 here.

3 MS MOORE: Which one? Are you doing
4 the final or --

5 MR. DAVIS: 86. That was the one
6 we're missing, right, 86?

7 THE REPORTER: Yes.

8 MR. DAVIS: Do we have another copy of
9 that somewhere? That one I've got is all marked
10 up. I'll get you --

11 THE WITNESS: Here it is. Here it is.
12 It's at the bottom of Page 7. I'm just going to
13 read that last -- all I want to say is that in
14 this same order, it says -- I don't want to read
15 your notes, but all I want to do is --

16 BY MR. DAVIS:

17 Q. You can read them. My chicken scratch
18 is hard to read.

19 A. You said that, Counsel, not me.

20 On Page 7, I mean, in the same order
21 that you say they got this visitation, it says:
22 Any other factors that the court deems relevant
23 There is no -- and we're all familiar with this.
24 There is no compelling evidence that the
25 visitations by the children will have any benefit

1 to Abbie. So, I mean, that's in the order where.
2 the visitation that you've just talked about was
3 granted, so I can't testify -- I can't agree on
4 anything about success.

5 Q. Sure, sure. And University of the
6 South in Sewanee is a fine institution, and I'm
7 sure you took a lot of English classes and all
8 that kind of stuff, but --

9 A. No. I was a political science major.

10 Q. You must have had to read and write
11 and all that.

12 A. Well, I took a lot of English too.

13 Q. Well, let me ask you a question about
14 this sentence: There is no evidence. Is evidence
15 a subject? Is that there's no evidence? There's
16 no evidence. Is that right?

17 A. What are we doing here? I mean, it
18 says what it says.

19 Q. Is there a qualifying word or a
20 limiting word related to evidence?

21 A. Pretty strong word. No compelling
22 evidence.

23 Q. There's no compelling. It's
24 qualified, though. It's not a blanket -- it's not
25 an absolute statement.

1 common fund. I'm not quite sure what that means
2 in terms of -- well, anyway, that's a whole
3 'nother subject.

4 But the trustee may distribute -- this
5 is a power, okay. The trustee may distribute from
6 such common fund to or for the benefit of the
7 beneficiary, Abbie, during her lifetime, such sums
8 and at such times as the trustee, in its
9 discretion, determines appropriate and reasonably
10 necessary for the beneficiary's special needs.

11 Okay. All I said was that when you
12 take that language, and you put it with that other
13 language which says that all distributions, I
14 think, all distributions must be for Abbie, all
15 it's really saying is that the trustee has the
16 power to, in its discretion, which I will add the
17 law on that, as you well know, I think we all
18 know, is a fiduciary discretion, and it must be
19 exercised with reasonable care, skill, and
20 caution, okay. It's not just simply a subjective
21 thing that the trustee can do.

22 Q. Are you done with that thought? I've
23 got another question along those lines.

24 A. Well, I mean, that's the law. Now, it
25 says: As the trustee determines appropriate or

1 A. Well, I mean, I think it's pretty -- I
2 think it's worse than evidence, I think, if you
3 say there's no compelling evidence.

4 Q. I've got a few more questions. Let me
5 go back through my notes. And again, I did not
6 have the opportunity to prepare in advance, and I
7 apologize for stringing this out, and I'm doing
8 the best that I can, Mr. Walker.

9 MR. DAVIS: And I also appreciate the
10 court's indulgence. I really do.

11 THE COURT: Certainly.

12 BY MR. DAVIS:

13 Q. You also said, is it fair to say, that
14 if an action benefits Abbie, that the trustees
15 should do it? Is that fair to say?

16 A. No. I didn't put it that way. That's
17 a pretty general and broad statement. What I'm
18 saying is that you go to the discretionary
19 distribution language, and you got -- you've got a
20 situation here where the trust does include
21 language, and I'll have to find it, but --

22 Let me see if I can -- okay. In
23 Article 2, distribution of income and principle,
24 Item 2, it says: The income shall be added to and
25 become principle, just put it together and form a

1 reasonably necessary for the beneficiary's special
2 needs. So there is a provision in here that
3 allows that to happen, subject to the trustee
4 complying with the fiduciary duties, the duties of
5 prudence, the duty of reasonable care, skill, and
6 caution.

7 Now, that has -- if it is, in fact, a
8 discretionary distribution -- just as an aside
9 example, we documented every discretionary
10 distribution we made, okay, when I was -- a
11 particular trust officer that was handling the
12 account would send a memorandum, the committee
13 would look at it, it would be determined by the
14 committee that -- and very importantly, the
15 reasons for that distribution would be spelled
16 out, and we would either agree with it, or we
17 would want more information. That's available,
18 has been available.

19 Now, I don't remember seeing anything
20 in the file that is clearly -- or is identified at
21 all as a discretionary distribution by the
22 trustees for Abbie and anything at all about how
23 they dealt with the exercise of that discretion.
24 I don't remember any of that. But it's here, and
25 if they do it, and if they do it according to --

1 if they do it as a prudent person would do, acting
2 as trustee, and make some kind of record of it --
3 they don't have to have a record. The record
4 isn't required. But in order to support it, if it
5 comes into question --

6 I'm telling you where some of this
7 might come into question at some point is if the
8 state -- let's say Abbie passes away. I think
9 you're going to find that the state is going to
10 all of a sudden get very interested in all of
11 this, and the state may want to raise some
12 questions about all of this, because the state is
13 then going to be looking for its fair share.

14 Q. Let me ask you another question. I've
15 given you a whole bunch of leeway there. I think
16 you've kind of surpassed by a long ways the
17 question.

18 A. I'll take it if you give it to me.

19 Q. I don't want to give it to you, but
20 your fine attorney that brought you in here is
21 very good about objecting.

22 Can you explain your understanding of
23 sole benefit, about the trust has to be for the
24 sole benefit and the origins of that and what
25 exactly does that mean? Is it supposed to be for

1 to go.

2 MR. DAN SLOTCHIVER: Thank you.

3 MR. DAVIS: Your Honor, if you give me
4 permission, I'll be happy to cut the witness off,
5 and I'll get what I'm looking for and move on.
6 I've tried to stop him, and Mr. Slotchiver has
7 jumped up and said no.

8 THE WITNESS: Stop me, Counsel. Just
9 stop me.

10 MR. DAVIS: So I'm fine moving it
11 along, Your Honor, if you give me that --

12 THE COURT: If you can move it along a
13 little bit.

14 MR. DAVIS: Sure.

15 THE COURT: Because we certainly want
16 everyone else to get an opportunity.

17 MR. DAVIS: And I do too

18 BY MR. DAVIS:

19 Q. Your understanding of sole benefit
20 with regard specifically to government benefits,
21 do you understand the context of sole benefit with
22 regard to Abbie's retention of government benefits
23 and the d4A special needs trust?

24 A. I understand it as it appears in this
25 document, which is what's important for me in the

1 the sole benefit, is there some kind of a
2 governmental benefit requirement that it be for
3 the sole benefit, and what does sole benefit mean
4 to you, in your expert opinion?

5 A. I've looked at that in terms of what
6 it says in the instrument itself and where it
7 appears and --

8 Q. Well, not the instrument, Mr. Walker,
9 but in the governmental benefit regulations and
10 the --

11 A. Well, I'm assuming --

12 MR. DAN SLOTCHIVER: Your Honor, if I
13 may, I'm not objecting to this question, but I
14 wanted to, for just a moment, address with the
15 court that I do know that Mr. Walker plans to
16 travel back to Columbia tonight. I don't know how
17 long the court's going to allow us to go. I do
18 know that you've given, I believe, a good amount
19 of latitude to Mr. Davis. He's been examining him
20 for over 2 hours and 15 minutes, to my best
21 estimation. Other counsel will need to go forward
22 before he can go home. I'm assuming you wanted to
23 work late tonight, he's willing to drive home late
24 tonight, but I just wanted to clarify that.

25 THE COURT. I'll go as long as we need

1 administration of this trust. That's my opinion,
2 that's what I've given you, and I really don't
3 have anything else to add.

4 Q. Let me ask you this: Would it be
5 reasonable for the trustees to make -- to take
6 efforts to stop the litigation in California and
7 stop the expense of legal fees? Would it be
8 reasonable for them to -- and prudent for them to
9 try to do that?

10 A. Depending on how they dealt with the
11 decision-making process, the circumstances they
12 considered, and why they arrived at their
13 decision. That's the only way that question can
14 be answered.

15 Q. When you say decision-making -- so if
16 they did wrestle with it and think through it and
17 then come to some way of doing it, would it be
18 prudent to do it or try to do it?

19 A. You're asking me to make an assumption
20 to answer your question, and I cannot do that the
21 way you've asked it. You haven't given me enough
22 information.

23 Q. Absolutely. I'll be more than happy
24 to give you more information. And if you recall
25 back from the testimony of Dr. Cohen, he

1 specifically testified that he and Mrs. Cohen
2 wrestled -- he used the term wrestled
3 specifically, and I believe in your testimony, you
4 also used the term wrestled, so I wanted -- did
5 you recall his reference to the word wrestled?

6 A. I did, and I don't know what he meant.
7 What does that tell me, the person looking for
8 evidence of the circumstances considered, the
9 process he went through to get to the decision?
10 He wrestled.

11 Q. What did you mean by it when you used
12 the word wrestle? What did you mean, from a
13 trustee standpoint, when you said wrestle?

14 A. I meant that he and Mrs. Cohen, since
15 the trust says they must act jointly, that they
16 both considered relevant circumstances in a
17 conscious and deliberate way, dedicated to the
18 process of coming up with the decision. That's
19 what I meant. That's what the law requires.

20 Q. I understand. Thank you. I'll move
21 on.

22 You gave some testimony also about
23 self-dealing, and you explained -- and I'm
24 paraphrasing, if I'm wrong, please correct me --
25 that self-dealing is when you derive a personal

1 sorry. Go ahead.

2 THE COURT: I will allow it.

3 BY MR. DAVIS:

4 Q. Are you aware of that?

5 A. I don't think they've charged any
6 fees, but I never talked about self-dealing in
7 that specific context.

8 Q. Let me ask you this: Would it be --

9 A. Never said it.

10 Q. Would it be fair to say that if a
11 person takes money out personally for no
12 compensation for a trustee, just takes money and
13 uses it as their own money from a trust that
14 they're administering, that that would be
15 self-dealing?

16 A. That would be stealing.

17 Q. But would it also be self-dealing?

18 A. Well, it sure as heck would be
19 self-dealing.

20 Q. Do you have any evidence whatsoever
21 that the Cohens took money from this trust and
22 used it for their personal benefit?

23 A. None whatsoever in that context.

24 Q. That's all I need. Thank you.

25 A. But you haven't asked the full

1 benefit from the trust that you are administering.
2 Is that correct?

3 A. I didn't use the word personal
4 benefit, I don't think. What I did say was that
5 the duty of loyalty, which is probably the most
6 fundamental duty of a trustee, is sometimes
7 referred to as not putting the interest of any
8 other person, other than the beneficiary or
9 beneficiaries, to not put that interest above
10 those of the beneficiaries, particularly any
11 interest of the trustee.

12 Q. Let me ask you this question: When
13 you served as trustee at Wachovia, which became
14 Wachovia, did you charge a trustee fee? It's an
15 important question.

16 A. Yes. We didn't run -- we didn't run a
17 charitable organization, okay. We didn't give
18 away the services. We were in business.

19 Q. Are you aware of whether Dr. and
20 Mrs. Cohen have charged a fee for serving as
21 trustee of the Abbie Dorn Special Needs Trust?

22 MR. DAN SLOTCHIVER: And I would
23 object to relevancy, Your Honor. It doesn't
24 matter.

25 MR. DAVIS: He said self-dealing. I'm

1 question, Counsel.

2 Q. I was given permission to say: That's
3 all I need, Mr. Walker, and I'm going to take
4 advantage of that privilege.

5 A. Read the rest of the transcript. My
6 earlier answers gave you a far better answer.

7 Q. If it can be shown, Mr. Walker, that
8 Abbie does, in fact, receive a benefit from
9 visitation, would it be reasonable for the
10 trustees to have sought visitation?

11 MR. DAN SLOTCHIVER: Could we clarify
12 the time frame, Your Honor, for the purpose of his
13 answering the question?

14 MR. DAVIS: The whole time frame, Your
15 Honor, because they were with her all the time,
16 they deemed in their testimony that she would
17 receive a benefit, and that's all that's been
18 testified to by both Dr. Cohen and Mrs. Cohen, and
19 we've got additional testimony coming tomorrow, so
20 it's the whole time period they reviewed it and
21 made that decision.

22 THE COURT: Thank you. He's clarified
23 it.

24 MR. DAN SLOTCHIVER: Thank you.

25 BY MR. DAVIS:

1 Q. Let me state it again.

2 A. Please.

3 Q. If it can be shown that Abbie does, in
4 fact, receive a benefit from visiting with her
5 children, is it reasonable -- or was it
6 reasonable -- is it reasonable for them to have
7 sought visitation and received visitation for
8 Abbie?

9 A. The way I answer that question,
10 Counsel, is the way I've answered it before, I
11 believe, and that is that it depends upon what
12 they knew, what they have reason to know, what a
13 prudent person knew or had reason to know when
14 they sought visitation, when they were paying the
15 expenses for the visitation. Not now, later.

16 It is important to get back to what
17 I've been trying to testify to all afternoon and
18 evening.

19 Q. And let me stop you right there,
20 because I think you've answered my question.

21 MR. DAN SLOCHIVER: I think he was
22 responding, Your Honor.

23 THE WITNESS: I would like to answer
24 the question, Counsel.

25 BY MR. DAVIS:

1 A prudent trustee, a prudent person in
2 this position exercising reasonable care, skill,
3 and caution, it would only be -- it would only be
4 pertinent -- it would only be -- it would only be
5 pertinent if it was part of the process that the
6 trustee was going through at that time. If that
7 wasn't reasonably available or known to the
8 trustee, but the trustee went ahead and did it
9 anyway, that's not prudent.

10 Q. Sure. And Mr. Walker, I've got --
11 there's been testimony about Dr. Mamelak's report
12 and him -- the fact that he considered Abbie three
13 months -- or examined Abbie three months after the
14 accident and did not examine her again, and there
15 was reference to a persistent vegetative state
16 which would lead someone to believe that she may
17 or may not have a benefit. I'm not making any
18 statement with that regard, but just there's a
19 question that has been posed.

20 Assume that there was a doctor's
21 report during the time that the visitation action
22 was going on that indicated that she could receive
23 a benefit. Would that carry some influence with
24 you?

25 A. Well, it would simply be one of the

1 Q. I thought you did.

2 A. Are you cutting me off?

3 Q. Yes, sir, I am, with the privilege I
4 was given, but if I need to let you go further,
5 I'll be more than happy to.

6 THE COURT: He asked to complete his
7 answer.

8 BY MR. DAVIS:

9 Q. Go ahead. I'm sorry I'm not trying
10 to be argumentative, I promise. I'm just trying
11 to move us along.

12 A. Your question, as I understand it, was
13 that somehow it was determined that she did, in
14 fact, get some benefit from the visitation --

15 Q. Yes.

16 A. -- and I'm trying to answer your
17 question. I'm assuming -- that's what you're
18 asking me -- assume that there was a determination
19 that was valid, professional, all that, that there
20 was benefit from visitation. That's a big
21 assumption, and it is one that I questioned could
22 ever come to some complete agreement on without
23 some court ruling on it, but the key question is
24 when was that knowledge known, when was it
25 available to the trustees.

1 factors or circumstances that the trustees -- that
2 a prudent person acting as trustee and exercising
3 reasonable care, skill, and caution would have
4 taken into consideration, together with whatever
5 else was relevant.

6 Q. Are you familiar with the time frame
7 of the visitation action that was done in 2010?
8 Is that your understanding?

9 A. I would have to -- I mean, I know that
10 the order of the court in California was in 2011.
11 I'm not sure -- I think Mamelak, I believe his
12 deposition was taken in December of 2010 I'm not
13 sure. But what are you really asking me?

14 Q. Just wanted to make sure that we were
15 consistent on our understanding of the date that
16 the visitation action was ongoing, because I've
17 got here a doctor's report around the same date as
18 we're talking about the visitation action, and
19 this report indicates that she would be able to
20 receive a benefit, so I just want to point this
21 out to you and see if this changes your opinion at
22 all.

23 MR. DAVIS: Your Honor, and for the
24 court's edification, everyone else, this is
25 Respondent's No. 6. This is Dr. Hays's report

1 that has already been offered into evidence.

2 THE COURT: Thank you.

3 BY MR. DAVIS:

4 Q. If you look down at the assessment --

5 A. Where was that report at the time the
6 decision was made to pay the attorneys' fees for
7 visitation service?

8 Q. It was intertwined in the --

9 A. Are you going to tell me where it was?
10 Because I don't know where it was. I don't know
11 whether the trustees took that into account. My
12 point is I don't know anything about the process
13 that they went through. I don't know whether they
14 considered this. All I know is that they were
15 given an opportunity, and a prudent trustee would
16 have taken advantage of that opportunity, when
17 Dr. Mamelak was trying to explain to them what his
18 views were, and I don't think that -- in the case
19 of Mrs. Cohen and perhaps Dr. Cohen, they didn't
20 want to hear it, because it wasn't what they
21 wanted to hear.

22 Q. Let me get this straight.

23 MR. DAN SLOTCHIVER: I object to the
24 tone of counsel at this point.

25 MR. DAVIS: I'm not trying to

1 BY MR. DAVIS:

2 Q. What you are testifying to is that you
3 didn't have all the information to determine
4 whether their actions were prudent or not, you
5 didn't have this doctor's report, you didn't have
6 all the surrounding information that you needed,
7 but yet you came to this court, and you gave your
8 expert opinion that they breached their duty. How
9 can you do that?

10 A. There is no evidence that they went
11 through any process, Counsel, with this opinion or
12 any other opinion, and that is an affirmative
13 duty, and they have not shown that they did it.
14 What you're doing is bringing forward something
15 that may or may not have been in front of them. I
16 don't know what was in front of them. I'm not
17 saying anything other than the fact that the
18 required decision-making process in exercising
19 reasonable care, skill, and caution that is
20 required of the trustee, was not shown.

21 Q. What about in testimony? If they
22 testified that they actually looked at this, and
23 they considered it and talked about it and
24 discussed it, would that help you? Would that
25 influence your opinion?

1 intimidate anybody. I just want to --

2 THE WITNESS: He ain't going to
3 intimidate me, Counsel. Go ahead. Do whatever
4 you want to do.

5 MR. DAVIS: Your Honor, I'm just --

6 BY MR. DAVIS:

7 Q. Let me get something straight. Let me
8 get something straight. You said that you don't
9 have all the information, that you didn't have
10 that, and you didn't have that information to
11 determine whether what they did was prudent or
12 not, but --

13 MR. DAN SLOTCHIVER: I believe he's
14 mischaracterizing the testimony.

15 BY MR. DAVIS:

16 Q. -- yet you gave an expert opinion --

17 MR. DAN SLOTCHIVER: I believe he's
18 mischaracterizing the testimony.

19 MR. DAVIS: Your Honor, I know he's
20 trying to interrupt this wonderful moment that I'm
21 trying to have, and I would ask the court to
22 please let me finish this moment and not let
23 Mr. Slotchiver interrupt me.

24 THE COURT: Please move on, Mr. Davis.
25 Go ahead.

1 A. Well, put it in front of me.

2 Q. It was the testimony that was -- the
3 oral testimony. But do you want to take a look --

4 A. That didn't mean anything to me,
5 Counsel. What does that mean to me? I mean, I
6 don't know what you -- listen, I'm trying to
7 make -- you are having a problem because you don't
8 want me to say what I'm saying, because it's not
9 what you want to hear, but you are failing to
10 grasp or give any credence to the fundamental
11 requirement of the trustee to exercise -- the
12 prudent trustee to exercise reasonable care,
13 skill, and caution in making these decisions.

14 Q. Let me ask you this, then: Just
15 because there are not formal minutes that they sat
16 down and discussed this and evaluated these
17 things, does that by itself mean that it did not,
18 in fact, happen?

19 A. No, obviously. I told you that
20 earlier. But where is the evidence that it did
21 happen? I can't find it.

22 Q. Thank you. Do you want to read that
23 last sentence there, or the last two sentences of
24 that assessment?

25 A. I don't know what you're talking

1 about.

2 Q. This one. Down at the bottom, I'm
3 sorry, where it says: Her clinical condition at
4 this point.

5 A. Now, this is by Erica Swensson. No.
6 This is a letter to Erica Swensson from -- this is
7 Dr. Hays, okay.

8 MR. DAN SLOTCHIVER: Your Honor, if I
9 may again?

10 THE COURT: Yes, sir.

11 MR. DAN SLOTCHIVER: The witness has
12 testified over and over again, and without knowing
13 what the process is, he cannot -- and he says: I
14 don't know what it is because they haven't shown
15 or they haven't testified to it. I don't know
16 what advantage of him reading this letter would be
17 without having the information to show the
18 process, if any, that was utilized when seeing
19 this. So we can go through this exercise. We've
20 done it over and over again. I would object to
21 it. If we need to do it, we will, but I don't
22 think that it's relevant under that basis.

23 MR. STEVE SLOTCHIVER. Your Honor,
24 separately, I would ask if we have an idea how
25 much longer Bret plans to go forward, because I

1 information was not requested of the trustees?

2 A. I'm not aware of that. I just know I
3 haven't found it in what I've reviewed. If you
4 have it, Counsel, put it in front of me. Let me
5 look at it.

6 Q. Well, it's a little late in the game
7 to ask for it at this point.

8 A. I mean, I'm here. Let me look at it.

9 Q. But are you aware of the fact that Dan
10 Dorn's attorney did not ask for that information
11 in discovery?

12 A. I'm not aware that they didn't ask. I
13 have no knowledge what they asked or what they
14 didn't ask. But if you have it, Counsel, put it
15 in front of me right now. I'll read it. I'd love
16 to see it.

17 Q. One last thing. You testified that
18 Abbie is not the sole beneficiary. Is that still
19 your understanding?

20 A. She is not the sole. She is -- as the
21 trust instrument says, she is the primary
22 beneficiary, not the sole beneficiary.

23 Q. Is the trust supposed to be for the
24 sole benefit of Abbie?

25 MR. DAN SLOTCHIVER: Sir, this has

1 could use a small --

2 MR. DAVIS: I'm almost done.

3 THE COURT: Mr. Davis, there was an
4 objection.

5 MR. DAVIS: I'm sorry. I did not
6 realize that. Go ahead. What was the objection?

7 MR. DAN SLOTCHIVER: Well, the
8 objection was that -- I can restate it.

9 THE COURT: Did you say that you were
10 about finished?

11 MR. DAVIS: Just about, Your Honor.
12 And I apologize. I didn't hear the objection. I
13 was talking to Reese. If you want to restate it,
14 I'll be happy to address it.

15 MR. DAN SLOTCHIVER: Well, if you're
16 about finished, he'll give you the answer, but go
17 ahead. I'll withdraw it if you're about done.

18 THE COURT: Thank you.

19 BY MR. DAVIS:

20 Q. Mr. Walker, are you aware of the fact
21 that Dan Dorn's counsel did not request specific
22 information in discovery about the processes,
23 mental processes, in meetings or minutes about
24 communications or meetings between the trustees to
25 come to a decision? Do you realize that that

1 been asked and answered, Your Honor.

2 THE WITNESS: As I've testified to
3 ad nauseam today, my opinion is that while Abbie
4 is alive, she is the one who is solely benefiting
5 now. Obviously, the remainder beneficiaries will
6 benefit if there's anything left when she dies.

7 BY MR. DAVIS:

8 Q. That's all I've got, Mr. Walker. It
9 has been a treat speaking with you.

10 A. I've enjoyed it. Thank you.

11 THE COURT: We are going to take five
12 minutes.

13 THE WITNESS: I hope it's been helpful
14 to the court.

15 THE COURT: Yes, it has. Thank you.
16 Five minutes.

17 (A recess transpired from 7:33 PM to
18 7:39 PM.)

19 THE COURT: Ms. Hedgepath?

20 CROSS-EXAMINATION

21 BY MS. HEDGEPATH:

22 Q. Mr. Walker, I'll be very brief.

23 Do you have a list of documents that
24 you have reviewed in anticipation and preparation
25 for your testimony here tonight?

1 A. I didn't prepare -- I was not asked to
 2 do so, and I didn't prepare a list. I mean, I can
 3 certainly -- I can certainly prepare a list, but I
 4 don't have one now.
 5 Q. Are all of the documents that have
 6 been provided to you, were they provided by
 7 Mr. Slotchiver?
 8 A. Yeah.
 9 Q. You didn't come to --
 10 A. Other than a few that I've been asked
 11 to look at here this afternoon in my previous
 12 testimony that I had not seen, which you're aware
 13 of.
 14 Q. Mr. Davis showed you some documents
 15 tonight that Mr. Slotchiver had not given you.
 16 A. Yeah.
 17 Q. Have you reviewed any depositions?
 18 A. Oh, yeah.
 19 Q. Do you recall which ones?
 20 A. Well, I read Mrs. Cohen's deposition.
 21 I read Dr. Cohen's deposition. I read
 22 Dr. Mamelak's deposition. I read Professor
 23 Freeman's deposition. I really can't tell you
 24 what depositions I didn't read.
 25 MR. DAN SLOTCHIVER: Your Honor, if

1 it's helpful, I'll be happy to advise the court
 2 what documents he has reviewed.
 3 THE COURT: Ms. Hedgepath?
 4 MS. HEDGEPATH: Please.
 5 MR. DAN SLOTCHIVER: Every document
 6 that Professor Freeman received, he received.
 7 MS. HEDGEPATH: So are you telling me
 8 all of the documents that Professor Freeman
 9 produced at his deposition?
 10 MR. DAN SLOTCHIVER: Yes.
 11 MS. HEDGEPATH: Anything else?
 12 MR. DAN SLOTCHIVER: No.
 13 BY MS. HEDGEPATH:
 14 Q. But you have been reviewing the
 15 transcripts each night, or have you reviewed some
 16 of the transcripts from the testimony?
 17 A. Yeah, right.
 18 Q. Have you reviewed all of them?
 19 A. No. For example, I did not have an
 20 opportunity to review anything today because I was
 21 traveling. Yesterday, I reviewed part of it off
 22 and on during the day, and I got the hard copy to
 23 take a look at --
 24 Q. When you can't sleep?
 25 A. It came in late last night, and I

1 didn't know it was here, so I started reviewing it
 2 today when I was driving -- when I was not
 3 driving, when my grandson was driving me over
 4 here. Check that. And so, I mean, I've had a
 5 chance to look at a good bit of it.
 6 Q. So you have looked at a substantial
 7 amount of information, but it's fair to say that
 8 you haven't reviewed everything that's been
 9 introduced into the court?
 10 A. I have not reviewed everything because
 11 some of it I just haven't gotten to.
 12 Q. I understand.
 13 A. I didn't get to. But most of it I've
 14 reviewed, not all of it, but most of it.
 15 Q. And you would agree with me, of
 16 course, then, that you don't have the benefit of
 17 everything that the judge and that we have
 18 reviewed from day one in this hearing?
 19 A. I don't have the full benefit, no.
 20 Q. Now, I want to go back to the duty of
 21 the trustees.
 22 Can you hear me okay? I'm fighting
 23 with my voice here.
 24 A. Yeah, I can hear you.
 25 Q. You were telling me that the trustees

1 have a duty to use reasonable care, skill, and
 2 caution as a prudent person would, correct?
 3 A. Well, it's actually worded -- the
 4 statute itself reads -- and this is a statement --
 5 these are statements of duties that have been
 6 around a long, long time, but it now reads: A
 7 trustee shall administer a trust as a prudent
 8 person would, and some language -- in discharging
 9 or complying with that standard to exercise -- in
 10 other words, prudence is reasonable care, skill,
 11 and caution.
 12 Q. And that is -- and you mentioned the
 13 reasonable man standard?
 14 A. Well, that was just when you talk
 15 about the prudent person standard, it is -- it's
 16 referred to as -- I forget the exact words, but
 17 it's in the -- it's either in the comments of our
 18 code or it's in the restatement. More people are
 19 familiar with the prudent person, I'm sorry, the
 20 reasonable person when you go into a court when
 21 you've had an accident, a collision. That has
 22 nothing -- the reasonable person standard really
 23 has nothing to do with the prudent person standard
 24 for trustees.
 25 Q. So when you are acting as trustee, you

1 use a prudent person standard?

2 A. Yeah. I mean, that's what -- that's
3 what a trustee is required to do.

4 Q. And you look at that and all the
5 circumstances and make your decision as a prudent
6 person would. Now, what I want you to help me
7 with is how do we determine a prudent person? Do
8 you put -- if you're acting as a prudent person --
9 say, for instance, you're looking at the Dorn
10 trust, okay, or the Cohen trust. Do you put
11 yourself in the trustees' position and look at it
12 from their perspective, if you were in their
13 situation facing the issues that they're facing?
14 Is that the manner from which you look at it?

15 A. Well, let me -- if I could just maybe
16 rephrase that a little bit. What's required is
17 that the standard -- the prudent person, as it's
18 referred to in the statute, it means a prudent
19 person acting or serving as trustee in the same or
20 similar circumstances would act. The point is
21 that the standard is objective. Instead of the
22 actual trustees, in this case Dr. and Mrs. Cohen,
23 you look to what a prudent person, the objective
24 standard, would do. And I'm here, as I understand
25 it, as one expert witness to opine, to give my

1 opinion, on what a prudent person serving as
2 trustee in those -- in the same or similar
3 circumstances would do or would not do.

4 Q. So if you were a trustee, you would
5 put yourself -- or advising these trustees, you'd
6 put yourself in -- or if you were acting as a
7 prudent person, you'd put yourself in the same
8 facts and circumstances situations as the Cohens?

9 A. Yeah. The question is what would be a
10 prudent person, and if you want to use me to say:
11 Mr. Walker, let's assume you're the prudent
12 person, if you want, but, I mean, it's -- I'm here
13 as the expert because of my experience, and I'm
14 simply giving you my opinion as someone that's had
15 years and years of experience with what it is to
16 be a trustee to tell you what, in my opinion, a
17 prudent trustee would have done or not done, faced
18 with the same circumstances, same or similar.

19 Q. But, now, isn't it true that prudent
20 persons can have different opinions?

21 A. I don't understand what you're asking
22 me.

23 Q. You might be looking at the situation
24 with the Cohens and say: Well, I would not have
25 paid Bill A. Someone else of similar skill as you

1 might look at it, put themselves in the same
2 situation, and say: Well, I would pay it.

3 A. Well, you could get two experts in
4 here, and those two experts may not agree. Now,
5 the point I think I need to make here is that in
6 this case, what counsel and I spent so much time
7 going back and forth on is that this isn't a case
8 where I was able to see the process, to see the
9 evidence. There could be minutes of a committee
10 meeting. It's just whatever the record would show
11 that Dr. and Mrs. Cohen here, the actual trustees,
12 what process they went through considering the
13 relevant circumstances and exercising reasonable
14 care, skill, and caution to get to their decision,
15 whatever that decision was. I really have no -- I
16 had none of that to work on.

17 Q. I understand.

18 A. Here's the point: If I had that to
19 work on, if that were laid out in minutes of a
20 meeting, memorandum to the file -- which is quite
21 frequently the way individual trustees will do it.
22 They will just prepare a memorandum to the file,
23 or there may be an email to the file, okay, some
24 kind of evidence as to what went on in that
25 decision-making process. Now, if I had that to

1 look at, then I could further opine on what my
2 opinion was about their decision, and some other
3 expert could come along and could look at it, and
4 that other expert might have a different opinion,
5 but without all of that, all I'm really able to
6 opine on is that without that, there's no evidence
7 that they went through the process, which is
8 required.

9 Q. I understand. And you've only been
10 provided --

11 A. I don't want to go through all that
12 again.

13 Q. No, sir, and I promise you we won't go
14 through that, but you've only been provided with
15 what Mr. Slotchiver has provided you?

16 A. Yeah. He provided me a lot.

17 Q. In all fairness to you, I don't --

18 MR. DAN SLOTCHIVER: Your Honor, I
19 object. He's also been provided with a copy of
20 the transcript of this hearing.

21 MS. HEDGEPATH: Yes. And he indicated
22 he had read a portion of it.

23 THE COURT: Thank you.

24 BY MS. HEDGEPATH:

25 Q. Now, let's talk about the remainder

1 beneficiaries. Abbie is a sole -- the trust is
2 for the sole benefit of Abbie during her life.

3 A. During her lifetime.

4 Q. Yes, sir, during her lifetime.

5 A. Yeah. That's the way I read the
6 document.

7 Q. Now, what duties, if any, do the
8 trustees have to the -- I'm calling them remainder
9 beneficiaries. That may not be the proper word.
10 The children.

11 A. Well, that's a correct -- because once
12 Abbie dies, in the event of her death or when she
13 dies, the trust will terminate, as I understand
14 it. There's no -- the trust doesn't continue.
15 It's just the state gets whatever the state gets,
16 if there's something left, and then if there's
17 something left after that, Abbie's heirs, or her
18 children, get it.

19 And the way I read the trust, there's
20 nothing in the trust that goes on to say that the
21 trust continues. The trust stays in existence for
22 their lifetime. I mean, maybe I missed something.
23 You could have a trust that says after Abbie dies,
24 the state gets whatever the state gets in
25 reimbursement, and then whatever's left continues

1 being administered, they are -- you know, they
2 need to be kept in mind by the trustee, and their
3 interests ultimately, their ultimate interests,
4 need to be considered by the trustee.

5 The fairness is what that duty is
6 really all about, and it's called a duty of
7 impartiality. You can't -- you can't be -- you
8 got to be loyal to all of them. You can't be
9 loyal to one and not loyal to the others, but it's
10 not equal, obviously. It's not equal.

11 Q. And that's what I'm having a hard time
12 with. Does Abbie do without something that might
13 be borderline whether she needs it or not?

14 A. Well, it's up to the -- you know, I
15 said earlier, just a few minutes ago, the trust
16 does provide, which is fairly standard language in
17 a trust, that it does give the trustee
18 discretionary authority to -- or gives the trustee
19 discretion to make distributions to or for Abbie's
20 benefit, and that can be done, obviously, during
21 Abbie's lifetime.

22 But as is true of any power,
23 particularly discretionary powers, it's subject to
24 the trustee must exercise that discretion in a
25 fiduciary way exercising prudence, reasonable

1 in trust, stays in trust for these children until
2 they reach certain ages. But the point here is
3 that I think that the trust essentially terminates
4 when Abbie dies, and these payouts are made, to
5 the extent there's any money to pay out.

6 Q. And at Abbie's death, what is in the
7 trust, Medicaid gets first dibs at it, and they
8 get reimbursed for what they pay, and the
9 remainder goes to the children. Is that correct?

10 A. Yeah. But I think your question to me
11 was what -- I think, what obligations do the
12 trustees have --

13 Q. To the children.

14 A. -- to the remainder beneficiaries now.

15 Q. Yes, sir.

16 A. Well, I think that's best answered,
17 really, when you look at the duty of impartiality.
18 That is a spin-off duty from the duty of loyalty,
19 okay. If you've got more than one beneficiary,
20 more than one beneficiary, then what the law says
21 is that the trustee has to be loyal to all of the
22 beneficiaries, but in respect to their interest,
23 and in this case, these remainder beneficiaries
24 have interests that don't really go out to them
25 until after Abbie's death, but while the trust is

1 care, skill, and caution.

2 So there is this opportunity that the
3 trustees have to make these distributions to
4 Abbie, and, of course, it's tied in to ultimately
5 distributions -- I forget the exact language, but
6 it's tied in to meet her special needs.

7 Now, that's for the trustees to
8 decide, and they have to follow those fiduciary
9 duties of -- comply with those fiduciary duties of
10 reasonable care, skill, and caution when they do
11 that.

12 Now, admittedly, that will take money
13 out of the trust, and that is not in compliance --
14 that doesn't meet the purposes of the trust that
15 I've spelled out so many times, so there is a bit
16 of a balancing act here. And I would say that if
17 the record is that at the end of the day, after
18 Abbie has died, that the trust -- the record shows
19 considerable discretionary distributions to meet
20 all kinds of need that the trustees think Abbie
21 has, some of those may come into question by the
22 state, who's trying to figure out what they really
23 are entitled to, not to mention whoever's looking
24 out for Abbie's children's interest at that time
25 after her death.

1 Q. You talked earlier about the trust was
2 set up for the purpose of Abbie's needs that the
3 Medicaid did not take care of, so we had -- the
4 trustees had a duty to manage that money to make
5 sure that there was enough there to take care of
6 Abbie's needs. Am I remembering correctly?

7 A. Well, I mean, I'll just --

8 MR. DAN SLOTCHIVER: Your Honor, if I
9 may place an objection on the record. He's been
10 called as an expert on the issue of trust
11 administration. He has been questioned for hours
12 and hours on the issue of different applications
13 of trust, and that's not what he's been testifying
14 to as an expert. And we can do it, but it's just
15 irrelevant to the case. It's irrelevant to what
16 he's been called for.

17 It's like you're asking a witness
18 something that has nothing to do with what he's
19 here or what he's opining about or what he's
20 testifying about or what his expertise is in, and
21 I do object to it. It is irrelevant. We can do
22 it if you want, but I wanted to place the
23 objection on the record. It's the same objections
24 I was making before, to some extent.

25 THE COURT: Thank you.

1 administration issues under that trust, so I will
2 allow it.

3 BY MS. HEDGEPATH:

4 Q I think we were talking, Mr. Walker,
5 about the purpose of this trust is to provide for
6 Abbie those things that she cannot get through
7 Medicaid and the need to have the trust funds
8 available. Is that -- for her needs.

9 A. It clearly states: The purpose of
10 this trust -- I mean, I'm just telling you what
11 the trust says.

12 Q. Yes, sir.

13 A. The purpose -- which is good, because
14 it's so clearly set out in this trust. It doesn't
15 have to be gleaned from interpreting, okay. The
16 purpose of this trust is to provide a
17 discretionary spendthrift trust to supplement
18 public resources and benefits when such resources
19 and benefits are unavailable or insufficient to
20 provide for the special needs of the beneficiary.

21 And this is significant, this purpose,
22 because earlier we have seen, maybe on Page 1,
23 these -- she is likely to have special needs
24 related to the disability described above that
25 will not be met without this trust, and the monies

1 Ms. Hedgepath?

2 MS. HEDGEPATH: I thought he was
3 qualified as an expert in the management of
4 trusts, and that's what I'm asking him is how a
5 trust should be managed. Now, it may have been a
6 question for ours, but --

7 MR. DAN SLOTCHIVER: But the question
8 isn't dealing with the management of trust -- I'm
9 sorry. The questions being asked, as I
10 understand, were not about trust management. It's
11 about different types of trusts and different
12 types of benefits and what goes to who with
13 reference to those trusts, not trust management.

14 MS. HEDGEPATH: I'm asking him
15 about --

16 MR. DAN SLOTCHIVER: His testimony --
17 you can ask him a thousand times. He's going to
18 repeat it. He has repeated it over and over and
19 over again. He is here, and his opinions deal
20 with prudence and what steps did you take, and
21 ultimately, 95 percent of every answer he gives
22 comes back to that same issue. We've heard it
23 over and over again.

24 THE COURT: I think Ms. Hedgepath is
25 asking about this particular trust and

1 to be paid to this trust do not exceed the amount
2 that appears reasonably necessary -- at that time
3 when all this was put together and everybody
4 signed off on, to exceed the amount that appears
5 reasonably necessary to meet the special needs of
6 the beneficiary. So that is what the law says the
7 trustees have to exercise good faith in accordance
8 with, this purpose.

9 Q. I understand that. And there's no
10 doubt a considerable amount has been used for the
11 litigation in California. You're aware of that?

12 A. Oh, yes.

13 Q. But are you aware of any needs of
14 Abbie's that have not been met by lack of any
15 funds in the special needs trust? Have you seen
16 any documents to that effect?

17 A. The testimony or the record, including
18 testimony from the Cohens, is that to this extent,
19 to this point, the needs -- her needs are being
20 met, and the shortfall -- I mean, it appears to me
21 from what I've read, the spendthrift trust is
22 about empty, so right now those needs are being
23 met with the annuity payment.

24 Now, the answer to your question is so
25 far I don't find -- I haven't seen any evidence

1 that there is any shortfall. The testimony from
2 the Cohens, certainly Mrs. Cohen, is that if that
3 happens -- and this is kind of her speaking as the
4 parent, as the mother -- we'll do what we've
5 always done. We'll step forward. We'll take care
6 of that. We will not let Abbie down or whatever,
7 but that's -- we're talking about a trust, and the
8 trust -- because they say it won't exceed the
9 amounts reasonably necessary. That's why this
10 purpose is so important.

11 Q. I understand. Mr. Walker, I'm going
12 to wind it up with you. I thank you for your
13 courtesy and cooperation.

14 A. Thank you very much. Appreciate it.

15 MS. MOORE: Thank you, Judge. I just
16 have a few questions.

17 THE COURT: Yes, ma'am, Ms. Moore.

18 CROSS-EXAMINATION

19 BY MS. MOORE:

20 Q. Mr. Walker, if I understood your
21 testimony correctly, one of your biggest concerns
22 is the fact that you have not seen any written
23 documentation or any testimony in writing that
24 supports this process that you believe is
25 necessary to show that they have acted prudently.

1 different ways, and I think I tried to say it by
2 summing it up by saying I think that there
3 wasn't -- there hasn't been the kind of
4 separation, if you will, that the prudent person
5 acting in this would, because that's the standard.
6 The separation of their personal -- their family,
7 their parent, their mother and father, from their
8 trust role, which is required.

9 Q. Mr. Walker, is it possible that such
10 communications could have gone on between them,
11 and that it simply is not reflected in the
12 testimony that's been presented to the court?

13 A. I mean, certainly, that's possible.

14 Q. You have not had any direct
15 conversations with either one of them, have you?

16 A. No, I haven't. Obviously, I haven't.

17 Q. Would you agree that one of the major
18 issues in this case has been about the expenditure
19 of funds for the California case?

20 A. Well, yes. I mean, the case, it's
21 attorneys' fees that have been paid, and the
22 issue, of course, goes back to this provision
23 about prior approval and all of this stuff that
24 we've been through.

25 Q. Yes, sir. Would you agree, though,

1 Is that correct?

2 A. Well, most of what I've reviewed, of
3 course, is written, so I'm looking -- I'm
4 searching the record of what's been provided to
5 me, and I am paying attention to what I'm reading,
6 and what I've said is that what I have read tells
7 me that there have not been -- there appear to
8 have not been conscious and deliberate meetings,
9 if you will, between the two trustees where
10 they've really dealt with together.

11 I mean, Dr. Cohen made the term, which
12 is the same term I used, that he's wrestled, and
13 that could well indicate that there was a
14 particular decision that he had to deal maybe with
15 or without Mrs. -- I mean, it's not -- you know,
16 they're supposed to work jointly, but that doesn't
17 necessarily, in my opinion, mean they've got to be
18 physically. That would be the way you normally
19 would do it, be physically together, but they
20 could work on some subject separately and then
21 basically come to an agreement on it.

22 But I just -- I haven't seen anything,
23 and what's been indicated to me by what I have
24 seen is that not much of this, if any, has
25 actually gone on. I mean, I said it two or three

1 that when preparing a case for trial, that the
2 parties don't know on the front end who the
3 ultimate successor may be?

4 A. The ultimate --

5 Q. The person who's going to be
6 ultimately successful at the end. They don't know
7 that on the front end?

8 A. You mean in terms of the visitation
9 battle or the --

10 Q. In terms of the whole litigation.

11 A. Well, no, but that isn't what the law
12 calls for. The law calls for decisions to be made
13 whenever they come up to be made, and at that
14 point, at that time, with the knowledge that the
15 trustees have, what's on the table, the relevant
16 circumstances, whatever they are.

17 And, of course, the trustees have to
18 determine -- I mean, they're the ones sitting
19 there, unless they take it into court, and they're
20 sitting there with the court trying to help them
21 in some way, some appropriate way. I'm talking
22 about a formal proceeding. They've got to
23 basically say: Well, what do we really need to be
24 thinking about here? And then the question is:
25 Okay. You say we need to think about this. Well,

1 is that really relevant to this decision? You
2 know, they've got to get the relevancy
3 straightened out, and then they go ahead and they
4 consider it, and they do so exercising reasonable
5 care, skill, and caution. This is what prudent --
6 this is what a prudent trustee would do. That's
7 the standard.

8 Q. So wouldn't one of the things that a
9 prudent trustee would do would be to solicit
10 advice from other medical professionals?

11 A. Well, I mean, if it's a medical -- if
12 it's a medical issue that's involved and that is
13 relevant. I mean, that was my point earlier. I
14 think that if you really --

15 Q. Mr. Walker, I don't mean to stop you,
16 but that was -- I'm talking specifically about the
17 California case.

18 A. Well, yeah. You mean with regard
19 particularly to visitation?

20 Q. Yes, sir.

21 A. That was what I was trying to say. I
22 think that you -- you're trying to get -- you're
23 trying to get the best information you can, and
24 that's what the trustee ought to be doing, and by
25 no means do you get only the information you want

1 with opinions that you got that you wanted to
2 hear. You got the opinions that were available.

3 Q. Yes, sir. Mr. Walker, in the
4 litigation in California, weren't there other
5 medical providers who provided testimony at trial
6 other than Dr. Mamelak?

7 A. I understand -- you're talking about
8 the order that came down from Judge Shaller?

9 Q. Correct.

10 A. Well, I understand that Dr. Hays, I
11 think she's quoted in that opinion, and, of
12 course, that opinion ended up saying what it said.
13 I mean, to me, maybe I'm missing something, but
14 that opinion, that's an opinion from the
15 California court.

16 Q. Yes, sir. But Mr. Walker, that
17 opinion comes out at the point at trial. The
18 parties don't know what the judge is going to do
19 at the time they initiate the process. Isn't that
20 correct?

21 A. Well, that's true, except that -- I
22 mean, in other words, they don't have the
23 benefit --

24 Q. Of 20/20 hindsight.

25 A. -- of Dr. Shaller's opinion, that's

1 to hear. That's no way to make a prudent
2 decision.

3 Q. But if the trustees and conservators
4 have received advice from medical professionals
5 that led them to believe that Abbie would receive
6 a benefit from having visitation, would it have
7 been a prudent action for them to take to pursue
8 the issue of visitation?

9 A. Well, I think -- again, this is
10 objective, okay. This is objective.

11 Q. Yes, sir.

12 A. And so you've got to basically look at
13 whatever is relevant, and if all of that is
14 actually done, then somebody -- I mean, you know,
15 it's not all -- it may be an expert witness like
16 me, but it's probably -- it's going to end up
17 being the judge, the court, as the finder of fact,
18 and so somebody's going to have to decide, number
19 one, did they go through this or not. If they
20 didn't, then they didn't comply with their duties
21 to go through the process. If they did go through
22 the process, show me the process. Show me your
23 decision. And then they got to decide -- whoever
24 is deciding this has got to say. Look, you didn't
25 just make a one-sided thing. You didn't just deal

1 for sure, but what I'm saying is that what I read
2 was Dr. Mamelak's deposition where he is saying
3 that back some period of time following, but
4 not -- I don't know whether it was three months or
5 six months or what. He was brought in as a
6 physician at that time, and he was testifying as
7 to what he was attempting to communicate.

8 Q. I understand, but he's not --

9 A. So that was -- that was information.

10 Q. Correct. But he wasn't the only
11 medical professional, was he?

12 A. Well, I mean, that's the
13 deposition I --

14 Q. That's the only one that you read.

15 A. Yeah, if there are others, but there
16 is nothing on the record that tells me that any
17 process was put into place where whatever was
18 available was put on the table to be considered,
19 in the exercise of reasonable care, skill, and
20 caution, and come up with a decision.

21 Now, I do know that there was a good
22 bit of -- you know, that whatever Dr. Mamelak was
23 trying to say, apparently, in fact, his testimony
24 was that he finally just -- that Mrs. Cohen did
25 not want to hear what he had to say. Now, a

1 prudent trustee wouldn't do that, because you
2 remove it from the subjective, because the trustee
3 had his own --

4 Q. Yes, sir, Mr. Walker, but would you
5 agree that the parties, at the time of preparing a
6 case for trial and going to trial, that they want
7 to know the weight to which the judge will place
8 import on an expert's opinion? They're not going
9 to know that ahead of time.

10 A. I mean, I don't -- what does that --

11 Q. So if there were two professionals
12 that say different things, a party is not --

13 A. All I can tell you and ask -- all I
14 can tell you is that the law, the trust requires
15 when there's a decision to be made by a trustee,
16 that a trustee, when deciding whether and how to
17 exercise a power, any of the powers, and we're
18 talking about powers here, must do so, must
19 exercise reasonable care, must be prudent. I
20 mean, I keep saying it because -- and I don't know
21 that I'm --

22 Q. You're getting through to me.

23 A. I mean, I know that I'm in a contest
24 here, but I'm going to keep repeating that because
25 it is so fundamental.

1 Q. I understand. But today, you can't
2 testify to the fact that the Cohens did not go
3 through that very process in making a decision as
4 to whether to continue with the litigation in
5 California?

6 A. I'm telling you that there is no
7 evidence of that. There is nothing that I found
8 that -- certainly nothing that was prepared to the
9 current with that process. That's the best
10 evidence, something that's prepared.

11 I mean, it's not me that -- I'm just
12 telling you what I found or what I didn't find,
13 and therefore, what my opinion is. The court is
14 going to have to ultimately wrestle with what
15 actually happened and the strength of the
16 evidence, credibility, and all that stuff. I'm
17 just telling you that in my review, in my
18 analysis, I mean, I just haven't found any
19 evidence of it at all, any indication that this
20 went on.

21 And some of the things that I've read
22 in the depositions of both -- all of them, I mean,
23 Dr. Mamelak and certainly Mrs. Cohen and
24 Dr. Cohen, just tells me one last time, tells me
25 that there wasn't the degree of conscious

1 awareness to their roles, the very serious roles,
2 as trustees.

3 Q. Mr. Walker, did you read Dan Dorn's
4 deposition?

5 A. I read part of it, and I was in the
6 process of trying to read the rest of it driving
7 down here, but I haven't concluded it.

8 Q. Did you happen to read the portion
9 where he indicated that he utilized the issue of
10 child support as leverage with regard to the
11 litigation?

12 A. I don't know that I read that in his
13 deposition. I think there was something said here
14 by Ms. Meyer in this long thing that I -- the
15 court gave me the opportunity to read shortly, but
16 you're saying he used --

17 Q. The issue of child support as leverage
18 in the litigation.

19 A. Well, I mean, I'll accept the fact
20 that he said it.

21 Q. If he, in fact, used his request for
22 child support as leverage in the litigation, would
23 that put the Cohens in a position of having to
24 continue to defend the litigation?

25 A. That certainly -- I mean, you mean if

1 they were made known or the fact that it -- or the
2 fact that it was -- I mean, I'm having a little
3 trouble.

4 Q. The fact that he used it as leverage.
5 He admits that he used the issue of child support
6 as leverage in the litigation. What impact --

7 A. Weed that out a little bit more,
8 because I'm having a little -- I mean, I'm trying
9 to answer your question, but --

10 Q. Yes, sir. Dan Dorn made a request for
11 child support. Dan Dorn never filed a pleading to
12 withdraw his request for child support. Dan Dorn
13 admitted in his deposition that he used the
14 request for child support as leverage in the
15 litigation. What impact would that have on the
16 duty of the trustees to continue or defend the
17 litigation in California?

18 A. To defend what part of the litigation
19 that you're focusing? What part of it?

20 Q. Child support. He's using it as
21 leverage. He won't withdraw it.

22 A. And you're saying, then, that that
23 tactic by him, that would -- what effect would
24 that have, in my opinion --

25 Q. As to what actions would have been

1 reasonable.

2 A. -- on their -- well, I mean, the
3 only -- the only effect that that could have --
4 the best way I can answer that is that if
5 knowledge of that was -- the trustees had
6 knowledge of that, and they, in fact, used that
7 knowledge in this process that we're talking about
8 here, because it needs to be monitored -- I mean,
9 I don't really know enough about -- I mean, I'm
10 not quite sure what the implications of all of
11 that were, but you're saying that has come out,
12 he's acknowledged that, so that's a tactic he
13 took.

14 I'm not trying to evaluate it or
15 whatever. I'm just simply saying insofar as the
16 trustees are concerned, that would have to be
17 taken into consideration or would have to be
18 considered by an expert, by me, as to how did the
19 trustees deal with it, and what else were they
20 dealing with at that time.

21 So I can certainly agree with you that
22 knowledge of that would become a circumstance that
23 they would -- it would be -- it would be in the
24 exercise of their prudence to consider. But you
25 see, I can't really deal with the ultimate

1 Section 42 USC (d)(4)(C), it's not under
2 (d)(4)(A), and it's got very limited application
3 to what we have here. It's a different
4 arrangement. It's set up with a sort of coop.
5 It's a whole different type of deal, which is not
6 applicable to what we're doing. It has some very,
7 very limited similarities, but it's a different
8 type of trust from what we've got with a d4A, and
9 we have great testimony with regard to this
10 specific trust, which is a d4A trust.

11 MR. KACHMARSKY: It's actually quite
12 similar, and I can actually explain the
13 differences. There is a requirement for a d4A
14 trust --

15 MR. DAN SLOCHIVER: I'm not sure he
16 can hear you, the witness.

17 MR. KACHMARSKY: Can you hear me?

18 THE WITNESS: I'm trying.

19 MR. DAVIS: Your Honor, the second
20 part of the objection is he clearly referenced
21 that it was from a jurisdiction that does not have
22 precedential value on this court

23 THE COURT: I understand. Thank you.

24 MR. KACHMARSKY: It's a federal court
25 case. Well, let's see. If we go in here, we

1 decision because I don't know what the process
2 was. I don't know what else was in the pot,
3 because I never have seen -- not only have I not
4 seen what's in the pot, I haven't seen the pot.

5 MS. MOORE: Thank you. That's all I
6 have.

7 THE COURT: Thank you.

8 Mr. Kachmarsky?

9 CROSS-EXAMINATION

10 BY MR. KACHMARSKY:

11 Q. I just wanted to share one thing with
12 you. This is a case that originated in
13 Pennsylvania, Lewis v. Alexander, and it's in the
14 context of a pooled --

15 A. I'm sorry. I'm having trouble hearing
16 you.

17 Q. I'm sorry. I'm usually not hard to
18 hear, except my voice has been cracking for days.

19 This is a case called Lewis v.
20 Alexander, and it's a little complicated. It's a
21 Pennsylvania case, and it relates to a pooled
22 special needs trust. Mr. Davis was asking you
23 about a --

24 MR. DAVIS: Your Honor, I want to put
25 an objection on the record. That's under

1 start talking about d4A, B, and C trusts. Only
2 the first exemption, which is the A trust, is
3 restricted to an individual under the age of 65.
4 The other two exemptions include a pooled special
5 needs trust, contain no similar language, so
6 that's one difference, okay.

7 THE COURT: Mr. Davis, I'm going to
8 overrule your objection and allow him to proceed
9 with the question. I gave you a lot of latitude
10 in your examination. I'm going to let
11 Mr. Kachmarsky --

12 MR. KACHMARSKY: And I would just also
13 simply point out that the sole benefit requirement
14 is not applicable to the A trust, by the way.

15 MR. DAVIS: I'm sorry. What did he
16 say, the sole benefit is not applicable to the A
17 trust?

18 MR. KACHMARSKY: That's correct.

19 MR. DAVIS: You're talking about the
20 d4A trust?

21 MR. KACHMARSKY: That's correct.

22 MR. DAVIS: The sole benefit
23 requirement is not applicable to the d4A trust?

24 MR. KACHMARSKY: Yes, for the third
25 time. Other than that, I think they're just about

1 identical, okay.

2 BY MR. KACHMARSKY:

3 Q. And in this particular case,
4 Pennsylvania was trying to basically, in addition
5 to the federal statute, was trying to impose its
6 own limitations on special needs trusts, and this
7 case was joined by the Special Needs Alliance.
8 They wrote a big brief. It was actually handed --
9 argued in March of 2012, this decision was handed
10 down in June of 2012, and then a writ for
11 certiorari in the U.S. Supreme Court was denied in
12 January of this year, okay, so this case basically
13 is the law of the land at this time.

14 And I just wanted to point out this
15 provision right here, if you would, and if you
16 would like to just go ahead and read it. It talks
17 about --

18 A. That paragraph?

19 Q. That's correct.

20 A. Shall I read it?

21 Q. If you would like to, that's fine.

22 A. Pennsylvania's general trust law
23 contains numerous provisions for protecting the
24 trust and the interest of its beneficiaries. For
25 example, Pennsylvania law imposes duties of

1 loyalty, impartiality, prudent administration, and
2 prudent investment. These duties may be enforced
3 by a court when the court's jurisdiction is,
4 quote, invoked by an interested person or as
5 provided by law, close quote, and the proceeding
6 may, quote, relate to any matter involving the
7 trust administration, close quote, and it gives
8 the Pennsylvania statutory sites. The court's
9 authority includes the power to remedy breaches of
10 trust, remove the trustee, or terminate the trust,
11 more Pennsylvania statutes. Should the
12 beneficiary be incapable of protecting his or her
13 own interests, the Commonwealth of Pennsylvania
14 may ask a court to appoint a guardian capable of
15 bringing actions on the beneficiary's behalf.

16 Q. Now, I've asked you to read one
17 paragraph out of a 22-page opinion, and I don't
18 know that there's any possible way that you could
19 completely understand the entire context of it,
20 and I've read it a couple times, and I'm not sure
21 I completely do still, but what the court is
22 saying here is that if there are breaches in a
23 special needs trust or there are issues that
24 arise, that these duties at the top here are
25 duties that are available under state law and

1 duties that an interested party can take -- avail
2 themselves of.

3 Is that consistent with South Carolina
4 law and your understanding of the law as it
5 pertains to special needs trusts?

6 A. Yeah. I mean, that's -- I mean, I'm
7 just giving you a pretty quick answer, because
8 that's what I certainly understand as it relates
9 to the questions we've been dealing with earlier
10 and South Carolina law, trust law.

11 Q. And we're talking about duties of
12 loyalty, impartiality, prudent administration, and
13 prudent investment, and whatever other laws we
14 have?

15 A. Yeah, yeah. I mean, that's the simple
16 way for me to answer that.

17 Q. Thank you. I have nothing else.

18 THE COURT: Thank you.

19 THE WITNESS: Do you want this back?

20 MR. KACHMARSKY: You can have it.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Slotchiver?

23 MR. DAN SLOTCHIVER: I think three
24 questions.

25 MS. MOORE: You said three before, and

1 I made fun of you.

2 MR. DAN SLOTCHIVER: Three again.

3 THE COURT: We'll count them.

4 REDIRECT EXAMINATION

5 BY MR. DAN SLOTCHIVER:

6 Q. You were asked, Mr. Walker, earlier, I
7 think Ms. Moore referenced to you that Dan Dorn
8 used the issue of child support as leverage in
9 litigation, and would that justify litigation in
10 the dissolution case. I want to go a little more
11 clearer.

12 Take for a hypothetical that the issue
13 of support, all in all, from start to finish, cost
14 \$40,000, and take as a hypothetical that the issue
15 of visitation cost somewhere north of \$800,000.
16 Using those parameters, how would prudence be
17 applied in determining -- if using the \$40,000
18 cost of defense, would that justify a \$750,000
19 expenditure related to a different and separate
20 issue which you have the right to, because you're
21 the movant, which the trust had the right to
22 dismiss it any time they wanted? How would that
23 be affected by prudence?

24 A. My answer, my opinion, is that these
25 would be -- this is information that would be

1 available to the trustees, and again, the only way
2 I really know how to answer it is that the
3 information you've just stated should be put on
4 the table by the trustees with their trustee hats
5 on, and they should -- this information should be
6 considered when -- or in the process of trying to
7 come to particular decisions. And from the way
8 you pose this, I see the decision perhaps being --
9 or the decision that they've got to come to,
10 they've got to make, is whether to continue to
11 defend or continue to prosecute, to pursue.

12 Q. Those are either/or options.

13 A. And I think that without everything on
14 the table in front of me, in the pot in front of
15 me, so that I can really evaluate what goes on to
16 come to the final conclusion, I can just simply
17 say that these are certainly to be considered, but
18 if I followed your question, I don't think it's
19 rote. I don't think you just -- one automatically
20 results in the other. I mean, it just doesn't
21 work that way, it shouldn't work that way. A
22 prudent trustee wouldn't do it that way.

23 Q. So the fact that you want to fight on
24 the spousal support doesn't necessarily justify
25 you to use all of the trust funds in pursuing a

1 answer was no, you weren't. That being a given --

2 A. I say that because that's what --
3 that's what Mrs. Cohen had said.

4 Q. Understanding that and taking that as
5 a given and understanding that we're dealing with
6 a trust that has a primary beneficiary who has the
7 sole benefit until she passes, and then the
8 benefit comes to Medicaid and/or to the remainder
9 children, does the mere fact that the ward hasn't
10 been deprived, would that justify waste of trust
11 funds?

12 A. No, no.

13 Q. Last question.

14 MS. MOORE: I think you're to five.

15 MR. DAN SLOTCHIVER: This is compound.
16 Last question.

17 THE WITNESS: You promise?

18 MR. DAN SLOTCHIVER: Yes.

19 THE WITNESS: I'm sorry, Judge. I
20 didn't mean to be cute.

21 BY MR. DAN SLOTCHIVER:

22 Q. Understanding that you've read a
23 tremendous amount of documents and understanding
24 that you've read the depositions of the Cohens and
25 understanding that you followed a substantial

1 claim for visitation. They're two separate
2 issues?

3 A. Yeah.

4 Q. So under your process, every issue
5 needs to be considered?

6 A. No. Every decision that a trustee has
7 to make -- and, you know, I've had occasion to say
8 this many times. Being a trustee is all about
9 making decisions, decisions, decisions, decisions,
10 and these decisions can't be made as if you
11 weren't a trustee. They can't be made with
12 subjective considerations.

13 When the chips are down and the
14 defecation hits the rotating blades, as it so
15 often does, the trustee has got to be able to show
16 and explain what went into that decision you made,
17 Mr. Trustee, that's now creating a real problem.
18 How did you come to that decision? Why did you
19 come to that decision? It's only when that is out
20 on the table that the finder of fact can decide
21 whether it was prudent.

22 Q. Mr. Walker, Ms Hedgepath asked you
23 earlier if you were aware of any needs of Abbie
24 that weren't met, even considering the depletion
25 of the funds of the trust, and I believe your

1 amount of the testimony and taking for a given
2 that I asked both Dr. Cohen and Mrs. Cohen about
3 what process did you undertake in making your
4 decisions as a trustee, what prudence did you
5 undertake in making your decisions as a trustee --
6 and I believe the record will reflect it, but just
7 taking it as a given, in case that doesn't reflect
8 in your recollection. I know you weren't -- you
9 haven't seen everything. And taking for a given
10 that the responses received were: What am I
11 supposed to do? It's like I'm in a box. I had to
12 fight for Abbie. If I lost all the money, it
13 would be okay as long as -- and I believe you
14 testified to that one, as long as we fought to get
15 her visitation. Are those the types of responses
16 you would anticipate seeing from a prudent
17 trustee?

18 A. No.

19 Q. And does that, in part, substantiate
20 the opinions that you've rendered earlier today?

21 A. Yes, sir.

22 Q. I've got nothing further.

23 THE COURT: Mr. Davis, anything else
24 from you?

25 MR. DAVIS: No, Your Honor.

1 THE COURT: I think we are concluded,
2 Mr. Walker, for today. I appreciate so much you
3 coming to Horry County to testify. I hope you
4 have safe travels back to Columbia.

5 THE WITNESS: I have my grandson who
6 is -- I thought he was going to come listen to his
7 grandfather, but apparently, he's got better
8 things to do.

9 THE COURT: I would bet he has an
10 electronic device of some sort.

11 THE WITNESS: He does. He brought his
12 computer, and he graduated from the College of
13 Charleston about two years ago, and he's trying to
14 get in the investment management business, and I
15 can guarantee you that's what he's into right now.

16 THE COURT: Good for him. Thank you.

17 We are adjourned. We need to talk
18 very, very quickly about what time we're going to
19 reconvene in the morning. I propose 8:30 in the
20 morning. I see the looks on the faces of counsel.

21 MR. KACHMARSKY: I'll be here.

22 MR. DAN SLOTCHIVER: Well, Judge, the
23 only thing I'll advise the court of is that I
24 intend to call my client first, and he has a plane
25 tomorrow. He has to fly back. Otherwise, he

1 MR. DAVIS: We'll just reserve the
2 right to call him back.

3 MR. DAN SLOTCHIVER: Actually, Your
4 Honor, if they want to reserve that right and we
5 can't finish it tomorrow between 8:30 and 3:30,
6 and we're not going to finish the trial, then why
7 don't we call him the next time we come back,
8 because I do not want to be placed in the position
9 where, for a period of several weeks, if not
10 months, I cannot speak to my client. So
11 understanding that, why don't we call him another
12 day.

13 MR. BOYD: I can't imagine we'll
14 finish it.

15 MR. DAN SLOTCHIVER: Mr. Davis already
16 said it. He spent three-and-a-half hours today
17 questioning this witness. I want to make sure we
18 don't have a problem.

19 THE COURT: Let me ask you, which one
20 of you are going to examine?

21 MR. DAVIS: Reese.

22 THE COURT: Then we might finish.

23 MR. DAVIS: We don't just want to take
24 Dan Dorn 'til 3:00 and say: Okay. He's your
25 witness.

1 won't make it back in time because of the way it
2 works with the flight back to California. His
3 plan tomorrow is he has to leave here by 3:00. So
4 I think we might finish part of his examination by
5 then, I hope we finish all of his examination by
6 then, but I just wanted to advise the court in
7 advance that's the schedule.

8 THE COURT: Does everybody hear that?
9 Mr. Dorn has to leave here at 3:30 to catch his
10 plane to California.

11 MR. DAVIS: We'll start him at 8:30 on
12 the dot. Is that what Your Honor's saying?

13 MS. HEDGEPATH: 3:30 when?

14 THE COURT: Tomorrow.

15 MR. DAN SLOTCHIVER: Tomorrow's
16 Thursday.

17 THE COURT: And Mr. Slotchiver will be
18 calling him first up in the morning, he will be
19 conducting his direct examination, and then the
20 Cohens' attorney and then all of the attorneys
21 would have an opportunity. We started Professor
22 Freeman -- I'm assuming this is going to take
23 longer than either one of our experts.

24 MR. DAN SLOTCHIVER: I don't know why
25 it should, but I think it will.

1 MR. DAN SLOTCHIVER: I don't plan to
2 take Dan Dorn, I don't think, more than 30
3 minutes.

4 MR. DAVIS: Because that's not fair to
5 us either.

6 MR. DAN SLOTCHIVER: But I'll take him
7 as long as I believe it's necessary for me to keep
8 him, Your Honor.

9 THE COURT: But you said you don't
10 think it's going to take very long.

11 MR. DAN SLOTCHIVER: I don't think it
12 will be more than 30 minutes, no.

13 THE COURT: We're going to start with
14 him in the morning at 8:30. I know nobody wants
15 to start, but we're going to start at 8:30 in the
16 morning. We'll start with Dan Dorn.
17 Mr. Slotchiver says he won't take long, 30
18 minutes, 45 minutes, then we'll move on to Reese.
19 That still gives us six hours, if we don't break
20 for lunch. If we had to go through lunch to get
21 him in, that gives us six hours of testimony with
22 Mr. Dorn after Mr. Slotchiver finishes.

23 MR. DAN SLOTCHIVER: Your Honor,
24 we're all, the Charleston contingency, planning to
25 drive back tomorrow night, and I've got nothing

1 more than the obligation to tell my family what
 2 time I think I'll be home.
 3 THE COURT: I haven't told my family
 4 that all week.
 5 MR. DAN SLOTCHIVER: I haven't seen my
 6 family all week.
 7 THE COURT: I haven't either.
 8 MR. DAN SLOTCHIVER: How late do you
 9 plan to work tomorrow?
 10 THE COURT: So we're going to get
 11 through Mr. Dorn tomorrow in time to make sure
 12 he's out of here by 3:30, and then --
 13 MR. DAN SLOTCHIVER: We might be done
 14 with him at 11:00. I mean, I just don't think
 15 there's that much to ask him.
 16 THE COURT: Right. And I think
 17 Ms. Hedgepath and Moore have a couple people on
 18 stand-by.
 19 MS. MOORE: We do.
 20 MR. DAN SLOTCHIVER: They've got
 21 Wingate.
 22 THE COURT: Oh, Wingate.
 23 MR. BOYD: Yes.
 24 THE COURT: And he's coming tomorrow?
 25 MR. BOYD: We've got him prepared to

1 come. It doesn't sound like --
 2 MR. DAN SLOTCHIVER: I think we'll get
 3 to him tomorrow, absolutely.
 4 THE COURT: Then I would say we would
 5 try very hard to finish with Mr. Wingate.
 6 MR. BOYD: I'd like to get Dan and Ken
 7 in tomorrow if we could.
 8 MS. HEDGEPATH: And that should fill
 9 up tomorrow.
 10 MR. DAN SLOTCHIVER: Your Honor, I
 11 don't think it will. I mean, honestly, I think
 12 that Dan Dorn has a limited amount of information,
 13 because he's not a trustee in this case. There's
 14 only so much he can be asked.
 15 THE COURT: I foresee objections.
 16 MR. DAN SLOTCHIVER: And once we get
 17 past that part of it, Mr. Wingate can only take so
 18 long, so I do believe that if you want to work
 19 until 5:00, for example --
 20 THE COURT: I would say at least.
 21 MR. DAN SLOTCHIVER: That we'll get
 22 several other witnesses in. It's up to you, I
 23 mean, but if we're going to come in at 8:30, I'm
 24 happy to work until we're done, but I don't want
 25 to stop early if we don't have witnesses here. So

1 I think we can get some witnesses in tomorrow.
 2 And then I think the other question
 3 we'll have to take up at some point is what do we
 4 do when we stop? Are we all limited to the
 5 witnesses who have been disclosed? Do they have
 6 the opportunity now to continue to go get
 7 witnesses? Do we have the opportunity to go get
 8 more witnesses? Do the Cohens have the
 9 opportunity to go get more witnesses? Does that,
 10 in fact, allow other -- does that require us at
 11 that point, perhaps, to have to call back people
 12 that have already testified to give new opinions
 13 based on the witnesses who have come?
 14 And I'm just posing that, Your Honor,
 15 to think about, so maybe we can chat about it
 16 tomorrow, because I think that's going to be an
 17 issue.
 18 THE COURT: All right.
 19 MR. DAN SLOTCHIVER: The other issue
 20 that I will raise tomorrow, I'll tell you in
 21 advance. I know at some point you're going to
 22 rule on the testimony of the -- you're going to
 23 rule on the motion of Mr. Boyd to revisit the
 24 issue about the testimony of the providers that he
 25 wants to put in, and I, in turn, Your Honor, would

1 ask that -- I'm asking for clarity, because I
 2 don't know, you've never spoken to it, and it
 3 hasn't been raised, but within the order that you
 4 issued at this point, allowing the trustees to
 5 call witnesses, because you stated you're not
 6 going to --
 7 THE COURT: You mean the --
 8 MR. DAN SLOTCHIVER: The guardian ad
 9 litem and the attorney for the guardian ad litem,
 10 that you're not going to punish them by this
 11 action. I would, at some point, Your Honor, like
 12 to be heard on the issue of allowing them to
 13 thoroughly take those testimonies, as you've done,
 14 but not to consider any of the testimony provided
 15 as it relates to the Cohens' portion of the case,
 16 because the prejudice that you've spoken about
 17 would be prejudice to the guardian ad litem, but
 18 the prejudice to us is related to the actions of
 19 the Cohens, and the prejudice should be on them,
 20 not on us.
 21 And I believe Your Honor could
 22 consider the testimony as it applies to the case
 23 presented by the guardian ad litem and not
 24 consider the testimony as it applies to the
 25 testimony of the Cohens. I'm not arguing it right

1 now. I'm just saying that I want to be heard on
2 that at some point also.

3 THE COURT: Okay. So let's do this.
4 We'll reconvene at 8:30 in the morning. We'll
5 take Dan Dorn. Everybody anticipates that we can
6 finish with him so he can be out of here at 3:30.
7 Then we'll move on to Mr. Wingate, and then
8 Mr. Slotchiver seems to think that we might could
9 get to a couple more witnesses, and if we can do
10 that, then I'm happy to go 'til 5:00, 6:00.

11 MR. DAN SLOTCHIVER: And can we ask
12 who those witnesses are, Your Honor, in our plan
13 to move forward and disclose witnesses the day
14 before?

15 THE COURT: Ms. Moore is shaking her
16 head, so good luck with that. I'm not going to
17 make her.

18 MR. DAN SLOTCHIVER: But, Your Honor,
19 you've made us disclose the day before on every
20 day -- in fact, today one of the objections by
21 Reese was that we shouldn't -- that Dan Dorn --
22 they weren't prepared because he wasn't listed,
23 and I have had to testify every day --

24 THE COURT: And I agree with you that
25 you listed him to be called today.

1 don't think. I'll have to get in touch with them
2 tomorrow morning.

3 THE COURT: So possibly Dr. McCarthy,
4 Dr. Dean.

5 MR. DAN SLOTCHIVER: Would it be fair
6 to say that we'll plan to recess at 5:00, Your
7 Honor?

8 MR. DAVIS: Whatever, but if we've got
9 them here, let's knock out as much as we can. I
10 don't want to burden -- I know you've got to get
11 back to Charleston.

12 THE COURT: I don't want to have
13 physicians here and us just say, okay, we're done
14 at 5:00 and send them home. I would like to try
15 to get to them if we can. So I'm not going to say
16 we're going to recess at 5:00. We may, we may
17 not.

18 MR. DAN SLOTCHIVER: Thank you, Your
19 Honor.

20 THE COURT: Thank you.
21 (The proceedings were adjourned at
22 8:45 PM.)
23
24
25

1 MR. DAN SLOTCHIVER: I haven't. I've
2 been required the night before to tell who I'm
3 going to call tomorrow, and I'm asking who
4 Ms. Moore and Ms. Hedgepath plan to call tomorrow,
5 based on the fact we're within 24 hours.

6 MR. BOYD: We've got Wingate.

7 MR. STEVE SLOTCHIVER: That was the
8 same process, Your Honor, that you did with us.

9 THE COURT: All right. Good enough.

10 MS. HEDGEPATH: It will be probably
11 Robin Morris, unless y'all -- are y'all going to
12 call her?

13 MS. MOORE: That's why we were
14 hesitating.

15 MR. BOYD: Well, that was an issue
16 that I wanted to raise with the judge. Again, we
17 didn't address -- there was some reference to
18 Robin Morris this morning, Your Honor, but we
19 didn't really -- we didn't address that issue.

20 MR. DAN SLOTCHIVER: Maybe they should
21 bring more than Robin Morris, because we'll have
22 objections on her. Anybody else?

23 MS. HEDGEPATH: Maybe Dr. McCarthy or
24 Dr. Dean, both of them, but I don't have good -- I
25 can't -- I don't have a number for them tonight, I

1 CERTIFICATE OF REPORTER
2

3 I, Marie H. Bruegger, Registered
4 Professional Reporter, Certified Realtime
5 Reporter, and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing transcript is a true, accurate, and
8 complete record

9 I further certify that I am neither
10 related to nor counsel for any party to the cause
11 pending or interested in the events thereof

12 Witness my hand, I have hereunto
13 affixed my official seal this 16th day of October,
14 2013, at Charleston, Charleston County, South
15 Carolina.
16
17
18
19
20

21 Marie H. Bruegger
22 Registered Professional
23 Reporter, CCR
24 My commission expires
25 April 18, 2021

STATE OF SOUTH CAROLINA
 PROBATE COURT
 COUNTY OF HORRY
 DANIEL B. DORN, in his Capacity as
 the Parent and Natural Guardian of
 [REDACTED] and [REDACTED]
 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 VI

BEFORE HONORABLE DEIRDRE W. EDMONDS,
 Judge

DATE March 7, 2013

TIME 8:38 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: It is March 7th, 2013, in
 the matter of Abbie Dorn.

Mr. Slotchiver?

MR. DAN SLOTCHIVER: I was just
 pointing out to the court that I believe that we
 should be able to finish the trial today in regard
 to the action brought in the case that I brought
 on behalf of my client, perhaps also with regard
 to the other case, but certainly with regard to
 the case that I brought, understanding that the
 witnesses left to be called are my client and
 Mr. Wingate.

Is that my understanding with
 reference to our part of the case?

THE COURT: Pardon me?

MR. DAN SLOTCHIVER: That's my
 understanding with reference to our part of the
 case, that we have my client, and counsel for the
 Cohens are going to call Mr. Wingate.

MR. BOYD: Your Honor, as we discussed
 yesterday at the close, we would like to call
 Robin Morris as part of our case.

MR. DAN SLOTCHIVER: And subject to
 that, Your Honor, we should be able to finish it,
 and part of that, just for information for the

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1 court, I was trying to remember and kind of look
2 back at what had transpired -- there's a lot that
3 transpired with the hearing -- and kind of
4 understand some of the actions, and one of the
5 things -- it's hard, without a tremendous amount
6 of sleep, to think clearly every day, but I
7 finally got some sleep until about 2:00 this
8 morning when I woke up and started looking back,
9 and I confirmed something that I'd seen before.

10 As Your Honor is aware, these two
11 cases were consolidated for purposes of trial, but
12 not consolidated for purposes of judgment. In
13 other words, you can have one judgment in one case
14 and a different judgment in the other case.

15 Now, that being the case, I noted that
16 you have appointed Ms. Hedgepath and Ms. Moore in
17 their capacities for Abbie, but Abbie is not a
18 party in the action I brought. She wasn't named
19 in the action I brought. She's not --

20 THE COURT: She may not be named as a
21 party, but let's be clear, in my opinion, she is a
22 party in your action to remove the trustees of her
23 trust. I didn't go back to look at the order, and
24 I'm happy to, but my position is I appointed
25 Ms. Hedgepath and Ms. Moore to represent Abbie in

1 to the action that we have brought -- and I'll let
2 Mr. Kachmarsky speak to his action, but with
3 reference to the action that I brought on behalf
4 of Daniel Dorn in his capacity as guardian for the
5 minor children against the Cohens in their
6 capacity as trustees and conservators, the
7 guardians have every -- the guardian and the
8 guardian attorney, or the attorney for Abbie, have
9 every right to cross-examine anybody that I call
10 as a witness or anybody that the Cohens call as a
11 witness, but they do not have the right in my
12 action, the one that we filed, to call their
13 witnesses.

14 THE COURT: Let me be clear.

15 MR. DAN SLOTCHIVER: Yes, Your Honor.

16 THE COURT: In my opinion, Abbie, she
17 may not be named as a party, but she has a vested
18 interest in that action. She is, in my opinion,
19 an indismissible party, and if you're going to
20 take the position that she is not a named party,
21 and that she's not a party to the action, then if
22 you had taken that position earlier on, I would
23 have said you need to amend your pleadings, just
24 like I think at some point discuss with Mr. Davis
25 and Mr. Boyd the need to amend their pleadings to

1 the action you brought and in the action that the
2 Cohens brought.

3 MR. DAN SLOTCHIVER: I understand
4 that.

5 THE COURT: I think Mr. Kachmarsky was
6 just appointed in the action that the Cohens
7 brought, but realizing that they were very
8 intertwined.

9 MR. DAN SLOTCHIVER: I understand
10 that. I understand that Mr. Kachmarsky represents
11 a named party in the action, and the action I
12 brought, the named parties are the Cohens in their
13 capacity as conservator and trustee and Daniel
14 Dorn. That being said, the court, in order to
15 protect the interests of Abbie, appointed
16 Ms. Moore and Ms. Hedgepath.

17 But in order to determine who a party
18 is under the rules, you look at the pleadings to
19 determine who the party is. They are not parties.
20 They are representing Abbie in her capacity.

21 As nonparties, Your Honor, we would
22 not have the right to serve discovery on
23 nonparties, and nonparties, while they have the
24 right to examine witnesses, do not have the right
25 to call witnesses, and therefore, with reference

1 add Department of Mental Health and possibly even
2 the minor beneficiaries, I think, to their --
3 because I think initially, the three children were
4 not named as parties. So my position is Abbie is
5 a party to your action.

6 MR. DAN SLOTCHIVER: If I may, just
7 for the record

8 THE COURT: Yes, sir.

9 MR. DAN SLOTCHIVER: Under Rule 10 on
10 the formal pleadings, we list the parties. There
11 has never been any reference in any court
12 proceeding that we've had that they were parties.

13 My understanding clearly agrees with
14 you, Your Honor, with regard to the fact that they
15 are named -- or they have been appointed with
16 reference to the case that I have brought, and
17 that even if the other case were not in existence,
18 they would still both be here.

19 But similar to what I understand
20 happens in family court, in family court, John
21 Smith sues Jane Smith for divorce. Those are the
22 parties. They have minor children. The question
23 is what is in the best interest of the children,
24 and the court will oftentimes appoint a guardian
25 for the children, who has the right to do an

1 investigation, who has the right to come to court,
2 who has the right to examine the parties or
3 examine the witnesses, but does not have the right
4 to call witnesses.

5 And that is my understanding pursuant
6 to the rules. Understanding your ruling is
7 different than that, but I certainly want to
8 preserve that for the record, because I'm not
9 aware of any time up until now that we've been
10 advised they are parties, so I -- excuse me, Your
11 Honor.

12 THE COURT: Sure.

13 MR. DAN SLOTCHIVER: They did not
14 serve an answer to the complaint. They were
15 not -- they have had no interaction, other than to
16 participate on behalf of Abbie and to be invited
17 to participate in the -- in negotiations, invited
18 to participate and attend all depositions.
19 They've never served discovery. They've never
20 been served discovery. In the traditional sense
21 of a party, in no way have they been acting in
22 that role in the sense that the rules set forth.
23 And we've never been advised to serve them, but
24 they've never asked to be served. They've never
25 interjected. They've never filed a pleading to be

1 considered a party in this action.

2 MR. BOYD: Objection, Your Honor To
3 borrow some of Mr. Slotchiver's own argument, you
4 don't have to be -- you don't have to ask to be
5 served discovery, and they did answer our
6 pleadings.

7 MR. DAN SLOTCHIVER: Your Honor, I
8 think what I'm referencing is clearly, they are
9 appropriately here and involved in every aspect of
10 the case in the capacities they've been appointed,
11 but I'm not familiar with authority that converts
12 that appointment to making them technically a
13 party in a sense. I would ask the judge to
14 consider that argument, if you're so inclined to
15 revisit it, based on this information. It's not
16 relative to where we start right now, but -- and
17 it may be a different argument with Mr. Kachmarsky
18 on the case he's involved with, although I
19 understand that he actually is appointed as an
20 attorney and GAL for the minor children, which
21 would mean that he is representing a party.

22 In that case, the children are -- as I
23 understand it, the people that were named in that
24 case were the children and the department, so he
25 would be standing in as a party. He'd have to

1 answer. Actually, he did answer, and he made a
2 counterclaim. But even in that case, they haven't
3 filed an answer, and they weren't required, as I
4 understood it, to be served, but I wanted to put
5 that before the court for your consideration
6 whenever you're willing or ready to rule.

7 THE COURT: Thank you.

8 MR. DAN SLOTCHIVER: Thank you.

9 THE COURT: Let me just see if anybody
10 else needs to be heard. Anybody else want to be
11 heard on that?

12 MR. KACHMARSKY: Yeah. I mean, I
13 guess -- and I have just heard this for the first
14 time, but I'm going to -- my petition is
15 basically -- it looks the same. The amended
16 petition names the three children, the Department
17 of Health and Human Services, and does not name
18 Abbie Dorn, so for the record, I'd like to put on
19 the record that I take the same position as
20 Mr. Slotchiver.

21 THE COURT: Thank you.

22 Mr. Boyd?

23 MR. BOYD: Your Honor, two quick
24 points in reply to this argument. Well, three
25 points. First of all, I don't think it's timely.

1 If counsel was going to take the position, they
2 should have advised the court and parties well
3 before now. I've never participated in a
4 proceeding in probate court where somebody's
5 attempted to impose that restriction on a GAL.

6 This court's order of February 21,
7 2011, is clear. You appointed Ms. Moore for the
8 protection of the interest of Abbie Dorn in both
9 cases and so -- and furthermore, the rules -- sort
10 of the rules of the trial, to the extent we've
11 been able to adopt any, my understanding, because
12 we had this discussion about exactly how we were
13 going to go through the mechanics of trial, is
14 that everybody was going to present their
15 witnesses, and we even discussed, as I recall,
16 Ms. Hedgepath and Ms. Moore, and that we were
17 going to get direct, and everybody was going to
18 have their chance to cross, and we weren't going
19 to do multiple trials. As the court will recall,
20 that was my question. And so there was nothing
21 discussed then, hey, we're not going to allow
22 Ms. Moore or Ms. Hedgepath to call witnesses.
23 This argument is not timely.

24 THE COURT: Thank you.

25 Ms. Hedgepath? Ms. Moore?

1 MS. HEDGEPATH: Your Honor, I never
2 was served with the complaint of Mr. Dorn when he
3 received the order. He, in turn, never served me
4 with his complaint. If I've answered it -- what I
5 have here on my computer, I don't show where Dan
6 Dorn ever served me with his petition.

7 THE COURT: Thank you.

8 Ms. Moore?

9 MS. MOORE: Your Honor, the only one
10 point I want to make is as far as the reference to
11 guardian ad litem in family court, guardian ad
12 litem are appointed routinely when issues
13 concerning custody or visitation are at issue in
14 the case, and routinely, guardian ad litem have
15 the authority and often call their own witnesses
16 to testify at trial in a family court matter.

17 Certainly, Abbie is an interested
18 party, a necessary party, and should certainly be
19 allowed to present any witnesses that either
20 Ms. Hedgepath or myself feel is necessary to
21 protect her interest.

22 MR. DAN SLOTCHIVER: Your Honor, I
23 would agree that we did not serve them because
24 they were not parties, and Your Honor, we cannot
25 serve nonparties with discovery, so although we've

1 In the same way, although I -- and I
2 absolutely agree with you that the guardian and
3 the attorney for the guardian in a case like this
4 is important and proper. I don't believe there's
5 anything to support that they are, in fact,
6 parties, and frankly, I believe that the rules
7 would not coincide with that position.

8 MR. DAVIS: Your Honor, if I may say
9 one thing real quick I appreciate the novel
10 argument, but I can't seem to understand it
11 whatsoever. In California, it's clear that the
12 Cohens were appointed as conservators to bring an
13 action for Abbie. Abbie was unable to bring an
14 action on her behalf as a party. A party cannot
15 be -- a party that has conservators cannot be
16 named. They have to be -- you have to get to that
17 person through the conservators. They've got
18 conservators appointed for them just for that
19 purpose, and they have named the Cohens as I
20 believe individually, co-conservators,
21 co-trustees, and co-guardians.

22 MR. DAN SLOTCHIVER: Not guardians.

23 MR. DAVIS: Not guardians. But they
24 have named them as co-conservators. They can't
25 name Abbie as a party because she's got

1 heard time and time again that they weren't served
2 with discovery, we would not appropriately be able
3 to serve them with discovery, and we certainly
4 could not subpoena them with a list of give me
5 every name you want to call. The most we can
6 serve them with is a subpoena for documents that
7 they would have in their possession.

8 So once again -- and lastly, Your
9 Honor, the timeliness of it, if you're not a
10 party, you're not a party. It's not something
11 that can be waived by not addressing until a
12 particular time. The reality is until they -- I
13 believe I don't have to raise this until they
14 attempt to act as a party, and up until this
15 point, throughout the entire case, from the
16 inception up until now, they have not acted as a
17 party. They've acted in their capacity having
18 been appointed by Your Honor. They've acted as a
19 guardian and as an attorney for Abbie.

20 If they choose to call a witness, then
21 at that point, they'll be acting as a party, but
22 if there was a crucial witness to a case, that
23 witness could not call a party in an action that
24 was brought between two -- a plaintiff and a
25 defendant.

1 conservators appointed for her, so she's clearly,
2 as you mentioned there, a party to this action,
3 and she was a party to the action in California
4 that they're complaining about. It was her
5 divorce, and she was a party, and she's a party to
6 this action, so I just don't understand his
7 argument.

8 MR. DAN SLOTCHIVER: We are not asking
9 to remove the Cohens as guardians. We are not
10 objecting to their behavior as guardians. That's
11 not been something that's ever come before the
12 court. That's not the testimony that has ever
13 been elicited from anybody, and it won't be
14 elicited today, that we would not state, and it
15 hasn't been claimed, that they acted
16 inappropriately as guardians, only in the capacity
17 as conservators and as trustees.

18 Also, contrary to what was said, the
19 guardians, if they want to be a party, there is a
20 mechanism with which they could have moved before
21 the court to be joined in as a party, but they
22 haven't done that, and they haven't taken
23 advantage of that in order to be named a party in
24 this action, and we certainly would contend that
25 any attempt to do it on the eve of the close of

1 trial would be inappropriate if they were, because
 2 it would avail us of the rights -- the different
 3 rights that we would have to exert against them as
 4 parties than we have to exert against them as
 5 guardians and attorney for Abbie.

6 Thank you, Your Honor.

7 THE COURT: Anything else?

8 Ms. Hedgepath?

9 MS. HEDGEPATH: If I understood him in
 10 his prior argument, he said that we haven't been
 11 participating, other than I participating as
 12 attorney for Abbie. Well, that's what this is all
 13 about. You're appointing me as attorney for Abbie
 14 in both actions. Had he formally served me with
 15 his petition, yes, ma'am, I would have answered
 16 it, but to come in here after the trial virtually
 17 is over and claim that we don't have any part in
 18 this action, it comes way too late. We
 19 participated in depositions. We've been here for
 20 motions. We've even presented fee affidavits.
 21 The court has awarded those. There's been no
 22 objection. So how he, in good conscience, can
 23 come in and say you can't act as attorney for
 24 Abbie --

25 MR. DAN SLOTCHIVER: I'm not saying

1 court. The only distinction is they're not
 2 allowed to be served with discovery, and they're
 3 not allowed to call witnesses. That's the only
 4 thing that I'm arguing.

5 MS. HEDGEPATH: What is the purpose in
 6 even wanting an attorney for Abbie or a guardian
 7 ad litem if we can't fully present our case? If I
 8 can't fully present my case on behalf of Abbie,
 9 which an integral part of it is calling witnesses,
 10 why even have me?

11 MR. DAN SLOTCHIVER: Your Honor, the
 12 money that's being asserted doesn't belong to
 13 Abbie. If we go back to what we've been talking
 14 about all along, this is a trust. Abbie is a
 15 beneficiary of the proceeds of the trust. We are
 16 asserting that the trustees and the conservators
 17 acted inappropriately in managing the monies of
 18 the trust. This is not an action against Abbie.

19 THE COURT: That's right, that's
 20 right.

21 MR. DAN SLOTCHIVER: It was not a
 22 scrivener's mistake.

23 THE COURT: But you're asking to
 24 remove the trustees of her trust, and that makes
 25 her very interested in the action. This court has

1 that, Your Honor. I'm not opposed or objecting to
 2 her acting as attorney for Abbie, and I'm not
 3 opposed or objecting to Ms. Moore acting as the
 4 guardian. The only distinction that I'm raising
 5 is that that does not make them a party; it makes
 6 them a participant. As I understand the court's
 7 ruling, it's a necessary participant, because you
 8 want to make sure that Abbie individually has a
 9 guardian and Abbie individually has an attorney to
 10 look out for her rights, but that, in and of
 11 itself, would not make them a party to the action.

12 MS. HEDGEPATH: But Your Honor, I
 13 can't be a participant representing Abbie if
 14 Abbie's not a party. What am I representing, a
 15 phantom?

16 MR. DAN SLOTCHIVER: She can be a
 17 participant representing Abbie. And if, in fact,
 18 Ms. Hedgepath desired to be a party, she could
 19 have filed a petition to be added to the
 20 pleadings, which she did not.

21 But she is -- I'm not objecting to her
 22 participation. I understand that guardians and
 23 guardians' attorneys are allowed to examine the
 24 witnesses, they're allowed to submit fee
 25 petitions, because they've been appointed by the

1 to take into consideration is that in Abbie's best
 2 interest, how does that affect her.

3 MR. DAN SLOTCHIVER: I understand
 4 that.

5 THE COURT: When you filed your
 6 action, I appointed counsel to represent her and
 7 the guardian ad litem to represent her.

8 MR. DAN SLOTCHIVER: I understand
 9 that, and I'm not disputing that at all. I'm
 10 raising the point that it doesn't make them a
 11 party. So I understand that it gives them certain
 12 rights in this action. I understand they have a
 13 voice to be heard with reference to everything
 14 that we do in this action.

15 THE COURT: But you want to limit them
 16 and say that they don't have the ability to call
 17 their own witnesses on Abbie's behalf to present
 18 to this court what they believe is in Abbie's best
 19 interest.

20 MR. DAN SLOTCHIVER: My understanding
 21 of the rules is that the rules preclude anybody
 22 from calling a witness who is not a party, and
 23 they are not parties to the action.

24 THE COURT: I deny your motion

25 MR. BOYD: Before you rule, let me

1 just add one point The order appointing the
 2 guardian and the attorneys for the protected
 3 person, the caption the court used in the order,
 4 which, again, you've signed the order the 2nd day
 5 of February 2011 -- and I've got a hard copy in
 6 the file, I can hand it up -- the caption that the
 7 court utilized in the order, it doesn't mention
 8 Dan Dorn. It doesn't mention the Cohens. It's a
 9 two-line caption, Your Honor. The first line is.
 10 The matter of Abbie Dorn, a protected person.
 11 Nobody else is mentioned in the caption. The
 12 second line is: Matter of Abbie Dorn Special
 13 Needs Trust. So to sit here and contend that
 14 Abbie Dorn is --

15 THE COURT: And what does the order
 16 actually say, Mr. Boyd?

17 MR. BOYD: And it contains -- so the
 18 caption of Your Honor's order is: Matter of Abbie
 19 Dorn, a protected person, matter of the Abbie Dorn
 20 Special Needs Trust, contains both the case
 21 numbers, 2008-GC -- actually, I think that's an
 22 error, Your Honor. It's 2010. 2010-GC-26-25 and
 23 GC-26-50, which are the two cases, and then the
 24 order is: Order appointing guardian ad litem upon
 25 review of the incoming pleadings filed in the

1 above-referenced matters, plural, referring to
 2 both, this court finds that the appointment of a
 3 guardian ad litem is appropriate, necessary,
 4 and/or desirable for the protected person, Abbie
 5 Dorn, referring to her as the protected person.

6 MR. DAN SLOTCHIVER: We agree with
 7 that completely. We're not disputing that.

8 THE COURT: And was that the order
 9 that appointed both Ms. Hedgepath and Ms. Moore?

10 MR. BOYD: There's an order for
 11 Ms. Moore, Your Honor, and there's the equivalent
 12 order for Mr. Kachmarsky, referring only to
 13 2010-GC-26-50 and an equivalent order for
 14 Ms. Hedgepath referring to both actions.

15 THE COURT: I believe the case is
 16 2008. Am I mistaken? Perhaps that has the wrong
 17 number, but it is 2008-GC.

18 MR. BOYD: I'm sorry, Your Honor,
 19 you're correct. It's 2008, 2008. My apology.

20 Thank you, Your Honor.

21 THE COURT: Thank you.

22 Mr. Slotchiver, I'm not aware of any
 23 rule that prevents a court-appointed guardian ad
 24 litem on behalf of either a minor, an alleged
 25 incapacitated person, a protected person, a ward

1 from calling their own witnesses in any action
 2 that involves that person.

3 MR. DAN SLOTCHIVER: Well, Your Honor,
 4 I'll be happy to --

5 THE COURT: Regardless of whether they
 6 were actually named as a party in a proceeding,
 7 I'm not aware of any rule that prevents them -- I
 8 understand you've cited the South Carolina Rules
 9 of Civil Procedure, but I'm not aware of any rule
 10 that limits a guardian ad litem's right to call
 11 witnesses in an action where that person they were
 12 appointed to represent -- maybe they're an
 13 incarcerated person, out of state, in state, maybe
 14 they're a minor, maybe they're already a protected
 15 person, maybe they're already a ward, maybe
 16 they're alleged to be incapacitated -- that would
 17 prevent someone who's representing the best
 18 interest of that person from calling witnesses in
 19 an action to which they have an interest.

20 MR. DAN SLOTCHIVER: Your Honor, I
 21 don't know if there is a particular rule that
 22 applies to a guardian ad litem, per se, but the
 23 rule would apply to nonparties, and the rule for
 24 nonparties is that a nonparty, as I understand it,
 25 cannot call a witness, and the rules specifically

1 set forth who parties are on a case based on the
 2 pleadings, and I will represent to the court that
 3 the pleadings in this case clearly show who the
 4 parties are, and the guardian ad litem or the
 5 attorney for the guardian and Abbie herself and
 6 the guardians for Abbie are not listed as parties
 7 to this case.

8 MR. BOYD: Your Honor, I believe the
 9 court has ruled that the protected person is a
 10 party, and counsel continues to make arguments on
 11 the assumption that she's not.

12 MR. DAN SLOTCHIVER: It's actually not
 13 what we're -- I think we're having a discussion,
 14 if I may, but your comment was you're not aware of
 15 a rule that said a guardian ad litem cannot call a
 16 witness, and my response, if we may continue, is
 17 that they're not -- even though they're interested
 18 persons, they're not parties, and where the person
 19 is a child that's going to be a party, for
 20 example, if I have a minor settlement that I'm
 21 going to appear in front of Your Honor for, I
 22 would have to be appointed a representative for
 23 that child. It would make me a party, in which
 24 case I could come forward.

25 Or if I was to bring a case related to

1 a matter, and there were unidentified parties,
2 unknown parties, people that hadn't been born yet,
3 for example, we would have to bring an action
4 against a GAL and have the court appoint the GAL
5 to represent the interest of the minor parties,
6 and the GAL would be a party to the action.

7 And I've had the scenario with GALs,
8 as I'm sure you've had here, where the GAL says:
9 I'm a party. I want to make sure I'm protecting
10 myself down the road with reference to what I do,
11 but they are parties to the action. I'm not
12 familiar with any basis for a nonparty to call
13 witnesses.

14 Now, I heard what Ms. Moore said, and
15 perhaps it could be done without objection in a
16 case, but I'm still, despite -- other than that,
17 I'm not aware of any authority to allow a nonparty
18 to do it.

19 This action, once again, is not being
20 brought against Abbie or the guardians,
21 understanding they're interested people. I'm not
22 objecting to Ms. Hedgepath. I'm not objecting to
23 Ms. Moore and the role they played in
24 cross-examining any witness. I believe they have
25 the right. They are interested persons. But

1 there's a distinction between the right to
2 cross-examine somebody and the right to call
3 somebody.

4 And if Your Honor rules against me, I
5 would just want my -- I want the record to reflect
6 that. And I would ask Your Honor to -- if you
7 would be so inclined, because I know it's early in
8 the morning, and I know we have some stuff to do,
9 but to -- in the same vein that you're going to
10 consider some of the other motions, if you'd like
11 us to brief it, I'll be happy to do it, but I
12 certainly wanted to raise it to the court's
13 attention.

14 THE COURT: Thank you.
15 Ms. Hedgepath?

16 MS. HEDGEPATH: Your Honor, one point
17 to ponder: When he got your order of appointment
18 of me as attorney for Abbie, was it incumbent upon
19 him, upon receipt of your order, to make Abbie a
20 party and to serve me? Because he was certainly
21 on notice then that you were well aware that Abbie
22 was an interested party and needed to be a party
23 and needed an attorney, so at that point in time,
24 at that juncture, should it not have been
25 incumbent on him to follow through, name Abbie,

1 and serve me?

2 MR. DAN SLOTCHIVER: If that were the
3 case, I think that every divorce case would have
4 to name the children, and I don't believe that's
5 the protocol. It's being -- the court's desire to
6 have Abbie represented separately from the Cohens,
7 I understood that, especially in light of the
8 allegations that were being made, but I don't
9 believe I had any obligation to serve her, and if
10 she thought I did have an obligation, she
11 certainly had the right to interplead to become
12 involved in the case.

13 She's representing Abbie as the
14 attorney for Abbie. She has the right -- if she
15 believed that they were an integral party to this
16 action, she certainly had the right to bring an
17 action to join this.

18 And although I understand the court's
19 comments from the bench today with reference to
20 Your Honor's opinion and your process in making
21 the appointment, this is the first time that it's
22 ever been discussed, and that being the case, it
23 is not a scenario where Ms. Hedgepath could have
24 known about it in advance, and if she believed her
25 role was so different from Lee Moore -- Lee Moore

1 is as the guardian. Ms. Hedgepath's role is as
2 the --

3 THE COURT: Guardian ad litem.

4 MR. DAN SLOTCHIVER: Is the guardian
5 ad litem. Ms. Hedgepath's role is as the
6 attorney. And if the attorney to an action
7 thought that: Maybe I need to be a party to the
8 action, she certainly had the right to file
9 paperwork asserting it.

10 But the reality is we have not claimed
11 anything against the guardian. The assertion we
12 made is based on the trust, and as stated before
13 and acknowledged by Your Honor, the money doesn't
14 belong to Abbie. It's protected under the special
15 needs trust. It belongs to the trust. She is
16 merely the beneficiary of it.

17 MR. DAVIS: Your Honor, may I say
18 something?

19 THE COURT: Yes, sir.

20 MR. DAVIS: I believe you have ruled
21 twice on his request. You denied it two times.
22 And I appreciate his efforts, but with all due
23 respect, Your Honor, if he doesn't like the
24 court's ruling, I believe he's exhibited a habit
25 of behavior where he just continues to ask the

1 court over and over on the same item that has been
2 ruled on. And this has been done on a few
3 different occasions throughout this, and I've
4 talked to Reese about it. Your Honor, you have
5 ruled twice on his motion, so I'm assuming if he
6 wants to continue talking, he needs to do it in
7 the form of a motion to reconsider.

8 We're ready to move forward. He's got
9 a client that's got to go back to California at
10 3:30. You've ruled, again, twice on his motion,
11 yet he continues to talk to you about this. So
12 we're ready to move.

13 THE COURT: Thank you, Mr. Davis.

14 Anything from you Mr Boyd?

15 MR. BOYD: Your Honor, the court's
16 ruled. I'm just in agreement with what the court
17 has ruled.

18 THE COURT: Thank you.

19 I think the court has ruled,
20 Mr. Slotchiver. I deny your request to exclude
21 Ms. Hedgepath and Ms. Moore from calling
22 witnesses based upon your argument that Abbie Dorn
23 is not a party to this action.

24 MR. DAN SLOTCHIVER: Understanding
25 that my objection is so noted on the record --

1 BY MR. DAN SLOTCHIVER:

2 Q. Good morning, Dan. It's been a long
3 week.

4 A. Yes.

5 Q. You've heard a lot of things said
6 about you over the week. This is your chance to
7 respond a little bit, okay.

8 Let's start with some background. Can
9 you tell the court where you're from and your
10 educational background?

11 A. I was born in Los Angeles, California,
12 and I got a college degree in finance and real
13 estate.

14 Q. And where are you employed? Who do
15 you work for?

16 A. I work for Carl Dorn, my father.

17 Q. Dan, are you currently married?

18 A. Yes, that's religiously.

19 Q. And when were you remarried? This is
20 your second marriage.

21 A. I got religiously married about three
22 months ago.

23 Q. And you live together with your wife
24 and the children in California?

25 A. Presently, yes.

1 THE COURT: Yes, sir.

2 MR. DAN SLOTCHIVER: -- I would call
3 Daniel Dorn.

4 THE COURT: Mr. Dorn.

5 MR. BOYD: Your Honor, may it please
6 the court, should we go ahead and address the
7 issue of Robin Morris at this time?

8 THE COURT: No, sir. We're going to
9 get Dan Dorn and finish with him before we address
10 anything else. Thank you.

11 MR. DAN SLOTCHIVER: Can he run to the
12 restroom real quick, Your Honor?

13 THE COURT: That would be fine. I'm
14 going to take five minutes. I will be right back.
15 Five minutes. Thank you.

16 (A recess transpired from 9:09 AM to
17 9:15 AM.)

18 THE COURT: We are back on the record
19 in the matter of Abbie Dorn

20 DANIEL DORN

21 having first duly affirmed, testified as follows:

22 MR. DAN SLOTCHIVER: May it please the
23 court?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

1 Q. And how many children do you have?

2 A. We have five children together.

3 Q. So you've got the three children born
4 between you and Abbie who are six years old at
5 this point. Is that right?

6 A. Correct.

7 Q. And then you've got two more. How old
8 are they?

9 A. Six and four, so I have my own first
10 grade.

11 Q. Got your hands full.

12 Well, let's go to the meat of this.
13 Tell me about how you met Abbie.

14 A. I was in a rabbinical school at the
15 time, and I was basically set up, like a
16 matchmaker. He said he had --

17 Q. And for the court's benefit, that is a
18 custom that is still followed to a large extent,
19 you get set up, but it's not -- as I understand
20 it, correct me if I'm wrong -- and I will lead a
21 little bit, Your Honor, but as I understand it,
22 it's not a matchmaker where this is who you're
23 going to marry, it's a matchmaker for the
24 introduction.

25 A. For the introduction. He is -- it's

1 like mutual friends. He knows people in your age
2 range. So basically, I'll cut to the chase. He
3 gave me Abbie's number. I spoke to her on the
4 phone for over an hour, and two days later, I flew
5 out to Atlanta, Georgia, where she was finishing
6 up being a chiropractor at Life University.

7 Q. How long did you and her date before
8 you became engaged?

9 A. I always like to joke around that I
10 asked her to marry me on the third date, but I
11 think she said I asked her to marry her on the
12 sixth date, but I always like to joke around it
13 was the third.

14 Q. And you were then married shortly
15 thereafter, I take it?

16 A. About six months later. She came out
17 to California. She met my family. I met her
18 family. It wasn't like just all of a sudden.
19 When I say date, I don't mean just an hour. I
20 mean from like 9:00 in the morning 'til 11:00 at
21 night. It's a full day.

22 Q. When you and Abbie were married, where
23 did you live? I don't mean physically, but the
24 city. Did you live in Los Angeles?

25 A. I lived in Los Angeles, California.

1 baby, and it was -- turned out that there were
2 three heartbeats, and I was elated. I was very
3 happy. It was a good day. She was nervous, Abbie
4 was nervous, but I was happy

5 Q. Throughout the pregnancy, you and
6 Abbie still maintained a very tight relationship?

7 A. Very much so.

8 Q. And when the day came for the
9 children, was it a surprise day, or was it
10 scheduled?

11 A. Abbie did a lot of research. She was
12 on bedrest literally at least the last four
13 months. She did a lot of research that the babies
14 would be much healthier if it was a vaginal birth,
15 and she kept talking to the doctor and trying --
16 saying that she wanted a vaginal birth. The
17 doctor kept saying he would try it if he was able
18 to. And it wasn't scheduled. I came home in the
19 morning, and she said her water broke, and I
20 excitedly and nervously drove her to the hospital.

21 Q. I'm going to move a little. I'm going
22 to move from that to then ultimately, the babies
23 were conceived, and the issue occurred.

24 A. Yes.

25 Q. I'm going to move a little past that,

1 Q. And Dan, how long were you and Abbie
2 married before this event occurred?

3 A. Roughly five years.

4 Q. How would you describe your marriage?

5 A. We had a wonderful marriage together.

6 Q. You loved your wife, and she loved
7 you?

8 A. Very much so.

9 Q. Was it easy for the two of you to have
10 children?

11 A. It was difficult.

12 Q. And I understand it took quite some
13 time?

14 A. Over a year, over a year trying with
15 fertility methods.

16 Q. And I don't want to go into a lot of
17 that personal detail, because I don't think it's
18 relevant or necessary, but ultimately, she did
19 become pregnant?

20 A. Yes.

21 Q. And I'm assuming that was a happy
22 period?

23 A. Yeah. I remember when we went in to
24 see -- one of the hormone levels was off the
25 chart. We went in to see if it was more than one

1 instead of dwelling on that. I'm assuming you
2 were -- the three children were born. The doctors
3 knew they had a problem immediately, I take it.
4 Is that right?

5 A. I mean, there were three children born
6 vaginally. I think there was no apparent
7 life-threatening problem, I thought, at least
8 until much later.

9 Q. Let's move to the next day. Let's
10 move 24 hours later. 24 hours later, the problem
11 had been discovered?

12 A. Yes.

13 Q. In earlier testimony, the comment, or
14 a comment, was made by Susan Cohen that they were
15 with the children. They never saw you with the
16 children during the time that Abbie was in the
17 hospital. Where were you? Well, first, did you
18 see the children?

19 A. I saw the children many times a day.
20 I just basically was living in the hospital. I
21 slept by Abbie's side, and if I wasn't by Abbie's
22 side, I was by the children's side. It was just
23 back and forth.

24 Q. Would it be fair to say that it was,
25 as I would imagine with anybody, a devastating

1 time?

2 A. Yes.

3 Q. Kind of a weird mix of happiness for
4 the children and --

5 MR. BOYD: Your Honor, I object. I'm
6 trying to give counsel some latitude, but he's
7 leading his own witness, and I'm not really sure
8 exactly how far that he needs to really go here.
9 It's not really relevant to his claims.

10 MR. DAN SLOTCHIVER: Well, Your Honor,
11 I'll be happy to move away from the background and
12 purely into what's technically relevant to my
13 claim if co-counsel or the counsel on all the
14 other sides would observe the same courtesy to my
15 client, but my experience thus far is that we
16 generally want to go into the background, and they
17 want to -- I'm assuming that they're going to
18 explore all of this stuff with him. If they're
19 willing to just talk about the claim itself, I'm
20 happy to move forward, and we'll just use that as
21 a starting point.

22 THE COURT: I'll give you some
23 latitude, Mr. Slotchiver.

24 MR. DAN SLOTCHIVER: I'm just trying
25 to get -- a lot of bad things have been said about

1 A. Correct.

2 Q. Eventually, you were able to take the
3 children home?

4 A. Correct.

5 Q. Was any financial assistance given to
6 you by the hospital from the time period that you
7 brought the children home?

8 A. Cedars-Sinai paid for, from what I can
9 remember, 24-hour care for six months.

10 Q. Now, we heard testimony earlier from
11 the Cohens that they had contributed a
12 considerable amount of money also out of their
13 pocket. Is that correct?

14 A. To the children's care?

15 Q. Excuse me. I'm shifting. For
16 expenses related to Abbie.

17 A. In the beginning, that's correct.

18 Q. Were they reimbursed for all those
19 expenses?

20 A. Within the settlement from
21 Cedars-Sinai, I worked very hard to get them every
22 single penny returned to them.

23 Q. So the children had 24-hour care, and
24 you're still going back and forth with Abbie and
25 the kids, I take it?

~1 him, and I think he needs to have a little bit of
2 time to explain. And understanding that the
3 objection is that it's not relevant, it's
4 certainly -- the opposite of this was certainly
5 brought up in testimony.

6 THE COURT: Yes, sir.
7 BY MR. DAN SLOTCHIVER:

8 Q. At this point now, you're sleeping
9 with Abbie in the room where she is. You've got
10 the kids. Are they in like a NIC unit,
11 neonatal-type unit?

12 A. They were -- because, thank God, they
13 were all healthy, they actually were -- they could
14 have gone home a couple days later, but the
15 pediatrician, he did me a favor, basically, by
16 saying they were a bit jaundiced, so they were
17 under that blue light, and in order to keep them
18 there longer, because I wasn't prepared to take
19 them home at that point.

20 Q. So he found a way to justify and to
21 quantify, I guess, to keep them a little bit
22 longer?

23 A. Correct.

24 Q. And you had other things you were
25 dealing with?

1 A. Abbie was in the hospital for three
2 months, and the entire first two weeks -- the
3 children were in the hospital for two weeks, and
4 for two weeks, it was just like living up and down
5 stairs.

6 Q. Did you and Susan Cohen ever have any
7 conversations -- or what conversations did you and
8 Susan Cohen -- I'll rephrase it.

9 Can you tell me about any
10 conversations you and Susan Cohen would have had
11 regarding who would be best with the children?

12 A. A little while -- a little later down
13 the line, Susan suggested that I give the children
14 to her daughter to raise, Amy, or Chana Meyer.

15 MR. BOYD: I'm going to object.
16 There's been no evidence or testimony to --

17 MR. DAN SLOTCHIVER: She's a party,
18 Your Honor.

19 MR. BOYD: I understand that, Your
20 Honor, but --

21 MR. DAN SLOTCHIVER: He doesn't have
22 to corroborate what someone else already testified
23 to. He is a party, and he's testifying as to what
24 a party said to him.

25 THE COURT: I'll allow it.

1 MR. BOYD: Thank you.
 2 BY MR. DAN SLOTCHIVER:
 3 Q. What did you say to her in response?
 4 A. I thought she was joking.
 5 Q. Was she?
 6 A. No. She seriously told me to consider
 7 it and tried to talk me into it and said how great
 8 the children would be and how it would be in the
 9 best interest of the children. Of course I
 10 disagreed.
 11 Q. Let's talk about more of a broader
 12 spectrum over the first year. What did you do to
 13 familiarize yourself with the condition that Abbie
 14 was under?
 15 A. I constantly talked to Adam Mamelak.
 16 Q. And we've seen his deposition. It's
 17 going to be in the record for the court to review.
 18 A. I spoke to him in the hospital many
 19 times as well as his --
 20 Q. What do you know about Dr. Mamelak?
 21 A. He was voted one of the top 100
 22 doctors in America one year. He graduated --
 23 MR. BOYD: Objection, Your Honor.
 24 There's no foundation for that testimony.
 25 MR. DAN SLOTCHIVER: It's his

1 across very harsh.
 2 Q. In a manner or in a diagnosis similar
 3 to Mamelak, but just a little harsher?
 4 A. Yeah. It was hard to swallow at the
 5 time, and I think we all agreed to switch doctors,
 6 get someone who could -- I would say his bedside
 7 manner was better.
 8 MR. BOYD: Your Honor, I object.
 9 There's references to diagnoses. He's testifying
 10 to things that are not simply in evidence.
 11 THE WITNESS: I didn't say anything
 12 about diagnosis.
 13 MR. DAN SLOTCHIVER: He testified
 14 actually that Susan was upset about it, and they
 15 decided to switch.
 16 THE COURT: I'll allow it.
 17 BY MR. DAN SLOTCHIVER:
 18 Q. Would it be fair to say that during
 19 this time period, that you were having constant
 20 communication with Paul and/or Susan?
 21 A. Yeah. Paul and Susan were even
 22 sleeping in my parents' house, and in fact, Paul
 23 slept in my parents' house for at least a year.
 24 He stayed at my parents' house.
 25 Q. You said that you had spoken to

1 understanding, Your Honor.
 2 MR. BOYD: Your Honor --
 3 THE WITNESS: Look it up on the
 4 Internet.
 5 MR. BOYD: Your Honor, there are a lot
 6 of things on the Internet, but Mr. Dorn can't
 7 testify to those things in court.
 8 MR. DAN SLOTCHIVER: I believe, Your
 9 Honor, that many objections were raised by myself,
 10 and the response was always what is their
 11 understanding. I'm just asking his understanding.
 12 Certainly, this isn't an expert opinion I'm asking
 13 for. I'm just asking him what his understanding
 14 and what his knowledge is of Dr. Mamelak, and if
 15 he can tell us -- I can lay a foundation.
 16 THE COURT: Please do so.
 17 BY MR. DAN SLOTCHIVER:
 18 Q. Have you ever seen anywhere or seen
 19 any document to substantiate the position that he
 20 was listed as one of the top 100 doctors?
 21 A. I saw it on the Internet when we were
 22 looking it up, because the first doctor that --
 23 the first neurosurgeon that we had at Cedars-Sinai
 24 I would say was a little blunt the way he came
 25 across, and Susan didn't like him at all. He came

1 Dr. Mamelak. What else did you do to familiarize
 2 yourself with the condition that Abbie was under?
 3 A. I have a bunch of friends that I went
 4 to grammar school with that all became doctors,
 5 and I constantly was talking to them.
 6 MR. DAN SLOTCHIVER: Let's not state
 7 what they said. I'm not asking what they said.
 8 I'm asking, Your Honor, what actions he did.
 9 THE COURT: Yes, sir.
 10 BY MR. DAN SLOTCHIVER:
 11 Q. So you spoke to friends of yours who
 12 you knew that were medical doctors?
 13 A. Correct. And then I spoke to other
 14 doctors constantly within the hospital. It was a
 15 well-known story within the hospital, so everybody
 16 was interested.
 17 Q. What was your understanding of what
 18 was going on with Abbie?
 19 A. Early on?
 20 Q. Early on.
 21 A. I just knew that it was not like the
 22 movies. I thought she was clinically dead for 20
 23 minutes.
 24 MR. BOYD: Objection, Your Honor.
 25 He's not qualified as a medical expert. He

1 doesn't know that.

2 THE WITNESS: I was there in the room.

3 THE COURT: Excuse me. Let them --

4 MR. DAN SLOTCHIVER: Your Honor, he's
5 testifying as to his understanding I would ask
6 for a little latitude, and I would ask that the
7 court keep in mind that there are two sides and
8 two families that have been affected by Abbie, and
9 this is her husband who lost his wife as a result
10 of this who's testifying.

11 THE COURT: I'm going to allow it,
12 Mr. Boyd.

13 MR. BOYD: Your Honor, he did not
14 say -- the witness did not say he thought she was
15 clinically dead; he said she was clinically dead.

16 THE COURT: Well, I think
17 Mr. Slotchiver said what is your understanding, so
18 the witness can certainly qualify his answer by
19 indicating his understanding.

20 THE WITNESS: I can go a little into
21 depth. I was there in the room when she died.
22 She flat-lined. That's why I ended up getting an
23 extra \$250,000 in the settlement, because I saw
24 her die

25 BY MR. DAN SLOTCHIVER:

1 little bit. I want to give you time, but you did
2 indicate last night you'd be done with your client
3 in 30 minutes, and I --

4 MR. DAN SLOTCHIVER: Well, Your
5 Honor --

6 THE COURT: No, Mr. Slotchiver. I'm
7 certainly going to give you the time you need,
8 okay.

9 And Mr. Boyd, I would like to give him
10 a little bit of leeway here.

11 MR. BOYD: I understand, Your Honor, I
12 understand. The point, Your Honor, that I would
13 make is the witness made a direct answer to his
14 question, and apparently, in my impression,
15 counsel didn't like it, so he was trying to refine
16 the witness's answer. That's not proper.

17 THE COURT: Yes, sir. I agree with
18 that. Mr. Slotchiver --

19 MR. DAN SLOTCHIVER: Only trying to
20 further elaborate on it, Your Honor. And I did
21 state yesterday, Your Honor, that we've had 36
22 hours of trial work, essentially, plus all the
23 other parts of it, so I was a little exhausted
24 last night. I'm a little more refreshed right
25 now. I think it's going to take a little longer

1 Q. And for the purpose of that, just for
2 clarity, my understanding is that California has
3 different sets of rules with reference to torts
4 and different requirements and different minimum
5 or maximum limits that you can recover, so it's, I
6 guess, to some extent, a calculation as to what
7 happened, and that can provide how much you can
8 get, and from there you go to the next step. Is
9 that --

10 A. Yeah, correct, but I'll backtrack a
11 little.

12 MR. DAN SLOTCHIVER: I just wanted to
13 clarify, Your Honor, more for the record that it's
14 not: I got more money because of it. You were
15 qualified to get more.

16 MR. BOYD: Objection, Your Honor,
17 counsel is testifying in his questions.

18 MR. DAN SLOTCHIVER: Your Honor, it's
19 a harmless point, and I'm just trying to move past
20 this.

21 MR. BOYD: Your Honor, he's trying to
22 refine the testimony as he goes.

23 MR. DAN SLOTCHIVER: I'll be happy
24 to --

25 THE COURT: If you can move along a

1 than I expected, but I'll move along as quick as I
2 can.

3 THE COURT: That's fine. Thank you.
4 But he is your witness on direct. If you can
5 refrain from leading, to the extent that you can.

6 MR. DAN SLOTCHIVER: I'll be happy to.
7 BY MR. DAN SLOTCHIVER:

8 Q. You stated that you witnessed her
9 flat-line. Tell me what happened next.

10 A. They called a code blue, and they
11 worked on Abbie. At least, I would say, 30
12 professionals came into the room. They started
13 with CPR. They intubated her. They brought in
14 the defibrillator, same thing they did for you
15 last week. They shocked her once. She still was
16 flat-lined. She still had no pulse. They did it
17 twice. I think they -- I'm pretty sure they did
18 it three times.

19 The OB/GYN doctor, he was in the room,
20 and he looked at me, and he shook his head.

21 MR. BOYD: Objection, Your Honor,
22 hearsay.

23 THE COURT: Strike that

24 MR. DAN SLOTCHIVER: Your Honor, I
25 don't believe shaking a head would be a

Page 1858 1 communication. He can observe that. It's not an 2 oral statement. 3 THE WITNESS: Somebody shook their 4 head at me. 5 THE COURT: I will allow that. Thank 6 you. 7 THE WITNESS: Indicating to me that -- 8 I thought that maybe she was going to pass away 9 right there, and I started talking to her, I would 10 say screaming to her, saying: Get a pulse, get a 11 pulse, and all of a sudden, a pulse appeared. And 12 it got stronger, and I thought it was going to be 13 like the movies, like it came out from -- I 14 thought it was going to be like the movies, and 15 all of a sudden, she was better again, but then 16 after what seemed to be a long period of time, 17 they took her to the ICU, quickly. 18 BY MR. DAN SLOTCHIVER: 19 Q. Let's move further down, okay. Let's 20 move further in time. With reference to issues 21 that needed to be addressed, the kind of issues 22 like guardianship, conservators, trustees, what is 23 your understanding as to who had the authority to 24 serve in that capacity? 25 A. I know a lot more now than I did then,	Page 1860 1 issues? 2 A. The significance for a year to me was 3 every medical expert that I spoke to told me that 4 if there's no medical improvement in Abbie after 5 one year -- 6 MR. BOYD: Objection, Your Honor. 7 This is absolute hearsay. 8 BY MR. DAN SLOTCHIVER: 9 Q. What is your understanding of the 10 significance of a year? Without saying what 11 anybody told you, what was your understanding? 12 MR. BOYD: Objection, Your Honor. 13 He's just eliminating the middle man, but he just 14 indicated this testimony is hearsay. 15 THE COURT: Mr. Slotchiver, I believe 16 there were similar objections from you as to 17 Mrs. Cohen's testimony the other day, and I would 18 not allow it in. I don't think this is -- 19 MR. DAN SLOTCHIVER: I'll rephrase it. 20 THE COURT: Okay. 21 BY MR. DAN SLOTCHIVER: 22 Q. What was your opinion of Dr. Mamelak? 23 MR. BOYD: Objection, Your Honor. Is 24 he asking for a medical opinion? 25 MR. DAN SLOTCHIVER: I don't believe
Page 1859 1 but being the husband, I had full control of 2 everything. 3 Q. Which one of those did you decide to 4 exercise? What did you accept, and what did you 5 allow somebody else to accept? 6 A. Susan, I would say, taking control, 7 not because I didn't want to or didn't think about 8 it. It's I didn't really have a choice. I was 9 just kind of pushed to the side. She took 10 control, so -- and very competent. I'm not saying 11 she's not competent. She's very competent in 12 taking control. I thought it would be in the best 13 interest of Abbie to let her be conservator, 14 control of the trust and control of guardianship. 15 Q. During that time period, how was your 16 relationship with Susan? 17 A. I think that was back when Abbie was 18 in Bakersfield. I wouldn't say it was great. I 19 would say it was okay. We were on speaking terms 20 barely even then. 21 Q. Was there any significance to a year 22 after the event happened, give or take, but just a 23 year period? Was that significant for any reason, 24 other than obviously it's the anniversary, it's 25 your children's birthday, but other than those	Page 1861 1 he can give a medical opinion. 2 THE COURT: He's just asking for 3 his -- I assume his lay personal opinion of this 4 doctor. I'll allow that. 5 THE WITNESS: He was -- I thought he 6 was very smart, as well as he's also a religious 7 Jew. Also, he graduated from Harvard 8 MR. BOYD: Objection, Your Honor. 9 There's no foundation for these statements. 10 THE COURT: I'll allow that. 11 BY MR. DAN SLOTCHIVER: 12 Q. I read in Dr. Mamelak's deposition -- 13 I'm assuming you've read Dr. Mamelak's deposition 14 before. Is that a fair statement? 15 A. Yes. 16 Q. And you testified that you as well -- 17 that you had the opportunity to speak to 18 Dr. Mamelak? 19 A. Yes. 20 Q. And based on his deposition, what is 21 your understanding -- and that's in evidence. 22 Based on his deposition, what is your 23 understanding of Abbie's likelihood to consider -- 24 or to improve based on timeliness, meaning at 25 different marks along the way?

1 A. That she was never going to recover,
2 and she would always be in a vegetative state, and
3 if she were to be able to come out of that state,
4 the vegetative state, it would be virtually,
5 virtually impossible, that every single -- like
6 New England Journal of Medicine would want to
7 write about it and publish articles about it.

8 MR. BOYD: Objection, Your Honor.
9 He's mischaracterizing the deposition.

10 MR. DAN SLOTCHIVER: We'll move along.
11 BY MR. DAN SLOTCHIVER:

12 Q. After a year had taken place, there's
13 been testimony that you approached or that you
14 contacted Dr. Cohen, telling him you wanted to
15 move along. Can you tell me about any
16 conversation you had with either Susan or Paul
17 Cohen where the issue of moving along, getting a
18 dissolution, getting the -- where that was
19 discussed?

20 A. I first talked to Adam Mamelak before
21 I spoke to Susan and Paul, and it's in the
22 deposition. You can even read our conversation.

23 Q. Well, that's not before the record at
24 this point, so tell us about your conversation
25 with Susan and Paul.

1 BY MR. DAN SLOTCHIVER.

2 Q. So you can explain it.

3 A. Normally, within the Jewish religion,
4 you just give a Get, and the woman receives it,
5 and you have a divorce. But the argument was
6 Abbie was not able to receive the Get. She was
7 not in a condition able to receive the Get, so I
8 needed --

9 MR. BOYD: Objection, Your Honor,
10 that's hearsay. He's obviously referring to the
11 statements of others.

12 THE COURT: I will allow it, Mr. Boyd.

13 THE WITNESS: So a rabbi actually from
14 Atlanta had to go out to see Abbie to see if she
15 was even in a condition able to receive the Get,
16 because if she could receive a Get, I'd just give
17 her the Get, and I'm divorced. Why go through the
18 whole trouble of getting over 100 rabbis on three
19 different continents?

20 BY MR. DAN SLOTCHIVER:

21 Q. Did you have to ultimately go through
22 the effort?

23 A. Yes, I did. And Susan tried to argue
24 that she was there, and the rabbi didn't find
25 that, so I had to go through --

1 A. I basically told them that I wanted to
2 move on.

3 Q. There was testimony that you were
4 ready to get married. Were you ready to get
5 married when you had that conversation with them?

6 A. Absolutely not.

7 Q. Can you explain the process that you,
8 as an observant Jew, would have to go through
9 before you would even be eligible to get married?

10 A. The process I had to undergo was
11 called heter mer rabanan. It means like from 100
12 rabbis, but it had to be like 120, just in case a
13 few of them were disqualified or something. It
14 has to be on three different continents. And
15 basically, the concept is -- what a Get is in a
16 Jewish religion, a Get is a divorce, but a woman
17 has to receive the Get in order to --

18 MR. BOYD: Objection, Your Honor. I'm
19 not sure there's any foundation for this
20 testimony.

21 MR. DAN SLOTCHIVER: Your Honor, he's
22 testifying as to his knowledge and his basis, and
23 I don't believe he needs a foundation to testify
24 about what he was doing and why.

25 THE COURT: I'll allow it.

1 MR. BOYD: Objection, Your Honor,
2 hearsay.

3 THE WITNESS: So Susan had to --

4 THE COURT: I'll sustain that. Strike
5 that.

6 MR. DAN SLOTCHIVER: With reference to
7 the rabbi's comment, not Susan's comment, correct?

8 THE COURT: Yes.

9 BY MR. DAN SLOTCHIVER:

10 Q. So Susan argued with you over it?

11 A. She argued with the rabbi saying that
12 she was there, but if she was there, then I could
13 just give her the Get, and I'm divorced.

14 Q. So ultimately, you were unable to give
15 her the Get?

16 A. I was unable to give her the Get, so
17 they started the process of the heter mer rabanan,
18 which took roughly a year-and-a-half. And that's
19 from -- I don't recall exactly, but it's from the
20 point, almost, of getting the bifurcation.

21 Q. So two-and-a-half years after the
22 birth of your children and the injury to Abbie is
23 when you received the ability to go out and get
24 married?

25 A. Yes, roughly.

1 Q. Can you tell us what you anticipated
2 would happen with a legal divorce action,
3 dissolution action in California, how you
4 envisioned it playing out?

5 A. I say that's why --

6 Q. You can talk about conversations you
7 had with Paul or Susan Cohen.

8 A. Upon the finality of the medical
9 malpractice lawsuit, I remember being in the
10 hallway with Paul, and I thought we were going to
11 go through -- I thought I was going to be able to
12 do something through legalzoom.com, they would
13 just agree to everything, and it would be \$1,000,
14 \$2,000 at the most. He handed me a card. He said
15 it, and then when he said it, I remember he did
16 hand me a card, and he said: You need to get an
17 attorney. I didn't think anything of it. I just
18 thought maybe it'll cost a little bit more than
19 \$1,000. Maybe it will cost \$5,000 if I have to
20 get an attorney. I didn't think anything of it.

21 Q. Ultimately, you got an attorney?

22 A. I did.

23 Q. And ultimately, you mentioned the word
24 bifurcation?

25 A. Yes.

1 Q. And was it agreed upon that everyone
2 would go along with the bifurcation?

3 A. Well, I thought it was strange. Susan
4 actually fought me to get -- she fought against
5 me. She did not want me to bifurcate the
6 marriage, which I thought was strange. First she
7 wanted -- she says I was embarrassed. I never
8 remember that at all. I just told her I wanted to
9 move on. There was no question whether I was
10 embarrassed or not embarrassed. I never said
11 those words. I told her I wanted to move on.

12 And then she wanted to -- she drove
13 the divorce, and then she didn't want me to get a
14 divorce, which I thought was strange. I thought
15 it was very strange at the time. Why would she
16 send somebody up to argue me legally getting a
17 divorce?

18 Q. As the bifurcation happened, and I
19 understand the testimony is that's when the
20 dissolution of marriage was granted, and then the
21 other matters were fought over, everything else,
22 when, if ever, did this matter become really
23 hostile?

24 A. Well, I thought it was hostile when
25 she didn't even want me to dissolve the marriage.

1 Q. How about public? How did this matter
2 become public? Well, first, did this matter ever
3 become public?

4 A. I remember Susan calling the rabbi at
5 my shul and -- I don't remember her calling him,
6 but the rabbi at my shul spoke to me, said, you
7 know --

8 MS. MOORE: Objection, hearsay.

9 THE COURT: Can't say that, sir.

10 BY MR. DAN SLOTCHIVER:

11 Q. Can you tell me was -- would you
12 consider the divorce action between you and Abbie
13 a private matter or more of a public matter, not
14 the issue itself, but the way this thing unfolded?

15 A. I was on the front cover -- Abbie was
16 on the front cover of the LA -- a picture of Abbie
17 was on the front cover of the LA Times, the Sun
18 Daily Times.

19 Q. Do you know how that happened?

20 A. I assume Susan or her attorney
21 contacted the LA Times.

22 MR. BOYD: Your Honor, I object. He's
23 got no foundation for that.

24 THE WITNESS: The paper itself.

25 THE COURT: Mr. Slotchiver?

1 MR. DAN SLOTCHIVER: Well, the paper
2 itself --

3 BY MR. DAN SLOTCHIVER:

4 Q. Have you ever spoken to Susan or Paul
5 about how this matter became in the public eye,
6 any conversations with them about publicity
7 surrounding it?

8 A. I think, you know, Susan, basically,
9 she would do whatever it took to get visitation.

10 THE COURT: So I'll strike his answer.

11 MR. BOYD: Objection, Your Honor.

12 THE COURT: His answer where he said
13 he assumed that Susan or her attorney contacted
14 them. He's testifying now --

15 BY MR. DAN SLOTCHIVER.

16 Q. Did you ever instruct your attorney
17 to -- or said differently, did you ever personally
18 or cause publicity around this matter?

19 A. Absolutely not.

20 Q. Did you enjoy any benefit from
21 publicity around this matter?

22 A. Absolutely not.

23 Q. Have you ever hired a publicist on
24 this matter?

25 A. Absolutely not.

1 Q. There were different forms submitted
2 to the court in the dissolution matter and then
3 following it. Are you aware of any -- are you
4 aware of the form that has a check next to
5 visitation from your side?

6 A. Now, yes.

7 MS. MOORE: I'm sorry. I couldn't
8 hear him.

9 THE WITNESS: Yes.

10 BY MR. DAN SLOTCHIVER:

11 Q. And when did you first learn of that
12 check having been placed?

13 MR. BOYD: Your Honor, I'd like some
14 clarification from counsel exact -- there are
15 numerous forms, numerous check boxes, numerous
16 checks. I think we should clarify exactly what --

17 MR. DAN SLOTCHIVER: I appreciate
18 that. I think he can do it on his
19 cross-examination. I'm asking him his knowledge
20 of a form with a check on it for child support
21 from Daniel Dorn.

22 THE WITNESS: Repeat the question.

23 BY MR. DAN SLOTCHIVER:

24 Q. When did you first become aware that a
25 form existed that referenced visitation, granting

1 Your mommy loves you, your mommy this, your mommy
2 that, your mommy this, your mommy that, speaking
3 as if she is her mommy And to go on with that,
4 in my first visit, which was December, I think,
5 '09, maybe it was 2010. I don't -- maybe it was
6 2010.

7 Q. Either way.

8 A. She would constantly be saying: Look,
9 your mommy loves you. Look, your mommy's smiling.
10 Look, your mommy said how much -- how pretty you
11 look. Your mommy said this Your mommy said
12 that. And I don't want the children having these
13 thoughts in their head, what their mommy's saying
14 or what their mommy's this, and Susan interpreting
15 what their mother is saying. It's just not the
16 case

17 Q. You also said that you were worried
18 about her trying to take your children What
19 substantiates that concern?

20 A. In the beginning, she tried to ask --
21 she wanted the children for three months in the
22 summer, and I absolutely refused.

23 Q. Three months with you present?

24 A. Without me present at all

25 Q. What was your concern about what --

1 visitation to Abbie in the proceeding?

2 A. Granting visitation?

3 Q. Granting visitation to Abbie in a form
4 filed on behalf of you.

5 A. Just saying that I would allow it,
6 once, I think, the MOLM firm came along.

7 Q. What were your fears in the litigation
8 in California? What did you view as the worst
9 outcome? What were you worried about?

10 A. I was worried that Susan would take
11 away my children, that she would fill their heads
12 with things that I did not want them filled with,
13 basically indoctrinating my children to her own
14 beliefs and system.

15 MR. BOYD: Objection, Your Honor.
16 This is not relevant. He's way beyond discovery.

17 MR. DAN SLOTCHIVER: It is absolutely
18 relevant, Your Honor.

19 THE COURT: I will allow it.

20 BY MR. DAN SLOTCHIVER:

21 Q. Can you tell me the basis of those
22 fears?

23 A. The basis is that from day one, she --
24 even though they were babies, and I don't think
25 they could understand at the time, she'd say:

1 was it your understanding that -- or was it your
2 concern that if she was successful in the
3 visitation action, that's what she wanted?

4 A. My concern really is just her taking
5 the children away from me for any reason
6 whatsoever, my children.

7 Q. There was commentary during the trial
8 in the questioning, I believe, of Mr. Walker
9 yesterday referencing testimony that you had given
10 about filing the -- asking for child support as a
11 basis of leverage. Do you recall that?

12 A. Yes.

13 Q. Any other leverage that you're aware
14 of used in this case?

15 A. Well, when someone's trying to take
16 away your children, I would have done anything,
17 but the whole standing issue had to do with
18 visitation, because I didn't want them to have the
19 standing in order to pursue visitation, so
20 standing had 100 percent to do with visitation.
21 If they didn't pursue visitation, there would
22 never be the standing issue.

23 Q. Is this for Dan Dorn, or was this for
24 the children?

25 A. This was 100 percent for the children,

1 that I can raise the children, and I can be with
2 my children and indoctrinate my children the way I
3 see fit and not have grandparent visitation
4 rights.

5 Q. There's been reference made in the
6 record to -- in the court's statement of findings
7 that you had asserted that you believe this was
8 all about grandparent visitation rights. Can you
9 tell us about that?

10 A. Well, because Abbie lives in their
11 home, it's not like me just visiting Abbie, so
12 what I proposed to do if she stayed in California,
13 which we talked about many times, was I was
14 planning to buy a house and staff it properly and
15 go -- make sure that I would be able to visit
16 whenever I wanted.

17 But the way it is now is Susan is just
18 in control of everything, and it's her house, and
19 it's very difficult to separate the two. Where
20 Susan and Abbie are, it's very difficult. And
21 because Abbie can't move, talk, speak, or do
22 anything on her own, everything is done -- at
23 least through verbal is done through her trustees
24 and conservators, which is Susan, and so
25 therefore, any visit with Abbie would be a visit

1 with Susan, and because Susan can't seem to -- she
2 has a hard time controlling herself when it comes
3 to communication, then, therefore, it's
4 grandparent visitation.

5 Q. There was testimony yesterday and
6 questioning yesterday about the issue of Susan
7 Cohen doing things for the benefit of Susan Cohen,
8 as opposed to the benefit of Abbie. Do you have
9 any examples that you can share, other than what
10 we just talked about?

11 A. Other than pursuing visitation for
12 herself and her husband? You know, when she says
13 she tried to see me in Los Angeles, she never
14 tried to see me personally. She always tried to
15 see the children.

16 When she was waiting -- when she says
17 she tried to see me at the shul, she wasn't
18 waiting for me at the entrance; she was waiting in
19 the children's program upstairs, where the
20 children go. That has nothing to do with me.

21 I pretty much think everything she
22 does is in her own interest, which she just
23 disguises as Abbie's.

24 MR. BOYD: Objection, your Honor.
25 There's no question --

1 MR. DAN SLOTCHIVER: It's his opinion.

2 THE COURT: I'll allow it.

3 BY MR. DAN SLOTCHIVER:

4 Q. There was talk throughout the trial
5 alleging that you drove the litigation, that you
6 would refuse to accept any offer that Susan or
7 Paul would ever make. Is that your recollection?

8 A. Any offer Susan made were with
9 multiple, multiple strings attached, where she was
10 in control of the situation the whole time. I
11 only defended myself the entire litigation. I was
12 never -- I know what offense and defense is. I
13 know what the plaintiff and defendant are, very
14 well, being in seven years of straight litigation
15 now, and I was the entire time on the defensive,
16 just defending myself in order just to keep my own
17 children, just to keep my children. I was just
18 defending myself in order to keep my children.

19 And at the time, they tried to take my
20 children away from me, they tried to bankrupt me,
21 and they put me in the media as a terrible,
22 horrible person, in essence, trying to sully my
23 reputation as well. In order to end it, I
24 actually did offer them more than they got in
25 trial.

1 MR. BOYD: Your Honor, I'm going to
2 object. There's no foundation for what he's
3 saying.

4 MR. DAN SLOTCHIVER: He's a party to
5 the case, Your Honor, and he's talking about the
6 interactions between Mrs. Cohen.

7 THE COURT: I'll allow it.

8 MR. BOYD: Your Honor, Mrs. Cohen was
9 attempting to testify to her recollection of the
10 settlement discussions, and counsel objected on
11 the basis that the settlement discussions were not
12 admissible.

13 MR. DAN SLOTCHIVER: But she was able
14 to testify, as was Lisa Meyer, to the fact,
15 repeatedly, that they rebuffed -- that he rebuffed
16 every settlement negotiation and left it hanging
17 in the air as if he wouldn't even talk settlement
18 ever.

19 THE COURT: Yes, sir. I'll allow it.

20 MR. BOYD: Thank you.

21 MR. DAN SLOTCHIVER: I'm almost done,
22 Your Honor.

23 THE COURT: Okay.

24 BY MR. DAN SLOTCHIVER:

25 Q. You have filed an action in South

1 Carolina seeking what?

2 A. Originally -- the original thing was
3 also -- one of the things was for all of their
4 documents concerning the trust, which they filed
5 in 2011 for multiple years, which raises a
6 question in my mind how the whole claim of child
7 support, how really important was that to the
8 trust to lose the Medicaid when they didn't even
9 file any documents.

10 MR. BOYD: Objection, Your Honor.
11 He's not responding to the question, and he's
12 stating comments that there's no foundation.

13 MR. DAN SLOTCHIVER: I believe I can
14 ask him to stop responding if I want to, but he's
15 giving a statement that he believes responsive.

16 THE COURT: I'll allow it, Mr. Boyd.

17 THE WITNESS: So that was the first
18 thing. The second thing is to remove them as
19 conservators, remove them as trustees, replenish
20 the trust for all the money that they used suing
21 me in California, as well as return all the
22 attorneys' fees associated to the South Carolina
23 case.

24 MR. DAN SLOTCHIVER: Your Honor, if I
25 may briefly address the court?

1 THE COURT: You may.

2 MR. DAN SLOTCHIVER: One of the things
3 that we've sought after in the petition is
4 reimbursement of fees and costs associated with
5 bringing this claim. Historically, my
6 experience -- and I wanted to confirm with your
7 court as to your protocol, but historically, my
8 experience is that if Your Honor were so to award
9 fees and costs, you would then advise us to submit
10 fees and costs, and counsel would have the
11 opportunity to question us in a review of those,
12 similar to what's happened in these other matters.
13 I wanted to confirm that would be the same
14 protocol, assuming that we got to that point?

15 THE COURT: Yes, sir.

16 MR. DAN SLOTCHIVER: Then I don't have
17 to discuss it?

18 THE COURT: No, sir.

19 MR. DAN SLOTCHIVER: Thank you.

20 BY MR. DAN SLOTCHIVER:

21 Q. And I'm sorry. You said -- you stated
22 forth the grounds.

23 Are you, in fact, an attorney?

24 A. No.

25 Q. And are you relying on counsel in

1 drafting and filing and serving the pleadings?

2 A. Very much so.

3 Q. You have had the opportunity over the
4 last several years, since the court's order, to
5 come to Little River and to take the children to
6 the home to see Abbie?

7 A. Yes. I think I've been to see Abbie
8 with the children three times, maybe four. Susan
9 said three at the deposition, so three times.

10 Q. Can you tell the court about what
11 happens during those visits?

12 A. What happens is the children interact
13 with the caretaker. They interact with Paul if
14 he's there. If there's a therapist there doing
15 something with Abbie -- like, for example, Abbie
16 had a therapist who grabbed her hand and put it
17 around a stick to hit the xylophone with, so of
18 course a xylophone and kids, they love to strike
19 that no matter where it is, on her lap or
20 anything.

21 I don't find that they're afraid of
22 Abbie, unless she cries out, in which case [REDACTED]
23 in particular, is very sensitive.

24 I think if there is -- there's little
25 interaction with Abbie and the children. I mean,

1 what I do basically when I go is we go swimming in
2 their pool. Abbie's in the same room. If we're
3 in the bedroom, I put on a video.

4 Susan does put out arts and crafts.
5 She's good at -- I would say she's creative about
6 stuff with arts and crafts and stuff with the
7 kids, so she puts out a table with arts and crafts
8 for the kids.

9 And they have a very kind caretaker,
10 Crystal, very kind lady. She interacts with the
11 children. They also have a play area in the back,
12 like a plane seesaw and a swingset. The kids
13 enjoy that, bring Abbie outside.

14 The next visit, Crystal said she
15 would -- the ferris wheel that Paul's referring
16 to, that we can meet her there or meet her at the
17 kid's museum -- they have that lopsided museum --
18 so the kids enjoy that. Next visit, Crystal said
19 she can take Abbie out --

20 MR. BOYD: Objection, Your Honor, it's
21 hearsay testimony.

22 THE WITNESS: The caretaker said she
23 would --

24 MR. BOYD: Objection, Your Honor,
25 hearsay.

1 THE COURT: Sustained.
 2 BY MR. DAN SLOTCHIVER:
 3 Q. Can't say what somebody else told you.
 4 A. To do more interactive stuff. The
 5 older the kids get, it's harder to contain them in
 6 just the room, so it's just to do more interactive
 7 stuff with Abbie present.
 8 Q. Have you had an opportunity --
 9 obviously -- I'll rephrase it.
 10 What observations have you made of
 11 Abbie during your visits, if any, that would give
 12 you rise to believe that she has improved past the
 13 level that Dr Mamelak spoke about?
 14 A. None whatsoever.
 15 MR. BOYD: Objection, Your Honor. Is
 16 this a medical opinion that he's giving?
 17 MR. DAN SLOTCHIVER: He's allowed to
 18 give his own personal observations, Your Honor.
 19 THE COURT: I'll allow that.
 20 THE WITNESS: Just -- to make it
 21 easier, just from the period of time when she was
 22 in the hospital to now, there's absolutely no
 23 change in her whatsoever.
 24 MR. BOYD: I'm going to object, Your
 25 Honor. I don't believe the witness is around

1 Abbie enough to make that statement.
 2 MR. DAN SLOTCHIVER: He's allowed,
 3 Your Honor, to make the statement, I believe,
 4 based on his observations at the time that he sees
 5 her, which are three years, from a year to year to
 6 year. Sometimes I believe that we observe things
 7 differently when we see each other over long
 8 periods and sometimes even better than when we see
 9 each other on a day-to-day basis.
 10 THE COURT: I agree that he can
 11 testify as to his observations of what he sees
 12 when he visits one time a year.
 13 THE WITNESS: I would definitely agree
 14 that in terms of her body, her body is well taken
 15 care of, very well taken care of, but in terms of
 16 her mental ability, there's no change. And I just
 17 want to say even in the hospital, for people who
 18 have traumatic brain injuries, I'm not even sure
 19 what the words are, but when they go outwardly
 20 like this with their hands and legs, and they go
 21 inwardly like this --
 22 MR. BOYD: Objection, Your Honor.
 23 He's giving a medical opinion that he's not
 24 qualified to render.
 25 THE WITNESS: I'm not giving a medical

1 opinion. I'm just stating what I see.
 2 MR. BOYD: He's demonstrating the
 3 difference in brain injuries and hand orientation,
 4 Your Honor. There's no foundation for that.
 5 THE COURT: There was an objection to
 6 Mrs. Cohen along this line, so I'm not going to
 7 allow that.
 8 MR. DAN SLOTCHIVER: I understand.
 9 We'll move along.
 10 BY MR. DAN SLOTCHIVER:
 11 Q. You can say what you see, but you
 12 can't state the basis for it if it deals with a
 13 medical diagnosis or relates to it, okay.
 14 A. Got it.
 15 Q. Have you ever had the opportunity to
 16 witness or to see evidence which purports to
 17 support the commentary from Dr. Cohen that Abbie
 18 can respond by making long blinks or short blinks
 19 or moving yes or no?
 20 A. I have not seen any of that. What I
 21 do see is oftentimes, she just falls asleep.
 22 Nothing's changed since day one in terms of her
 23 mental capabilities.
 24 MR. BOYD: Objection, Your Honor.
 25 He's making a conclusion there. That's not an

1 observation.
 2 THE COURT: I'll strike that.
 3 MR. BOYD: That's his unprofessional
 4 opinion.
 5 BY MR. DAN SLOTCHIVER:
 6 Q. Have you ever seen what purports to be
 7 evidence of her moving her eyes? There was
 8 referenced in the court's order, for example, to a
 9 video deposition of Abbie.
 10 A. I did see a video deposition of Abbie
 11 where they reported that she can say -- she can
 12 blink yes or blink no or long blink or short
 13 blink.
 14 MR. BOYD: Objection, Your Honor.
 15 He's giving hearsay testimony. I'm not sure who
 16 he's referring to.
 17 MR. DAN SLOTCHIVER: Actually, he is
 18 referring to the video deposition which is
 19 referenced in the court's order, and I'm going to
 20 ask him next, if I may, do you --
 21 THE COURT: I'll allow that if he's
 22 testifying from the video deposition.
 23 BY MR. DAN SLOTCHIVER:
 24 Q. The court's order referenced that
 25 they -- I'm going to summarize it. I can pull it

1 and read the exact language if I need to, but
2 basically referenced that they did not find that
3 to be credible. Do you agree or disagree?

4 A. I 100-percent agree. We gave -- they
5 didn't want us to take a deposition of Abbie. It
6 took us more than six months in arguing to get a
7 deposition of Abbie, in which case we had to give
8 five questions I think three months in advance,
9 even, of the deposition, and the five questions
10 were: Do you have children? Do you live in LA?
11 Am I a dum-dum? I can't even remember the other
12 two, but they were along those same lines.

13 And Paul got to ask the questions.
14 They had a big poster with a yes and a no, and
15 Paul must have asked each question at least 20
16 times, and at the end of his 20 times of asking
17 one question, he goes: Okay. Well, I can't
18 figure that out. I guess you can surmise what you
19 want from that. And that was the extent of a
20 20-minute five-question deposition of Abbie.

21 Q. Do you understand and agree that --
22 I'm not going to go there.

23 MR. DAN SLOTCHIVER. May I beg the
24 court's indulgence for one moment, Your Honor?

25 THE COURT: Sure.

1 saying that I tried to not give visitation to a
2 handicapped woman, when, in fact, she's in a
3 vegetative state. And she tried to bankrupt me by
4 making me spend over a million dollars on a
5 litigation that I thought I was only going to
6 spend \$5,000 on, which is one dollar -- every
7 dollar you take from me is one dollar you take
8 from my children.

9 BY MR. DAN SLOTCHIVER:

10 Q. Would you agree with the statement
11 that there is discord -- or do you believe there's
12 discord between you and Susan?

13 A. Yes, very much so.

14 Q. Do you have any concerns -- or what
15 concerns, if any, do you have about the effect of
16 your name being tarnished as it relates to your
17 children?

18 A. I worried more in the past, not as
19 much now that I'm married. My life's very stable
20 now.

21 Q. Just for a last issue for the court's
22 benefit. You're aware that the court executed an
23 order stating that you're required to notify
24 counsel in advance for future plans to travel to
25 South Carolina so that they can make arrangements

1 BY MR. DAN SLOTCHIVER:

2 Q. The last time you would have seen
3 Abbie would have been last summer?

4 A. Correct.

5 Q. Dan, a lot of things have been -- you
6 testified about a good amount of issues, and a lot
7 of things have been said about you over the course
8 of the trial. Is there anything else that you
9 want to say in your testimony?

10 A. Basically, Susan tried to take away my
11 children. She tried to ruin my reputation. She
12 tried to bankrupt me.

13 MR. BOYD: Objection, Your Honor.
14 There have been no allegations that these things
15 happen. There's nothing in the pleadings that
16 support this. There's been no evidence. This is
17 a tirade, Your Honor. There's no foundation for
18 any of these.

19 THE WITNESS: I'll give you my
20 foundation. It's my opinion.

21 THE COURT: I'll allow it.

22 THE WITNESS: My foundation for the
23 children is she tried to take away my children for
24 at least three months. My reputation, she put --
25 there's over 5 million hits on me on the Internet

1 to have your -- or travel east of the Mississippi
2 so that arrangements can be made for your
3 deposition to be taken here. Are you familiar
4 with that?

5 A. I'm vaguely familiar. Now more so.

6 Q. At the time that you received -- at
7 the time the order was written and disseminated,
8 where were you when I was able to get in contact
9 with you?

10 A. I was in New York.

11 Q. Had you already been in New York?

12 A. Yes.

13 Q. What was your purpose to be in New
14 York?

15 A. I was getting married. I got married.
16 I was already married.

17 Q. And what were you doing the very next
18 day?

19 A. Going home.

20 Q. So at the time that you got notice, it
21 wasn't a future plan, you were already there, and
22 you were traveling back and -- is that right?

23 A. Correct.

24 Q. And even then, it had not even
25 formally been received by me, although I had

Page 1890 1 received a fax copy, an email copy. Is that your 2 understanding? 3 A. I haven't even seen any documents 4 whatsoever. 5 MR. DAN SLOTCHIVER: I just wanted to 6 clarify that for the court. If you will answer 7 all the questions that other counsel have for you. 8 THE COURT: We're going to take five 9 minutes. 10 MR. BOYD: Thank you, Your Honor. 11 (A recess transpired from 10:26 AM to 12 10:37 AM.) 13 THE COURT: We are back on the record 14 in the matter of the Abbie Dorn Special Needs 15 Trust and also in the matter of the Abbie Dorn 16 conservatorship. 17 Mr. Boyd? 18 MR. BOYD: Thank you, Your Honor. 19 CROSS-EXAMINATION 20 BY MR. BOYD: 21 Q. Good morning, Mr. Dorn. As you know, 22 my name is Reese Boyd, and I represent Paul and 23 Susan Cohen in this matter, the trustees in the 24 Abbie Dorn Special Needs Trust. I just want to go 25 through a few of these issues with you this	Page 1892 1 A. No. 2 Q. You are not living in a rental home? 3 MR. DAN SLOTCHIVER: Objection to the 4 relevancy, Your Honor. Where he lives would not 5 be relevant to the case at hand. 6 THE COURT: Mr. Boyd? 7 MR. BOYD: Your Honor, I'll move 8 along. 9 THE COURT: Thank you 10 BY MR. BOYD: 11 Q. And you discussed the background of 12 your marriage to Abbie, Mr. Dorn. One thing that 13 struck me throughout your testimony was Abbie's 14 devotion to her children. Would you say that's a 15 fair statement? 16 A. I never saw her with her children in 17 terms of her being with conscious thought, so I 18 could surmise that she loves and cares for her 19 children, but I never -- 20 Q. Well, you testified, Mr. Dorn, that in 21 the months -- well, first of all, you testified 22 that you had difficulty having children? 23 A. Correct. 24 Q. And I assume, based on your testimony 25 concerning your efforts to have children, that it
Page 1891 1 morning. 2 First of all, Mr. Dorn, I believe 3 Mr. Slotchiver covered a lot of these introductory 4 questions. Where did you say you lived? 5 A. Los Angeles, California. 6 Q. And is your address 1456 Oakhurst? 7 MR. DAN SLOTCHIVER: Your Honor, I 8 object. I don't believe he has any necessity to 9 give his address. This is a very contested case. 10 He can be reached through me. I believe he has 11 the right to his privacy with reference to the 12 address, and it has no bearing on the case. 13 MR. BOYD: I have a specific question 14 in mind, Your Honor, and -- 15 MR. DAN SLOTCHIVER: Then I would like 16 to approach. 17 MR. BOYD: If I can have a little 18 latitude. 19 THE COURT: If you'd like to -- I'm 20 not going to instruct the witness to answer that 21 question, but if you -- 22 BY MR. BOYD: 23 Q. Well, Mr. Dorn, are you presently 24 constructing a new home or remodeling your home in 25 Los Angeles?	Page 1893 1 was your observation that Abbie wanted children 2 very much? 3 A. Correct. 4 Q. So from that, is it fair to say that 5 children, not necessarily these specific children, 6 but just children generally, were very important 7 to Abbie? 8 A. You know, we wanted to have children. 9 I'm sure she, having the opportunity, would have 10 been a wonderful mother. I wanted to have my 11 children with her and raise them with her. So I'm 12 not saying that she wouldn't have been a great, 13 wonderful mother. In my opinion, I think she 14 would have been a wonderful mother. 15 Q. I believe you testified that she 16 wanted to do a vaginal delivery because she 17 thought that would be in the best interest of the 18 children? 19 A. Yeah, for their lungs, that the 20 children who are born vaginally, it's better for 21 their lungs and their survival rate, I think, 22 something like that. 23 Q. And I believe -- well, in the process 24 of delivering these children, we know that there 25 was an unfortunate accident, Mr. Dorn, and we're

1 very sorry about that. As a result of that
 2 accident at the hospital, there was a medical
 3 malpractice action in California against
 4 Cedars-Sinai, correct?
 5 A. Correct.
 6 Q. And you received money out of that
 7 settlement, correct?
 8 A. Correct.
 9 Q. I believe you testified you received
 10 some additional money because you witnessed Abbie
 11 coding in her room?
 12 A. There's specific qualifications
 13 that -- pain and suffering is capped in California
 14 \$250,000, and that was the law from 1975, which
 15 was never adjusted to inflation. And there's
 16 another law that says that if you're related to
 17 the person, you're in the room, you're next to
 18 them at the time, and something goes wrong, and
 19 you saw something go wrong, you could get another
 20 \$250,000, which is very rare, and it's always
 21 contested, and in my case it wasn't even
 22 contested, and they just threw it in.
 23 Q. How much was the total amount,
 24 Mr. Dorn, that you received in the malpractice
 25 settlement?

1 because it's not relevant for the court.
 2 THE COURT: I'm going to overrule the
 3 objection. These were -- he testified about the
 4 additional monies he received in the -- so I think
 5 the door was opened.
 6 BY MR. BOYD:
 7 Q. Mr. Dorn, again, I would ask you:
 8 What was the total amount of money that was
 9 received by you in the med mal settlement in
 10 California?
 11 A. So I mentioned the first 250, the
 12 second 250, so we're at 500, and then there's a
 13 waiver of wrongful death that is split between the
 14 four of us, me and the three children, and once
 15 the attorney took all his fees and everything out,
 16 I was around 570.
 17 Q. And the children also received some
 18 compensation from the lawsuit in the form of
 19 annuities, correct?
 20 A. No. They received compensation that I
 21 chose to put into an annuity.
 22 Q. Fair enough. And what were the
 23 amounts of those annuities?
 24 A. About \$50,000 each.
 25 Q. So I want to go back to the hospital

1 MR. DAN SLOTCHIVER: Objection as to
 2 relevancy, Your Honor.
 3 MR. BOYD: Your Honor, they've opened
 4 the door by discussing --
 5 MR. DAN SLOTCHIVER: It's not opening
 6 the door, Your Honor. We went through background
 7 about the case to understand who he was and what
 8 happened. They certainly can ask him about the
 9 case, but the amount of money that he got has no
 10 relevancy at all to the issues at hand. Whether
 11 it's \$25 million or \$25, unless there's some basis
 12 to allege that it was part of it, it doesn't
 13 matter. If he's a multimillionaire or if he's a
 14 homeless man, it makes no difference.
 15 MR. BOYD: Your Honor, counsel was
 16 given wide latitude this morning, and I think that
 17 we're entitled to --
 18 MR. DAN SLOTCHIVER: Actually, Your
 19 Honor, I didn't take a lot of latitude in this
 20 case in the examination. I was very limited in
 21 what I asked him. I was very brief with what I
 22 asked him. I asked him to cover -- I jumped over
 23 large gaps of time, just to give some background
 24 so you can understand who he is, the interaction.
 25 I'm not trying to dig into his personal life

1 for a second, Mr. Dorn. You spent a lot of time
 2 talking about information -- you spent a lot of
 3 time talking about Dr. Mamelak. I take it you
 4 have confidence in his opinions?
 5 A. Very much so.
 6 Q. And you've reviewed his deposition?
 7 A. Yes.
 8 Q. And I believe you understand that --
 9 do you understand that his testimony in this case
 10 is based on a 2010 deposition that was based on an
 11 examination that occurred several years earlier?
 12 A. It's funny that you say that, because
 13 the same questioning, line of questioning, was
 14 brought up in the deposition itself.
 15 Q. But would you agree with it?
 16 A. Yes.
 17 Q. Do you discount the possibility that
 18 Abbie's condition can improve?
 19 A. I say it's virtually impossible.
 20 Q. But it's not impossible, correct?
 21 MR. DAN SLOTCHIVER: Your Honor, now
 22 he is asking my client to give a medical opinion.
 23 MR. BOYD: I'm just asking him to
 24 clarify what he means, Your Honor, by virtually
 25 impossible.

1 MR. DAN SLOTCHIVER: I attempted, Your
2 Honor, to ask him about these issues, and it was
3 objected to as my trying to get him to give a
4 medical opinion.

5 MR. BOYD: And he was allowed to give
6 his opinion, Your Honor.

7 MR. DAN SLOTCHIVER: Actually, he was
8 not able to give his opinion.

9 THE COURT: He didn't give his medical
10 opinion. I believe he gave his understanding.

11 MR. DAN SLOTCHIVER: Personally.

12 THE COURT: Personal opinion. I think
13 I gave you a lot of leeway, Mr. Slotchiver. So
14 without giving a medical opinion --

15 MR. BOYD: Certainly. And I'm not
16 asking the witness for an expert medical opinion,
17 Your Honor. I don't believe he's qualified to
18 render an expert medical opinion.

19 BY MR. BOYD:

20 Q. What I'm asking the witness for,
21 Mr. Dorn, is your personal opinion. When you
22 say -- you've just testified that you believe the
23 prospects for Abbie's improvement would be that
24 it's virtually impossible. Is that what I heard
25 you to say?

1 A. They wanted overnight visits, and any
2 visit without me present or an overnight visit
3 means grandparent visitation, and that's taking
4 the children away from me and giving it to the
5 grandparents.

6 Q. But are you aware of any filing or any
7 other document that the Cohens had filed that
8 would take legal custody of the children away from
9 you, Mr. Dorn?

10 A. Talking about legal custody, I only
11 got as of the beginning of 2012. They always used
12 it as a constant threat throughout the case, just
13 like the threat of child support. I never even
14 got my home until 2012.

15 Q. Mr. Dorn, let me ask you to bear with
16 me one second.

17 A. I was here when Ms. Meyer, whatever
18 her name --

19 THE COURT: I'm sorry. He asked if
20 you --

21 MR. BOYD: Your Honor, if you'll give
22 me one second.

23 MR. DAN SLOTCHIVER: I believe he was
24 still answering the question, Your Honor, if he
25 can.

1 A. Yes.

2 Q. And by virtually impossible, I assume
3 you don't mean impossible?

4 A. I would say it's less likely than
5 winning the lotto twice in one week. I'm talking
6 about those megamillion ones.

7 Q. But it's not an impossibility?

8 MR. DAN SLOTCHIVER: Asked and
9 answered.

10 BY MR. BOYD:

11 Q. Let's turn our attention to the
12 children. At your deposition, Mr. Dorn, you
13 testified, and you testified several times in your
14 direct examination this morning, that my clients,
15 the Cohens, tried to take those children away from
16 you. We've been in these proceedings for several
17 days now, and you've heard the testimony of Paul
18 and Susan Cohen.

19 Can you point to any testimony that
20 you heard or any document in evidence or anything
21 that you've seen that would support your
22 contention that the Cohens tried to take your
23 children away from you?

24 A. Yes.

25 Q. What would that be?

1 THE COURT: I'm sorry. I thought he
2 had finished.

3 MR. DAN SLOTCHIVER: I don't believe
4 that he had.

5 THE COURT: We'll give him a chance in
6 just a second.

7 THE WITNESS: I'll stop.

8 MR. BOYD: May I approach, Your Honor?

9 MR. DAN SLOTCHIVER: I believe you
10 were going to give him a chance to finish
11 answering.

12 THE COURT: I am. Are you ready?

13 MR. BOYD: I am. Go ahead, Mr. Dorn.

14 THE COURT: Go ahead, Mr. Dorn.

15 THE WITNESS: It's okay. I'm done.

16 BY MR. BOYD:

17 Q. Mr. Dorn, I'm going to ask you to take
18 a look at what's been marked as Exhibit R-7 in
19 these proceedings.

20 A. Okay.

21 Q. Do you recognize that document?

22 A. It's the original filing.

23 Q. Original filing for?

24 A. For dissolution of the marriage. I'm
25 asking, is it?

1 Q. Well, it's my job to ask you
2 questions. Let me just take a look at it, and
3 I'll show you something, and then you can --
4 Do you recognize the name of the
5 attorney filing the document?
6 A. Yes.
7 Q. Who is that?
8 A. The Cohens' attorney.
9 Q. Filed on behalf of the petitioner.
10 And could you tell the court who the petitioner
11 is?
12 A. Abbie Ilene Dorn.
13 Q. And where there is a -- where there
14 are check boxes, Mr. Dorn, on the second page of
15 this exhibit, I'd ask you about the middle of the
16 page to identify that first line that's under 7A
17 for me, please?
18 A. Legal custody of children, respondent.
19 Q. And would you identify who the
20 respondent is in the action?
21 A. Me.
22 Q. You, okay. So would it be -- and let
23 me also ask you to read the following line,
24 Mr. Dorn, where it says: Physical custody.
25 MR. DAN SLOTCHIVER: Your Honor, I

1 court grant you physical and legal custody?
2 A. It says it in the document right
3 there. I couldn't get a passport with that
4 document, though.
5 Q. Let's look at your response. I'll
6 show you what's been marked as Exhibit R-8. Can
7 you take a look at that document for me?
8 MR. DAN SLOTCHIVER: I think he said
9 you can't get a passport with that document.
10 MS. MOORE: I repeated it. Lynette
11 couldn't hear.
12 BY MR. BOYD:
13 Q. Can you identify that document, if you
14 recognize it, Mr. Dorn?
15 THE COURT: What number is that?
16 MR. BOYD: That's R-8, Your Honor.
17 THE COURT: Thank you.
18 THE WITNESS: I assume that's a
19 response.
20 BY MR. BOYD:
21 Q. Yes. Is this your response to the
22 petition filed by the Cohens?
23 A. I assume it is.
24 Q. And are the boxes checked under
25 Section 7 in a similar fashion?

1 don't believe this is an appropriate question.
2 He's asking him to read a document, as opposed to
3 asking a question about the document.
4 THE COURT: Mr. Boyd?
5 BY MR. BOYD:
6 Q. Do you recognize the second line where
7 it says: Physical custody, Mr. Dorn?
8 A. The second line?
9 Q. 7B.
10 A. Physical custody of children,
11 respondent.
12 Q. Also to you, correct?
13 A. That's me.
14 Q. And you would acknowledge that there
15 was a request for child visitation, correct, in
16 the next line?
17 A. Child visitation granted to
18 petitioner.
19 Q. And again, the petitioner was Abbie
20 Dorn, correct?
21 A. Correct, Abbie Ilene Dorn.
22 Q. So would it be your understanding of
23 that document that the initial pleading the Cohens
24 filed in the California marital proceeding was
25 offering -- or excuse me, requesting -- that the

1 MR. DAN SLOTCHIVER: Your Honor, if I
2 can ask that counsel would lay a foundation when
3 he's showing him the documents, first, to make
4 sure that he's seen these documents before,
5 understanding that he had counsel in the case.
6 From his responses just now, he goes: I assume, I
7 guess that's what it says, but it doesn't
8 necessarily mean he's seen these documents before,
9 and I think it's relevant for the court.
10 MR. BOYD: Your Honor, I asked him if
11 he was familiar with the document, and if he wants
12 more clarification on that point, I'll be glad to
13 provide it.
14 MR. DAN SLOTCHIVER: He's been sitting
15 in the courtroom for the last two weeks.
16 Everybody's familiar with the documents, but
17 having seen it might be a different situation
18 THE COURT: Thank you.
19 BY MR. BOYD:
20 Q. Have you seen that document, Mr. Dorn?
21 A. I vaguely recall anything. It's so
22 long ago. I don't -- I don't even remember -- I
23 remember Shelley Newman. You first said Rachel
24 Silverman. I never even heard of her. And this
25 Shelley Newman, I only had her for a month.

1 Obviously, she wasn't a very good attorney.
 2 MS. MOORE: I can't hear.
 3 THE WITNESS: I said Shelley Newman
 4 wasn't a very good attorney because I switched
 5 from her.
 6 BY MR. BOYD:
 7 Q. Why wasn't she a very good attorney?
 8 A. We were in constant conflict, and I
 9 switched from her.
 10 Q. But would you agree with me, Mr. Dorn,
 11 that both of the original filings in the
 12 California marital proceeding provided for
 13 visitation for Abbie Dorn and legal and physical
 14 custody for you, Daniel Dorn?
 15 A. Yeah. Is that what the responses all
 16 say?
 17 Q. Well, I offered you an opportunity to
 18 review this to refresh your memory, and I think
 19 that's what you did, but if you want to look at it
 20 again, you're welcome to.
 21 A. If it says full custody and -- what
 22 are the two words? Do you want to point it out to
 23 me?
 24 Q. We were on Section 7 on Page 2.
 25 A. Yeah, but this is -- this one's

1 obviously different. Does that say custody or --
 2 there it is.
 3 Q. There you go.
 4 A. Yeah. Looks good.
 5 Q. Thank you. And you said you weren't
 6 happy with Ms. Silverman. Is that correct?
 7 A. It wasn't Silverman. It was Newman,
 8 actually.
 9 MR. DAN SLOTCHIVER: Your Honor, I
 10 want to caution the witness not to go into
 11 anything that's attorney-client privileged.
 12 MR. BOYD: Your Honor, the witness
 13 said he wasn't happy with the lawyer. I was just
 14 trying to clarify what his basis for that
 15 statement was.
 16 MR. DAN SLOTCHIVER: I understand, and
 17 it would have to be some kind of communication.
 18 If it was a communication, I'm assuming it would
 19 be attorney-client privileged.
 20 THE COURT: Thank you.
 21 BY MR. BOYD:
 22 Q. Who did you next hire to represent you
 23 in the proceeding, Mr. Dorn?
 24 A. Vicki Greene.
 25 Q. You testified in your earlier

1 testimony today, as well as in your deposition,
 2 Mr. Dorn, that you initially thought that this
 3 California marital proceeding was going to be
 4 handled on legalzoom.com. Is that correct?
 5 A. That's correct.
 6 Q. And then you wind up being represented
 7 by Vicki Greene. Vicki Greene is nationally
 8 renowned. She is -- she's the divorce lawyer to
 9 the stars?
 10 MR. DAN SLOTCHIVER: Objection, Your
 11 Honor. It is not a proper question. There's no
 12 foundation for this. It's testimony by Mr. Boyd.
 13 THE COURT: Mr. Boyd?
 14 MR. DAN SLOTCHIVER: He's
 15 grandstanding at this point. Thank you.
 16 THE COURT: You can't testify. Do you
 17 have a question?
 18 MR. BOYD: I do have a question, Your
 19 Honor.
 20 BY MR. BOYD:
 21 Q. How does one go from LegalZoom to a
 22 nationally-regarded divorce lawyer?
 23 MR. DAN SLOTCHIVER: Objection, Your
 24 Honor. There's no foundation that she is a
 25 nationally-regarded counsel.

1 THE COURT: Mr. Boyd?
 2 BY MR. BOYD:
 3 Q. How did you come to retain Vicki
 4 Greene, Mr. Dorn?
 5 A. I asked for some references within the
 6 community, and Vicki Greene is a religious Jew,
 7 and I was referred to Vicki Greene.
 8 Q. And you made a few statements this
 9 morning, Mr. Dorn, about relying on counsel for
 10 the preparation of pleadings. You would agree
 11 with me that you are responsible for any pleadings
 12 that are filed on your behalf, correct?
 13 MR. DAN SLOTCHIVER: Objection, Your
 14 Honor. I don't believe he has -- he's not an
 15 expert, and there's no foundation to support that
 16 he can even give that opinion. It calls for a
 17 legal conclusion.
 18 THE COURT: Mr. Boyd, you could
 19 rephrase that if you would like.
 20 BY MR. BOYD:
 21 Q. Let's just turn to Ms. Greene. And
 22 again, we've been in these proceedings for some
 23 time, Mr. Dorn, and I would again ask you, is
 24 there any basis for your claim -- because we've
 25 looked at the original petition and your response.

1 Both of those documents provide for legal and
2 physical custody to Dan Dorn as the respondent, so
3 I'd ask you again, do you have any basis for your
4 claim that Susan Cohen was attempting to take your
5 children away from you?

6 A. She was attempting to take them away
7 even for visitation for three months in the
8 summer, away from me for grandparent visitation.

9 Q. Can you point to any place in the
10 documentation from the divorce proceeding,
11 Mr. Dorn, where Susan Cohen requested three months
12 of visitation in the summer?

13 A. I've heard her testify to it herself
14 many times.

15 Q. I don't believe that's her testimony,
16 Mr. Dorn, but again, I would ask --

17 A. In the California proceedings, it
18 actually was.

19 Q. Again, I would ask you, my question
20 is: Are you aware of any documents filed in the
21 California divorce proceeding that supports your
22 claim that the Cohens sought three months of
23 visitation in the summer?

24 MR. DAN SLOTCHIVER: I believe that's
25 asked and answered. He just spoke about the

1 into some of the Jewish traditions involved --
2 that in June 2007, you asked the Cohens to
3 initiate divorce proceedings on Abbie's behalf?

4 A. I have no recollection of that.

5 Q. You just testified to that effect this
6 morning, sir. Have you forgotten from when
7 Mr. Slotchiver was questioning you about 20
8 minutes ago?

9 A. That's not what I asked. I said I was
10 ready to move on.

11 Q. Let me restate the question. Well,
12 let me work from your answer. When you say you
13 were ready to move on, what were you referring to?

14 A. Sitting down, talking, doing some
15 legalzoom.com stuff. It would have worked well.

16 Q. So in effect, you were referring to a
17 divorce?

18 A. Yes.

19 Q. So again, I would ask my question:
20 Would you agree with me in June of 2007 that you
21 asked the Cohens to initiate a divorce proceeding
22 in California on Abbie's behalf?

23 MR. DAN SLOTCHIVER: Asked and
24 answered, Your Honor. He explained what he said,
25 and he explained what it meant, and now Mr. Boyd's

1 California issue.

2 MR. BOYD: Your Honor, actually, I
3 asked him a specific question, which he did not
4 respond to. I asked him if he was aware of any
5 pleadings.

6 BY MR. BOYD:

7 Q. And we've got the pleadings here,
8 Mr. Dorn. You can review them. Are you aware of
9 any pleadings supporting your claim that the
10 Cohens sought three months of visitation in the
11 summer?

12 A. Even one day with a sleep-over visit
13 is grandparent visitation.

14 Q. So your position is that any
15 visitation with Abbie that would have involved an
16 overnight visit would have been improper?

17 A. Yes, considering that Abbie -- it's
18 not to visit with Abbie, it's to visit with the
19 grandparents.

20 Q. In your opinion.

21 A. The court even ruled on my side. It's
22 not my opinion; it's the court's decision

23 Q. We'll get to that. We'll get to that.

24 You would agree with me that -- I
25 think this was your testimony today, and you went

1 asking him the exact same question again.

2 MR. BOYD: I'm asking the same
3 question again, Your Honor, because he initially
4 denied what he testified to Mr. Slotchiver about
5 briefly.

6 THE COURT: Mr. Slotchiver, I will
7 allow it.

8 THE WITNESS: I didn't think about it
9 really much at that time. I just wanted to let
10 them know my intentions in the future. I had no
11 plans for the next day. It was just really
12 planning that day that I let them know my
13 intentions of what the future held.

14 BY MR. BOYD:

15 Q. And what were your intentions for the
16 future?

17 A. To move on, to get remarried and raise
18 Abbie and my children within a home with a husband
19 and a wife and have more kids.

20 Q. Let me ask you this question,
21 Mr. Dorn: Why would you have asked Dr. and
22 Mrs. Cohen to initiate a divorce proceeding on
23 Abbie's behalf instead of simply filing a -- going
24 to LegalZoom and filing a divorce proceeding?

25 MR. DAN SLOTCHIVER: Objection, Your

1 Honor. There's no testimony that he asked them to
2 initiate the divorce proceeding.

3 MR. BOYD: He's just testified to that
4 fact, Your Honor.

5 MR. DAN SLOTCHIVER: I believe what he
6 testified to is he said he was ready to move on.

7 THE COURT: Sustained.

8 MR. BOYD: Well, Your Honor, I'm going
9 to have to ask the question, then, a third time,
10 because I thought the witness agreed with me.

11 THE COURT: I did not understand that.
12 BY MR. BOYD:

13 Q. Mr. Dorn, did you or did you not, in
14 June of 2007, request of the Cohens that they
15 institute divorce proceedings in California?

16 A. I did not.

17 Q. So Mr. Dorn, when you say -- when you
18 testified in your deposition to this effect, when
19 you say that you were ready to move on, that you
20 did not mean that you wanted a divorce?

21 A. At the time, I just wanted them to
22 know my future plans, that I was ready for -- to
23 sit down and talk about dissolution of everything,
24 and that's when I was thinking about legalzoom.com
25 and sitting down and talking about what the future

1 Q. Did the Cohens hire the MOLM firm
2 before you hired Vicki Greene?

3 A. I just -- when I hired Vicki Greene, I
4 just wanted to hire a competent attorney that
5 agreed with me.

6 Q. And was that before or after the
7 Cohens retained the MOLM firm?

8 A. I hired Vicki Greene two months after
9 Paul told me to get an attorney.

10 Q. And when did Paul tell you to get an
11 attorney?

12 A. Shortly after the day of the filing of
13 the medical malpractice lawsuit. In the hallway,
14 he told me -- handed me the card, said: This is
15 who we're getting, and I think you should get an
16 attorney.

17 Q. And do you recall the date of that
18 conversation?

19 A. I don't recall.

20 Q. Can you give us -- can you give the
21 court an approximate date?

22 A. Well, you showed me that that was in
23 '08, and the medical malpractice lawsuit took less
24 than a year, something like that, maybe a year,
25 and it happened in '06, so I assume maybe in '07.

1 held. I thought we would sit down and talk about
2 it, and instead, I was handed a card and told to
3 get a lawyer.

4 Q. What would have been the purpose of
5 going to legalzoom.com, except to get a divorce?

6 A. Like I said, the initial conversation
7 was to inform them of the future plans, that I did
8 want to move on, and I did want a divorce, but I
9 thought we would sit down and talk about it and
10 then go to legalzoom.com and resolve it. The
11 whole thing could have been done for less than
12 \$1,000 between the two of us.

13 Q. But then you hired Vicki Greene to
14 represent you in the proceedings?

15 MR. DAN SLOTCHIVER: Objection to the
16 innuendo, Your Honor.

17 MR. BOYD: Just trying to figure out,
18 Your Honor, how it escalated.

19 MR. DAN SLOTCHIVER: I'm not sure that
20 that was --

21 THE COURT: I'll allow it.

22 THE WITNESS: It escalated by the
23 Cohens hiring the MOLM firm and asking for
24 visitation.

25 BY MR. BOYD:

1 Q. So around sometime in '07?

2 A. I assume.

3 Q. So is it your testimony, then, that
4 you hired Vicki Greene sometime in 2007?

5 A. Well, the filing of the answer you
6 showed me I think was in '08, so I would say
7 shortly after the filing by Rachel Silverman, or
8 whatever her name was, I would say shortly after
9 that, I hired Vicki Greene.

10 Q. So that would have been sometime in
11 '08, correct?

12 A. I would assume.

13 Q. After the divorce proceeding was
14 filed, Mr. Dorn, would you agree with me that you
15 filed a pleading with the court or a document with
16 the court through Ms. Greene requesting that the
17 court bifurcate the proceeding?

18 A. Early on, yeah.

19 Q. What was your intent in bifurcating
20 the proceeding?

21 A. My intent was to dissolve the
22 marriage.

23 Q. And did you understand Ms. Cohen's
24 testimony earlier that she wanted to resolve all
25 the issues quickly, to deal with everything that

1 was involved in the divorce and conclude it?

2 A. I think Susan wanted visitation always
3 from the very beginning, and I didn't -- I
4 wasn't -- I didn't want to give it then, so in
5 order for -- to move things along, I wanted to
6 dissolve the marriage. That's why I asked for a
7 bifurcation.

8 Q. So do I understand your testimony to
9 be, Mr. Dorn, that you requested the bifurcation
10 so to avoid the visitation issue?

11 MR. DAN SLOTCHIVER: Objection, Your
12 Honor. I believe that's mischaracterizing what he
13 stated.

14 MR. BOYD: I believe, Your Honor, he
15 just said that there were other issues that he
16 didn't want to deal with.

17 THE COURT: I believe he said in order
18 to move things along, he sought the bifurcation.
19 BY MR. BOYD:

20 Q. So in order to move things along,
21 Mr. Dorn, you filed the bifurcation proceeding,
22 and then subsequently, I want to show you what has
23 been marked as Exhibit R-10, and I'd ask you if
24 you recognize that document, please?

25 A. Vaguely. Is this the same one you

1 showed me in the deposition?

2 Q. It's been marked as Exhibit R-10,
3 Mr. Dorn, and yes, I believe that is a document
4 that was part of your deposition.

5 Do you recognize that document?

6 A. Vaguely.

7 Q. Do you recognize this document to be a
8 request for child support in the proceeding?

9 A. I do, as well as child custody.

10 Q. What was your reasoning, Mr. Dorn, for
11 requesting child support in the divorce
12 proceeding?

13 A. I testified in my deposition that it
14 was used for leverage.

15 THE COURT: I'm sorry. If you could
16 just qualify that statement, that you're
17 testifying today, not as to what you testified in
18 your deposition, but he asked you what was your
19 intent.

20 THE WITNESS: The intent at the time
21 was to create a little leverage, because they were
22 asking for visitation, and I, in turn, asked for
23 child support, as well as in the document it says
24 custody, which I did not have, obviously.

25 BY MR. BOYD:

1 Q. Simply because they had not ruled on
2 the issue yet?

3 A. Correct.

4 Q. And I'm still a little puzzled,
5 Mr. Dorn. Why, exactly, did you need leverage
6 over the Cohens in what was supposed to be an
7 amicable and quick proceeding?

8 MR. DAN SLOTCHIVER: If I can just
9 caution the client not to talk about anything
10 that's attorney-client privileged.

11 THE COURT: Yes, sir.

12 THE WITNESS: Once they started asking
13 for visitation, it was no longer a, hey, we're
14 friends.

15 BY MR. BOYD:

16 Q. Do you totally discount the
17 possibility, Mr. Dorn, that Abbie is entitled to
18 visitation?

19 A. Yes, or at least it should be
20 100 percent on my terms, which I always argued.

21 Q. 100 percent on your terms. What does
22 that mean, exactly?

23 A. That means whatever I so choose.

24 Q. Is that what you choose today, or what
25 you choose minute by minute? How do you define

1 that?

2 A. As long as I am living and breathing,
3 it is whatever I so choose.

4 Q. And the Cohens, who are charged with
5 looking for the best interest of Abbie in this
6 matter, they have no say?

7 A. When they voice an opinion, they voice
8 it as the grandparents of the children, not as the
9 trustees or conservators. When they voice an
10 opinion, it's not of a woman in a vegetative
11 state, it's their personal opinion of what they
12 want, which is then, therefore, the grandparents.

13 Q. What basis do you have for that
14 statement? You've said quite a few things there,
15 but let's parse that a little bit. First of all,
16 do you understand that Dr. and Mrs. Cohen are the
17 guardians, conservators, and trustees for their
18 daughter?

19 A. Yes.

20 Q. But you say that they're making all of
21 those statements as grandparents?

22 A. When they say that they want their
23 daughter to see her children, and their daughter
24 lives in their home, which is not separate from
25 them, it is as the grandparents, that's correct.

1 Q. If the Cohens had constructed a
2 separate home in Myrtle Beach for Abbie to reside,
3 such that they were not living under the same
4 roof, would we be having this argument? Is this
5 an issue of the fact that Abbie lives in the home
6 with the Cohens?

7 A. I think it would be a different
8 argument, however, I still personally would have
9 100-percent control of the visitation, but it
10 would be a different argument.

11 Q. But do you recognize that the Cohens
12 were seeking visitation on behalf of their
13 daughter?

14 A. I recognize that is the claim.

15 Q. But you don't agree with it?

16 A. Of course not.

17 Q. Let's fast-forward to the statement of
18 the case that's been cited so often in these
19 proceedings, and I would ask you, as I've asked
20 others, Mr. Dorn, to look at Page 8 of what has
21 been marked as Plaintiff's Exhibit No. 86, and
22 would you just read the first sentence of
23 Paragraph 3B for me?

24 MR. DAN SLOTCHIVER: Your Honor, I
25 don't believe that's a question.

1 THE COURT: Thank you. You could just
2 review it, sir.

3 THE WITNESS: I reviewed the one
4 highlighted sentence.

5 THE COURT: Thank you.

6 BY MR. BOYD

7 Q. Well, it's actually not highlighted,
8 Mr. Dorn. 3B is paragraph --

9 A. The whole paragraph, 3B?

10 Q. Just the first couple of lines, if you
11 would review those for me.

12 A. Okay.

13 Q. So you have just claimed, Mr. Dorn, to
14 disagree with my position that the Cohens were
15 seeking visitation on Abbie's behalf, and yet
16 would you agree with me that the court granted
17 visitation to Abbie?

18 A. I'd agree that that's the language.

19 Q. I'm not sure I understand that answer,
20 Mr. Dorn. Would you agree with me that the court
21 granted visitation to Abbie?

22 A. Just like the Cohens didn't agree with
23 Mamelak or didn't agree with the court's decision.

24 MR. BOYD: That's not responsive, Your
25 Honor.

1 MR. BOYD: I'm going to ask a
2 question, Your Honor, if the court will just give
3 me a little bit of latitude.

4 MR. DAN SLOTCHIVER: Is he asking him
5 to review it or to read it for the court?

6 MR. BOYD: I'm asking him -- I'm going
7 to ask for his interpretation, Your Honor, but I
8 think we'd all better understand the question if
9 the witness had read the sentence.

10 MR. DAN SLOTCHIVER: This has come
11 up -- to review it or to read it out loud, this
12 has come up repeatedly throughout this trial --

13 MR. BOYD: He doesn't have to read it
14 out loud.

15 MR. DAN SLOTCHIVER: -- if I can
16 finish, where the witness is asked just to read
17 something. But if he doesn't have to read it out
18 loud, then I'll withdraw the objection.

19 THE COURT: Just review it.

20 BY MR. BOYD:

21 Q. Would you please review the first two
22 sentences?

23 THE COURT: And what page?

24 MR. BOYD: It's Page 8, Section 3B,
25 the first sentence, Your Honor.

1 THE WITNESS: It's the same way I
2 don't agree --

3 BY MR. BOYD:

4 Q. It's a yes or no question, sir.

5 MR. DAN SLOTCHIVER: Your Honor, it
6 wasn't posed as a yes/no question, and I would ask
7 that he be allowed to respond to the question as
8 he understood it.

9 MR. BOYD: I'll be glad to restate the
10 question, Your Honor.

11 THE COURT: Restate the question,
12 Mr. Boyd.

13 BY MR. BOYD:

14 Q. Yes or no, Mr. Dorn: Based on this
15 opinion which you've just reviewed, and the
16 specific sentence that I pointed out for you, did
17 the court -- yes or no -- grant visitation to
18 Abbie?

19 A. In that specific sentence, yes, not
20 the entirety of the document, though.

21 MS. HEDGEPATH: I'm having a difficult
22 time understanding, or hearing, I should say.

23 THE COURT: Mr. Dorn, you'll just need
24 to speak up and speak into that microphone, if you
25 will.

1 THE WITNESS: Yes, ma'am.
 2 THE COURT: Thank you.
 3 BY MR. BOYD:
 4 Q. On behalf of Abbie, the Cohens
 5 resisted your order -- or your request -- to
 6 bifurcate the proceeding.
 7 MR. DAN SLOTCHIVER: Your Honor, I
 8 object. Sounds like he's testifying at this
 9 point.
 10 THE COURT: Is that a question?
 11 MR. BOYD: Yes. I'm getting to it,
 12 Your Honor.
 13 BY MR. BOYD:
 14 Q. Can you take a look at this document,
 15 Mr. Dorn, which has been previously marked as R2-1
 16 and see if you recognize that document?
 17 A. Do I recognize it? No.
 18 Q. Would you recognize it if I said it
 19 was a responsive filing in response to your
 20 request to bifurcate the proceeding?
 21 A. Okay. No.
 22 Q. And when the Cohens say in this
 23 pleading: I am --
 24 MR. DAN SLOTCHIVER: Your Honor, I
 25 believe he stated that he does not recognize the

1 document. If he doesn't recognize the document,
 2 how can he be asked questions about a document
 3 that he doesn't recognize?
 4 MR. BOYD: I'm going to ask him if he
 5 would disagree with the following, Your Honor.
 6 BY MR. BOYD:
 7 Q. The Cohens state in this document that
 8 there were no temporary orders for visitation. Is
 9 that your recollection?
 10 A. The Cohens state what?
 11 Q. The Cohens state in this document that
 12 they resist bifurcation because there are no
 13 temporary orders for visitation. Is that
 14 consistent with your recollection?
 15 A. I don't remember anymore. I just --
 16 you know, the Cohens always wanted visitation.
 17 Q. And any visitation would have been
 18 improper in your mind?
 19 A. Any visitation that I wasn't
 20 100 percent in control of, where the court also
 21 agrees with me, I'm against.
 22 Q. And are you 100 percent in control of
 23 the visitation that has been ordered by the court?
 24 A. I am 100 percent in control of the
 25 visit itself, yes, I am, and that is the court

1 order as well.
 2 Q. But you won't disagree that the court
 3 ordered specific visitation on Abbie's behalf that
 4 you must comply with?
 5 A. The court ordered on the children's
 6 behalf, not on Abbie's behalf.
 7 Q. I thought we just covered that,
 8 Mr. Dorn, that you agreed with me that the court
 9 ordered visitation for Abbie.
 10 A. If you read the entirety of the
 11 document, they ordered on the children's behalf,
 12 not Abbie's behalf.
 13 Q. Would you like to review the document
 14 again?
 15 A. I could read that language of that
 16 sentence, and I agreed with you on that sentence.
 17 Q. We just talked, Mr. Dorn, when I
 18 showed you what's been marked as Exhibit R-10, how
 19 you sought child support and how you sought
 20 leverage over the Cohens. Let me ask you this:
 21 Did you ever present any filing, or did you ever
 22 direct counsel to present any filing --
 23 MR. DAN SLOTCHIVER: Objection, Your
 24 Honor. He's asking him what communications he had
 25 with counsel now at this point. That would be

1 improper.
 2 THE COURT: You can ask him about his
 3 filing.
 4 MR. BOYD: I understand, Your Honor.
 5 I understand.
 6 BY MR. BOYD:
 7 Q. Did you ever file anything with the
 8 court in California, Mr. Dorn, that would have
 9 withdrawn this request for child support?
 10 A. Did the Cohens ever file anything
 11 that would --
 12 MR. BOYD: That's not my question,
 13 Your Honor. I'd ask the court to instruct the
 14 witness to please answer my question.
 15 THE COURT: Mr. Dorn, you can't ask
 16 questions.
 17 THE WITNESS: No.
 18 BY MR. BOYD:
 19 Q. I'm going to ask you, if you could, to
 20 just confirm the specific relief requested,
 21 because I believe in your deposition and in your
 22 testimony this morning, you may have suggested
 23 that your request for child support was simply a
 24 matter of checking a box. Is that correct?
 25 A. The original -- from what you just

1 showed me just now and from what you showed me in
2 the deposition -- I even remember the deposition
3 now. It's like four or five pages asking for --
4 asking for child support, and I even remember
5 saying in the deposition that Vicki Greene could
6 spin one of those off in five minutes, four or
7 five pages.

8 Q. But you would agree with me that it
9 was not a matter of simply checking a box. Is
10 that correct?

11 A. It was a little bit more involved.

12 Q. I want to read for you, Mr. Dorn, just
13 for purposes of asking if you agree with it, that
14 the other -- the relief sought in what's been
15 marked as Respondent Cohens' Exhibit R-10, is that
16 Respondent Dan Dorn asked the court to order the
17 following: Child support, costs related to
18 education, and/or other specific needs of the
19 children and contributions towards the uninsured
20 medical expenses of the children.

21 Did you agree with that statement at
22 the time, and do you agree with it now?

23 A. Did I agree with it at the time? Yes.
24 My opinion changed once I found out that Abbie
25 could lose her Medicaid. Once I found out that

1 When did you drop the demand for child support?

2 A. It was never settled until the very
3 end of the case.

4 Q. So in effect, the issue was live until
5 the final settlement agreement?

6 A. So was child custody as well.

7 MR. BOYD: I'm going to object, Your
8 Honor. He's not being responsive. I would ask
9 that that be stricken.

10 THE COURT: I'll strike that. You
11 can't add your own commentary, sir.

12 BY MR. BOYD:

13 Q. So let's turn our issue -- our
14 attention, excuse me -- Mr. Dorn, to the issue of
15 visitation. And I think you've made your position
16 on visitation clear, but when the Cohens did
17 ask --

18 I mean, I'm going to show you what's
19 been marked as Exhibit R-11. If you could take a
20 moment to review that. I'm just going to let you
21 refresh your recollection.

22 When the Cohens did ask for reasonable
23 visitation on Abbie's behalf, Mr. Dorn, how did
24 you respond?

25 MR. DAN SLOTCHIVER: Objection, Your

1 Abbie could lose her Medicaid, the subject was
2 dropped. It was never brought up again.

3 Q. It was never brought up again. When
4 did you find out that Abbie could lose her
5 Medicaid as a result of the child support?

6 A. I don't exactly remember.

7 Q. When did you drop the demand for child
8 support?

9 A. It was -- when I say dropped it, the
10 issue was never brought up again. That's why
11 you're not showing me countless arguments; you're
12 only showing me one document.

13 MR. BOYD: Your Honor, the witness is
14 not responding.

15 THE COURT: Yes, sir.

16 MR. DAN SLOTCHIVER: I believe he was
17 responding, Your Honor, in his own way, based on
18 the question that was asked.

19 MR. BOYD: In his own way, his most
20 unusual way, Your Honor.

21 MR. DAN SLOTCHIVER: It was responsive
22 to the question that was asked of him, Your Honor.

23 THE COURT: I'm going to strike that.

24 BY MR. BOYD:

25 Q. And again, Mr. Dorn, I would ask you:

1 Honor. He's testifying now as to what the Cohens
2 did.

3 MR. BOYD: Your Honor, I'm simply
4 asking him how the Cohens -- excuse me. How he
5 responded to petitioner's demand in the
6 proceedings for visitation on behalf of the
7 respondent -- excuse me, on behalf of the
8 petitioner.

9 THE COURT: I think you can ask him
10 that.

11 THE WITNESS: Anything to do with
12 visitation, I would have instructed Vicki to
13 resist. I told you I did not want --

14 MR. DAN SLOTCHIVER: Your Honor, I
15 want to make sure that we're not opening the door
16 for attorney-client-privileged communications.
17 Based on it, I would ask that that be stricken.
18 He's been admonished before. Mr. Boyd continues
19 to ask questions that lead to it. Rather than my
20 objecting every time the question comes, I would
21 ask that the court would allow us some latitude
22 with it.

23 MR. BOYD: Your Honor, I won't go any
24 further with regard to communications with
25 Ms. Greene, but I don't believe the comment is

Page 1934 1 suspect to be stricken. I think he testified 2 clearly that he instructed his counsel to resist 3 visitation by any means. 4 THE COURT: I'll allow it. 5 MR. DAN SLOTCHIVER: I don't dispute 6 that. 7 BY MR. BOYD: 8 Q. Why was it so important to you, 9 Mr. Dorn, that visitation be resisted? 10 A. I wanted control of my own children. 11 They're my children. I don't want anyone taking 12 them away from me. My children are greatly, 13 greatly important to me, in fact, probably the 14 most important thing to me. 15 Q. And I appreciate that, sir, and I 16 respect that, and I want you to know that, but let 17 me ask you this question: You keep saying: My 18 children. Are those children not also Abbie's 19 children? 20 A. Abbie gave birth to them. She is the 21 mother of the children, and she will always be the 22 mother of the children. 23 Q. That's not the answer that I am 24 looking for, Mr. Dorn. 25 MR. DAN SLOTCHIVER: Your Honor, I	Page 1936 1 she's in a vegetative state, so because she's in a 2 vegetative state, it's the request of the 3 grandparents and no longer Abbie. 4 MR. BOYD: Your Honor, I'm going to 5 object to that to the extent that he's stating a 6 legal conclusion. 7 MR. DAN SLOTCHIVER: It's his opinion, 8 Your Honor. 9 THE COURT: It's borderline medical 10 opinion, but I'll allow it. 11 BY MR. BOYD: 12 Q. Let me ask you this, Mr. Dorn: If 13 it's shown that Abbie is not in a vegetative 14 state, what impact does that have on your opinions 15 in this case? 16 A. You asked about this in the deposition 17 as well. I think every case needs -- it's an 18 individual basis. It needs to be judged on it as 19 well. However, in Abbie's case, there's no 20 consciousness, so -- 21 MR. BOYD: I object, Your Honor. He's 22 not qualified to render that statement. 23 THE COURT: Sustained. 24 MR. DAN SLOTCHIVER: He's being asked 25 to speculate, Your Honor, on a very broad spectrum
Page 1935 1 don't believe he gets to ask for an answer he's 2 looking for. He gets the answer he gets. 3 MR. BOYD: It's not responsive, Your 4 Honor. I asked him a very simple question, and 5 he's not being responsive to the questions I ask 6 him. 7 THE COURT: Could you repeat your 8 question to him? 9 BY MR. BOYD: 10 Q. And I would ask you again, Mr. Dorn: 11 Is Abbie Dorn -- you said: They are my children. 12 Is Abbie Dorn -- are they also the children of 13 Abbie Dorn? 14 A. Yes. 15 Q. Is Abbie Dorn alive? 16 A. Yes. 17 Q. So she is their mother, correct? 18 MR. DAN SLOTCHIVER: Asked and 19 answered. 20 THE WITNESS: Yes. 21 BY MR. BOYD: 22 Q. But if the Cohens seek visitation on 23 the mother's behalf, there's no room for that in 24 your world, correct? 25 A. Well, you're discounting the fact that	Page 1937 1 of if she's better, and that doesn't quantify is 2 she better as in can get up and walk around, or is 3 she better as it has a little bit of ability, but 4 is still generally considered to be in a 5 vegetative state. It's hard for him to answer 6 without being able -- 7 THE COURT: Mr. Boyd, do you want to 8 clarify your question a little bit? 9 MR. BOYD: Let me ask it this way, 10 Your Honor. 11 BY MR. BOYD: 12 Q. If Abbie objectively is shown, 13 Mr. Dorn, not to be in a persistent vegetative 14 state, how would that impact your opinions in this 15 matter? 16 A. If it's shown that Abbie has conscious 17 thought, it would greatly impact my decision. 18 Q. I'm sorry I'm having a hard time 19 hearing you, sir. It would have what kind of 20 impact? 21 A. Greatly impact my decision. 22 Q. And what would the impact be? 23 A. I'd have to judge it at the time. 24 Q. Can we have an answer now? 25 MR. DAN SLOTCHIVER: Your Honor, it's

Page 1938 1 been asked and answered. He's asking him to 2 speculate. 3 MR. BOYD: Your Honor, I'm asking him 4 a very -- I'm asking him a very simple question, 5 may not be an easy question, but I've asked him 6 what impact would it have on his opinions in this 7 case if it was shown that the protected person was 8 not in a persistent vegetative state. He said it 9 would have a great impact, but he won't tell me 10 what the impact is. 11 MR. DAN SLOTCHIVER: Your Honor, I 12 don't know how he can answer without having more 13 information. He's been given a very limited bit 14 of information. 15 MR. BOYD: What more information does 16 he need, Your Honor? 17 THE COURT: I'm going to allow it. He 18 said it would have some impact. I would suppose 19 he has some idea of what kind of impact it might 20 have. 21 THE WITNESS: I said if Abbie had 22 conscious thought, first of all, so if she had 23 conscious thought, none of us would even be here 24 today. She would tell her parents: What are you 25 doing? Let's go home. You're doing all the wrong	Page 1940 1 A. When the children could start 2 understanding more, I started having conversations 3 with them about their mother. 4 Q. Isn't it true that you did not tell 5 them that Abbie Dorn was their mother until after 6 these proceedings began? 7 A. The proceedings began in 2007. They 8 were one year old. What are you going to say to a 9 one-year-old? Goo-goo, ga-ga, hi, you know. 10 You're just going to talk -- they don't understand 11 anything you say anyway. It's all your 12 expression. 13 Q. I want to ask you one more question 14 about this argument you raised in response to the 15 visitation request. Your attorney, Vicki Greene, 16 she filed her responsive filing with a -- 17 MR. DAN SLOTCHIVER: Is this document 18 in evidence? 19 MR. BOYD: This is R-11. 20 BY MR. BOYD: 21 Q. Your attorney, Vicki Greene, filed a 22 responsive pleading with a 12-page memorandum of 23 law attached, and the memorandum of law is 24 captioned: Motion to Stay any Judicial 25 Determination of Visitation Rights Asserted by the
Page 1939 1 things. 2 BY MR. BOYD: 3 Q. What would you do in response to that? 4 A. I would visit more often, probably. I 5 would be able to talk to her. I'd be: Hey, 6 what's going on? How you feeling? Would it help 7 if I came with the kids? Do you want to come to 8 Los Angeles? Do you want to stay with me? I 9 didn't end my marriage on -- we didn't disagree. 10 We had a loving, wonderful marriage. I'd still be 11 married to her. 12 Q. When you visit with Abbie -- you've 13 mentioned a few visits that you've had with 14 Abbie -- do you attempt to communicate with her? 15 A. In the past, I would talk to her. I 16 would read to her. Now my attempt is just to be 17 kind for the children's sake. I sit next to her. 18 I hold her hand. I show the children that there's 19 nothing to be afraid of, and that there's nothing 20 wrong with her, not nothing wrong, but that the 21 state that she's in is not scary state and that 22 you should still show compassion towards your own 23 mother. 24 Q. When did you first tell the children 25 that Abbie Dorn was their mother?	Page 1941 1 Conservators Until Petitioner is Adjudged 2 Competent to Assert Her Own Wishes and Desires, as 3 the Conservators Lack Standing to Assert Personal 4 Rights, et cetera, et cetera. 5 Are you familiar, Mr. Dorn, or do you 6 recall how the court ruled on that dispute, the 7 standing issue? 8 A. As I remember, they said that the 9 Cohens had standing to pursue. 10 Q. And the court made that ruling in 11 April of 2010. Is that not correct? 12 A. I have no memory of when they ruled on 13 it, sometime in the past. 14 Q. And is it not true, Mr. Dorn, that 15 subsequently in the California proceeding, you 16 again contested standing on behalf of the Cohens? 17 A. Yes. 18 Q. And why did you contest standing a 19 second time if the court had already issued the 20 order of April 2010? 21 MR. DAN SLOTCHIVER: Without 22 disclosing attorney-client-privileged 23 communication. 24 MR. BOYD: I'm not looking for any 25 communications between Mr. Dorn and his counsel,

Page 1942 1 Your Honor. I'm simply asking him why he went 2 back to take a second bite at the apple. 3 THE COURT: Yes, sir. 4 THE WITNESS: I'll say 5 attorney-client-privileged communication. 6 BY MR. BOYD: 7 Q. Again, Mr. Dorn, I'm not asking -- 8 MR. DAN SLOTCHIVER: He's answered, 9 and you're allowed to rely on an attorney and 10 talking with him in making decisions. He's 11 asserted the privilege. 12 THE COURT: Thank you. 13 Mr. Boyd, I think you need to move on. 14 BY MR. BOYD: 15 Q. But you don't deny that you persisted 16 in requesting the same relief yet again, correct? 17 A. Correct. 18 Q. One of the arguments that your counsel 19 and that you have made in this proceeding, 20 Mr. Dorn, is that the Cohens unreasonably spent 21 funds on the marital proceeding in California. Is 22 that correct? 23 A. That's correct. 24 Q. Would you not agree with me that 25 multiple hearings on the same issue would have the	Page 1944 1 THE COURT: Maybe I should admonish 2 counsel and the witness for the commentary. 3 MR. BOYD: Your Honor, I've come a 4 long way, Your Honor, in this proceeding without 5 being admonished. Please don't let me break my 6 track record today. 7 BY MR. BOYD: 8 Q. Mr Dorn, you testified earlier that 9 you didn't want the children indoctrinated, but 10 really all I heard you say was that Mrs. Cohen was 11 telling the children that their mother loved them. 12 Do you consider trying to convince the 13 children that they are loved by their mother, do 14 you consider that to be indoctrination? 15 A. I didn't want Mrs. Cohen, or Susan, to 16 fill the children's heads with things that she 17 perceived and that she thought. I wanted to be 18 able to explain to the children the way I thought 19 things were and not the way Susan thought things 20 were. 21 Q. You mentioned in your visits that 22 Abbie would sleep frequently. Are you aware that 23 severely brain damaged people often sleep 24 frequently? 25 MR. DAN SLOTCHIVER: Objection. Now
Page 1943 1 impact of increasing the fees and cost of 2 litigation? 3 A. What I do with my money is what I do 4 with my money. 5 MR. BOYD: That's not my question, 6 Your Honor. 7 THE COURT: Sir, no commentary. You 8 need to answer the question. 9 THE WITNESS: I would do anything to 10 not have them have visitation. 11 BY MR. BOYD: 12 Q. Including multiple hearings that are 13 redundant on the same issues that the court has 14 already decided in the Cohens' favor? 15 A. Whatever I needed to do to keep my 16 children, that's correct, to not have my children 17 taken away from me. 18 Q. I think we've already established, 19 Mr. Dorn, that the Cohens were not trying to take 20 your children away from you. 21 MR. DAN SLOTCHIVER: Objection, Your 22 Honor. 23 THE COURT: Mr Boyd, is that a 24 question? 25 MR. BOYD: Sorry, Your Honor.	Page 1945 1 Mr. Boyd is testifying as an expert. If you could 2 admonish him not to do that again, I would 3 appreciate it. 4 THE COURT: Mr. Boyd, you want to 5 restate that? 6 MR. BOYD. I'll move along, Your 7 Honor. 8 BY MR. BOYD: 9 Q. Isn't it true, Mr. Dorn, that you 10 refused to sign a conservatorship agreement in the 11 California proceedings for three months until 12 Jeffrey Cohen approached you about signing the 13 document? 14 A. I have no recollection of that 15 whatsoever. She was in the hospital for three 16 months. It wasn't even a question. She could 17 have died any day. There was no question about 18 being a conservator. Every day was something else 19 where we thought she was going to die. It's only 20 once she stabilized and came out of the hospital 21 after three months that I think the question could 22 even have been asked. 23 Q. Let me ask you this, Mr. Dorn: Is 24 there any right with respect to the children that 25 you believe the Cohens could seek to enforce?

1 MR. DAN SLOTCHIVER: Your Honor, it's
2 calling for a legal conclusion, as I understand
3 it.

4 MR. BOYD: Your Honor, I'm simply
5 asking him -- he's taken the position that any
6 visitation sought by the Cohens would have been
7 unreasonable, and I'm asking him is there any
8 legal right that Abbie Dorn may have enjoyed that
9 the Cohens could pursue reasonably.

10 MR. DAN SLOTCHIVER: And Your Honor,
11 once again, he's asking for a legal conclusion.

12 THE COURT: I agree. Sustained.

13 BY MR. BOYD:

14 Q. What degree of improvement in Abbie's
15 condition, Mr. Dorn, would have, in your mind,
16 justified the Cohens' pursuit of visitation on
17 their daughter's behalf?

18 A. In my mind, if Abbie had conscious
19 thought, they wouldn't have to pursue it. I would
20 just do it already. It would have been done if
21 Abbie had conscious thought. So they wouldn't
22 have to pursue anything. I just would have done
23 it, because I would have been able to communicate
24 with Abbie, in some way, fashion, or form that
25 everyone else sees in the same world that I live

1 in, what is communication.

2 Q. So in your world, Mr. Dorn, what I'm
3 hearing you say is that individuals who are brain
4 damaged surrender all parental rights. Is that a
5 fair statement?

6 A. No. You have to be judged on an
7 individual case, again.

8 Q. Let's talk about this case. What I'm
9 hearing you say is any brain damage or condition
10 that impairs communication equates with a
11 surrender of parental rights.

12 MR. DAN SLOTCHIVER: Your Honor, I
13 don't believe that's what he said. He's
14 mischaracterizing the testimony.

15 THE COURT: I will allow him to ask
16 the question.

17 BY MR. BOYD:

18 Q. Is that a fair statement? Would you
19 like me to repeat the question?

20 A. Yes.

21 Q. What I'm trying to extrapolate or hear
22 in your answer, Mr. Dorn, is that -- and I'm
23 asking you -- I'm trying to understand, Mr. Dorn,
24 why you failed to perceive my clients' conduct as
25 reasonable and how the unfortunate circumstances

1 in California evolved. What I hear you say is
2 that because Abbie could not communicate and
3 express her own conscious thought, that any
4 attempt by her guardians/conservators/trustees to
5 seek visitation on her behalf was unreasonable?

6 MR. DAN SLOTCHIVER: Object to the
7 compound question.

8 MR. BOYD: I'm doing my best, Your
9 Honor.

10 BY MR. BOYD:

11 Q. Is it true, Mr. Dorn, that what you
12 just testified to was that Abbie's inability to
13 communicate conscious thought on her own behalf
14 was the basis for your positions?

15 A. No. My basis of my positions was what
16 the reality was, that she's in a vegetative state,
17 and because she's in a vegetative state, it's the
18 grandparents seeking visitation. That's my --

19 Q. And you've testified to that effect,
20 and I understand that's your opinion. That's not
21 a medical opinion. That's your opinion. But I
22 asked you, moving beyond that, Mr. Dorn, what
23 degree of improvement in Abbie's condition would
24 have made the pursuit of visitation by her
25 guardians/conservators/trustees reasonable, in

1 your opinion?

2 MR. DAN SLOTCHIVER: Your Honor, this
3 has been asked and answered.

4 MR. BOYD: Your Honor, I'm asking it
5 multiple times because I can't get a straight
6 answer out of this witness.

7 THE COURT: Well, I think he did -- in
8 my opinion, I think he answered it.

9 MR. BOYD: Well, he said that his
10 objection was based on Abbie's inability to
11 communicate conscious thought.

12 THE COURT: Yes, sir.

13 MR. BOYD: And so then I asked him,
14 Your Honor, does that mean that individuals who
15 cannot communicate because of brain injury
16 surrender their parental rights. That was my
17 question. That's how we came around in the
18 circle. He still hasn't answered.

19 THE COURT: You can answer that
20 question.

21 MR. KACHMARSKY: Actually, he did
22 answer. He said no.

23 THE COURT: I think he said on a
24 case -- you have to take it on a case --

25 THE WITNESS: You have to judge

1 things --
 2 MR. DAN SLOTCHIVER: Your Honor, he's
 3 clarified this issue repeatedly over and over.
 4 Mr. Boyd may not like it, but he has addressed it,
 5 in his opinion, how the answer is. He's clarified
 6 the restricted question. He's gone back. He has
 7 explained it as he sees it. He also said as far
 8 as twice that if that happened, it wouldn't be an
 9 issue, because we wouldn't be here for purposes of
 10 arguing over visitation. He would give
 11 visitation, probably a different visitation than
 12 this.
 13 THE COURT: Mr. Boyd?
 14 MR. BOYD: I'll move on, Your Honor.
 15 I'll move along.
 16 THE COURT: Thank you.
 17 BY MR. BOYD:
 18 Q. Mr. Dorn, a lot has been made of the
 19 fact that in this case -- do you need to take a
 20 break?
 21 A. No. I'm okay.
 22 Q. A lot has been made in this case over
 23 the fact that the marital proceeding was
 24 bifurcated and that a dissolution was entered.
 25 I'm going to ask you to review, if you would, the

1 MR. BOYD: I simply asked for his
 2 understanding.
 3 THE COURT: Yes, sir.
 4 THE WITNESS: We had a dissolution of
 5 the marriage, and all other issues would be
 6 handled later.
 7 BY MR. BOYD:
 8 Q. But you understood that the court
 9 reserved jurisdiction over those matters?
 10 A. Maybe not at the time, definitely now.
 11 Q. Was it necessary in the California
 12 proceeding, Mr. Dorn, for Abbie Dorn's counsel to
 13 schedule your deposition over three proceedings?
 14 A. I always thought that every time they
 15 took my deposition, it was like updating Susan and
 16 Paul of my life status.
 17 MR. BOYD: Objection, Your Honor.
 18 That's not responsive to my question.
 19 THE COURT: Mr. Dorn, if you could
 20 answer his question.
 21 THE WITNESS: I don't know what was in
 22 their minds.
 23 BY MR. BOYD:
 24 Q. Do you recall being deposed on three
 25 separate times?

1 order of dissolution of marriage in the California
 2 proceeding, to refresh your recollection of that
 3 document.
 4 A. Okay.
 5 THE COURT: What number is that,
 6 Mr. Boyd?
 7 MR. BOYD: That is --
 8 THE WITNESS: R2-2.
 9 MR. BOYD: -- R2-2, Your Honor.
 10 THE COURT: Thank you.
 11 BY MR. BOYD:
 12 Q. Can I ask you to -- on Page 2 of the
 13 order, Mr. Dorn, it said -- in the order granting
 14 dissolution, it says: Judgment is reserved over
 15 all other issues, and all present orders remain in
 16 effect, except as provided below.
 17 What was your understanding, Mr. Dorn,
 18 of that statement by the court?
 19 MR. DAN SLOTCHIVER: Your Honor, I
 20 don't understand the relevancy of the question, if
 21 it's calling for a legal opinion. His
 22 understanding of a legal order, how it applies, I
 23 would object.
 24 THE COURT: I will allow it. Thank
 25 you.

1 A. If you ask me, I would say five or
 2 six.
 3 Q. Not less than three?
 4 A. I don't remember. I just remember it
 5 was a lot.
 6 Q. Is it fair to say that the California
 7 proceeding, Mr. Dorn, was acrimonious?
 8 A. Do you want to use a different word?
 9 Q. How would you characterize it?
 10 A. As a big battle with the Cohens trying
 11 to take my children away from me, painting me in
 12 the media as a man who won't give a woman
 13 visitation, a handicapped woman visitation, as
 14 trying to bankrupt me.
 15 Q. Is it true that you told the LA Times
 16 that you were the bad guy in all this?
 17 A. I have no recollection of speaking to
 18 the LA Times. I exchanged a few words with one
 19 reporter in the hallway as I was leaving, saying
 20 that the media wants to paint me as a bad guy. I
 21 think that's what I can vaguely, vaguely recall.
 22 MR. BOYD: Thank you, Your Honor
 23 Just a couple of minutes.
 24 BY MR. BOYD:
 25 Q. I alluded to this earlier, Mr. Dorn,

1 but I didn't follow up fully. You testified that
 2 the children were very important to Abbie, and
 3 that Abbie made great efforts to see the children
 4 delivered healthy. Is that your testimony?
 5 A. Abbie did lots of research on
 6 delivering children, and it was a good time in our
 7 lives, and she was excited, I was excited, and we
 8 were both excited to have children together.
 9 Q. As hard as Abbie worked to secure the
 10 safe delivery of the triplets, Mr. Dorn, and, in
 11 fact, making an incredible, unimaginable sacrifice
 12 in connection with the birth of those children,
 13 don't you believe it's reasonable for her
 14 guardians/conservators/trustees to pursue
 15 visitation on her behalf in light of that
 16 sacrifice?
 17 A. I don't believe Abbie is there
 18 anymore, I believe that she's in a vegetative
 19 state, so any visitation would be for the
 20 grandparents and not for Abbie herself.
 21 Q. Would your life be easier if Abbie
 22 Dorn was dead?
 23 MR. DAN SLOTCHIVER: Objection, Your
 24 Honor. That's an absolutely inappropriate
 25 question.

1 THE COURT: I'm not going to allow it.
 2 MR. BOYD: I'll withdraw it, Your
 3 Honor. I have no further questions of this
 4 witness.
 5 THE COURT: Five minutes.
 6 (A recess transpired from 11:58 AM to
 7 12:05 PM)
 8 THE COURT: We are back on the record.
 9 Mr. Boyd, I believe you concluded your
 10 examination of Mr. Dorn?
 11 MR. BOYD: Yes.
 12 THE COURT: Ms. Hedgepath?
 13 CROSS-EXAMINATION
 14 BY MS. HEDGEPATH:
 15 Q. Mr. Dorn, I'm Lynette Hedgepath, and I
 16 have been appointed by the court to represent
 17 Abbie Dorn and her interest. This is a sad case.
 18 My sympathy goes out to you and to the parents, so
 19 if I say anything that might appear to offend you,
 20 it's certainly not meant personally.
 21 Can we operate under that?
 22 A. Of course.
 23 Q. You had told Mr. Slotchiver earlier
 24 that you had a college degree. From where did you
 25 get that degree?

1 A. Cal State Northridge.
 2 Q. And what was the degree in?
 3 A. Real estate, finance and real estate.
 4 Q. And when was that?
 5 A. 2004.
 6 Q. And have you worked with anyone other
 7 than your father?
 8 A. No -- yes.
 9 Q. Who did you work with, Mr. Dorn?
 10 A. I worked with Sober Living Homes.
 11 Q. And what did you do with them?
 12 A. Administration kind of stuff, real
 13 estate/finance stuff.
 14 Q. How long were you there?
 15 A. A couple of years.
 16 Q. My computer's not obeying me.
 17 A. It's concurrent, though.
 18 Q. Pardon?
 19 A. It's concurrently. I did two things
 20 at the same time. That's why -- I don't think I
 21 mentioned in my deposition because I just didn't
 22 even remember.
 23 Q. Now, you indicated that at the time
 24 you wanted the bifurcation of the California
 25 action, you wanted to bifurcate that because you

1 wanted to go ahead and begin -- and get your
 2 divorce so you could begin the time running for
 3 remarriage. Is that correct?
 4 A. It was definitely one of the
 5 considerations.
 6 Q. What were other considerations?
 7 A. To move on. I wanted everything to be
 8 resolved, just like she did, just like Susan did.
 9 Q. You wanted -- I don't understand you.
 10 Explain that to me.
 11 A. If everything could have been resolved
 12 at that moment in time, that would have been
 13 great.
 14 Q. And why could y'all not resolve
 15 everything at that point in time?
 16 A. The court in California, and for any
 17 divorce, they have a minimum of six months before
 18 a legal dissolution of the marriage.
 19 MR. BOYD: Objection, Your Honor. Is
 20 he giving a legal opinion? I don't believe he's
 21 qualified to make that statement.
 22 MR. DAN SLOTCHIVER: She asked the
 23 question.
 24 THE COURT: Sustained.
 25 BY MS. HEDGEPATH:

1 Q. If I understood you correctly in your
2 prior testimony, that you would allow visitation
3 only if the visitation could be on your terms and
4 the way you wanted it. Is that correct?

5 A. That's correct.

6 Q. So if, in your opinion, visitation
7 should not be had until the children were ten
8 years old, that's what you wanted?

9 A. If that's the case, that's correct.

10 Q. You called all the shots?

11 A. That's correct.

12 Q. Abbie's trustees/conservators/
13 guardians, would have no say?

14 MR. DAN SLOTCHIVER: This has been
15 asked and answered three different ways at this
16 point, Your Honor.

17 THE COURT: I'm going to give her a
18 little bit of latitude on behalf of Abbie.

19 THE WITNESS: They would have no say
20 in terms of my children, that's correct.

21 BY MR. BOYD:

22 Q. And you keep saying: My children.
23 Aren't they Abbie's children too?

24 A. They are Abbie's children, but
25 Abbie's -- her consciousness is no longer there.

1 A. 100 percent, yes.

2 Q. Do you believe that she recognizes no
3 one?

4 A. That is correct.

5 Q. I assume you've done a lot of reading
6 and research on the issues of unconsciousness and
7 so forth. Is that correct?

8 A. I'm sure I've done a lot more than you
9 have.

10 THE COURT: Mr. Dorn?

11 THE WITNESS: Yes.

12 THE COURT: No narrative by you, sir.

13 Thank you.

14 BY MS. HEDGEPATH:

15 Q. Then I assume you have read
16 circumstances where people have even been in a
17 comatose state for years and come out of it?

18 MR. DAN SLOTCHIVER: Your Honor, are
19 we opening the door for him to testify about
20 medical testimony and medical records and
21 conversations he had? Because if we aren't, then
22 I do not believe it's fair for her to limit the
23 information he can testify to, but then again,
24 have other counsel object when I try to elicit the
25 same information. It can't go both ways.

1 She's in a vegetative state. So what you see is
2 just her body. It's not Abbie, per se, it's
3 Abbie's body.

4 Q. But she has people appointed by the
5 court to make decisions for her. Am I correct?

6 A. She has her parents, which do a very,
7 very good job as her guardian.

8 Q. Mr. Dorn, how -- or can you sit there
9 and tell me with absolute certainty that Abbie
10 knows nothing?

11 A. Well, you're asking me for my medical
12 opinion now, and my opinion --

13 Q. No. I'm asking you for your personal
14 opinion.

15 A. My personal opinion is all based on
16 medical opinion, and if I start going into that,
17 is someone going to object?

18 Q. The only thing I want to know is a yes
19 or a no.

20 A. What's the yes/no question?

21 Q. Do you believe that Abbie knows
22 nothing?

23 A. Yes.

24 Q. Do you believe that she's not aware of
25 any of her surroundings?

1 THE COURT: Ms. Hedgepath?

2 MS. HEDGEPATH: Your Honor, any
3 layperson can know or hear of people that have
4 been in comatose states.

5 THE COURT: I'll allow her to ask in
6 that respect.

7 MR. DAN SLOTCHIVER: I have no
8 objection to that respect, Your Honor.

9 THE COURT: Thank you.

10 BY MS. HEDGEPATH:

11 Q. And anything I ask you, Mr. Dorn, I'm
12 asking for a lay opinion, not a medical opinion,
13 okay.

14 Now, have you heard or have you read
15 articles about people who may have been in a
16 comatose state for years and have come out of it?

17 MR. DAN SLOTCHIVER: Objection, also,
18 Your Honor, as to the truth of the matter,
19 asserted, even if he heard a rumor or read it in a
20 magazine or seen it on a TV show.

21 THE COURT: I understand. She's not
22 asking him to state that as a fact that happened,
23 had he heard it or read about it.

24 MR. DAN SLOTCHIVER: If it's -- the
25 only concern I had, Your Honor, if it's asking him

1 for the truth of the matter asserted, it's
 2 different, and he should be able -- we need to
 3 qualify the truth of the matter asserted. If
 4 she's asking him have you heard rumor of it, it
 5 would be hearsay. It would be irrelevant if it's
 6 not offered for the truth of the matter asserted.
 7 So I don't know under what basis this testimony
 8 would be elicited, and that's the basis of my
 9 objection. I just want it on the record.

10 THE COURT: Thank you.

11 Ms. Hedgepath, go ahead.

12 BY MS. HEDGEPATH:

13 Q. Mr. Dorn, have you heard or read of
 14 people that have been in a comatose state and come
 15 out of it?

16 A. Are you claiming that Abbie's in a
 17 comatose state? I'm confused.

18 Q. That's not my question. My question
 19 to you, sir, is: Have you read or are you aware
 20 of situations where people have come out of a
 21 comatose state and been okay?

22 A. I've heard of it, but not okay.

23 Q. And are you telling me that you do not
 24 believe that is possible with Abbie, from a lay
 25 perspective?

1 A. That what's not possible?

2 Q. You mentioned that you had planned,
 3 when you were in California, to buy a house for
 4 Abbie to stay in it, and you were going to staff
 5 it for Abbie. Is that correct?

6 A. There was some initial talk about that
 7 early on within the medical malpractice lawsuit.

8 Q. But were any steps ever taken to do
 9 that, Mr. Dorn?

10 A. No.

11 Q. It appears, Mr. Dorn, that the main
 12 reason you don't want Abbie to have visitation is
 13 that you do not want the children to be --

14 MR. DAN SLOTCHIVER: Objection, Your
 15 Honor. Counsel is testifying: It appears.

16 MS. HEDGEPATH: If he'll let me finish
 17 my question, he'll know if I'm testifying or if
 18 I'm asking a question, Your Honor.

19 MR. DAN SLOTCHIVER: Well, the
 20 question, again, was: It appears. It is a
 21 statement from counsel. It's not a question.

22 THE COURT: Ms. Hedgepath, you can
 23 certainly ask leading questions, but if you could
 24 frame your comments in the form of a question.

25 MS. HEDGEPATH: Yes, ma'am.

1 BY MS. HEDGEPATH:

2 Q. Mr. Dorn, is the real reason you did
 3 not want visitation for Abbie with the children
 4 because you do not want them to be around the
 5 maternal grandparents?

6 A. No.

7 Q. Why did you not want visitation for
 8 the children with Abbie?

9 A. I did not want my children being taken
 10 away from me and given overnight visits to the
 11 grandparents.

12 Q. Was there ever any pleadings filed in
 13 California or anywhere where anyone sought custody
 14 of your children?

15 A. I would say the threat was out there.

16 Q. Mr. Dorn, will you give me a yes or no
 17 answer? Has anyone ever sought custody of your
 18 children?

19 MR. DAN SLOTCHIVER: Your Honor, I
 20 think it calls for a legal conclusion as to what
 21 the documents mean.

22 THE WITNESS: I mean, I'll answer.

23 THE COURT: Pardon me?

24 THE WITNESS: I'll answer.

25 THE COURT: Yes, sir.

1 THE WITNESS: From the document that
 2 Mr. Boyd gave me, they were never offering --
 3 there was never any form that was filed that gave
 4 me full custody until 2012, so the threat of
 5 custody was always there.

6 BY MS. HEDGEPATH:

7 Q. Mr. Dorn, please listen to my
 8 question. Have you ever received any pleading or
 9 had any action filed against you whereby someone
 10 was seeking custody of your children? I merely
 11 need a yes or no answer.

12 A. No. I guess it was never a real
 13 threat.

14 Q. Well, if it was never a real threat,
 15 Mr. Dorn, why was this litigation drug out so long
 16 and cost so much out in California?

17 A. Because the grandparents tried to seek
 18 visitation and take away my children for the
 19 summer.

20 Q. So really what it boiled down to, it
 21 wasn't that you were concerned that someone would
 22 take custody, you just didn't want Abbie to have
 23 visitation with those children, did you?

24 MR. DAN SLOTCHIVER: This has been
 25 asked and answered, Your Honor.

1 THE COURT: I'll allow it.
 2 THE WITNESS: I didn't want the
 3 children being taken away from me and given to the
 4 grandparents.
 5 BY MS. HEDGEPATH:
 6 Q. I know I'm beating this to death, but
 7 you can't have it both ways. You're telling me no
 8 one sought custody, so that was not an issue?
 9 A. Any visitation with Abbie is
 10 visitation with the grandparents. Abbie is in a
 11 vegetative state; therefore, Abbie can't do
 12 anything. You represent yourself as Abbie. I
 13 guarantee you Abbie would not want anything you're
 14 asking for. You never met Abbie. You don't know
 15 Abbie. And any visitation with Abbie is
 16 visitation with the grandparents, and the
 17 grandparents were seeking to take the children
 18 away from me, have sleep-over visits. Abbie can't
 19 do anything. She's in a vegetative state.
 20 Q. Well, what about your children? Let's
 21 look at what's in the best interest of your
 22 children. Don't you think your children want to
 23 know their mother?
 24 A. I think that's for me, as the father,
 25 to determine.

1 Q. Children shouldn't have any say?
 2 A. Children typically, in any
 3 relationship, do what their parents tell them to,
 4 and that's why you raise good children compared to
 5 children who just -- my children want to -- they
 6 would raise themselves eating candy all day and
 7 never putting their clothes on. I don't listen to
 8 my children. I tell my children what to do, and
 9 therefore, they will become respectable members of
 10 society.
 11 Q. Had it not been for the court order in
 12 California requiring visitation, you were not
 13 willing to voluntarily let those children visit
 14 with Abbie at all, were you?
 15 A. That's incorrect.
 16 Q. Then correct me, please, sir.
 17 A. I visited Abbie before there was a
 18 court order.
 19 Q. Well, in March of 2010, documents were
 20 filed with the court saying you had not let the
 21 children visit with Abbie. Isn't it true that you
 22 let Abbie -- the children -- you took the children
 23 to see Abbie right after birth? Am I correct?
 24 A. Sorry. Can you restate your question?
 25 Q. When they were infants, did you take

1 the children to see Abbie?
 2 A. Yes, I did.
 3 Q. How old were they when you last took
 4 them to see her in California?
 5 A. One year old, roughly.
 6 Q. They were born in 2006, correct?
 7 A. I guess that would have been 2007 if
 8 they were one.
 9 Q. And you didn't let them see -- or
 10 didn't take them to see their mother -- they had
 11 not been in March of 2010, so they went at least
 12 three years without seeing their mother, didn't
 13 they?
 14 MR. DAN SLOTCHIVER: Your Honor, I'm
 15 going to place an objection on the record to the
 16 relevancy of this. This is a very personal
 17 matter. It is a sensitive matter. I'm going to
 18 try to remind counsel to remember that. I know
 19 she wants to do a job effectively, but at the same
 20 time, we have to be cognizant of the fact that it
 21 is a sensitive matter. I don't know the relevancy
 22 of when the last time he took the children to see
 23 them would be and going through those dates as it
 24 applies to this case.
 25 MS. HEDGEPATH: Your Honor, the

1 relevancy -- and it is sensitive, and I don't like
 2 to be the one standing here asking him these
 3 questions, but they need to be asked, because
 4 Abbie is laying there, and she can't answer them.
 5 She's the one that visitation has been withheld.
 6 Her parents had to spend close to a million
 7 dollars out in California to get one week's --
 8 MR. DAN SLOTCHIVER: Actually, I'd
 9 object, Your Honor. The parents did not spend a
 10 million dollars in California; the trust spent the
 11 money in California. And I want to --
 12 Ms. Hedgepath is not representing the minor
 13 children. She's not representing the minor
 14 children's rights. He stands in that place,
 15 Mr. Kachmarsky stands in that place. She doesn't
 16 stand in that place. She's not the guardian of
 17 Abbie. She is the lawyer appointed for Abbie.
 18 There is a distinction.
 19 MS. HEDGEPATH: Yes, Your Honor, and I
 20 have to argue what I think would be what Abbie
 21 would want and what would be in Abbie's best
 22 interest.
 23 MR. DAN SLOTCHIVER: And Your Honor,
 24 she doesn't represent -- she represents Abbie, but
 25 how can she represent what Abbie wants? She is

1 not the guardian.

2 MS. HEDGEPATH: I am not the guardian,
3 Your Honor, but I have had conversations with the
4 guardian. I have visited with Abbie.

5 MR. DAN SLOTCHIVER: I believe the
6 guardian herself can make those arguments. It's
7 reminiscent of some of the arguments made in the
8 James Brown case recently, where people who had
9 never met the person said: I can tell you what
10 they want.

11 In this case, she may have met Abbie,
12 I don't know, but I cannot imagine that she's had
13 extensive conversations with Abbie under the
14 situation we're dealing with over this matter.
15 And I know there's a disagreement as to the
16 ability of Abbie to communicate. I'm not making
17 light of that. But recognizing there is a
18 distinction, I do not believe this is a proper
19 question to come before the court for a multitude
20 of reasons we've just discussed.

21 MS. HEDGEPATH: Your Honor, one more
22 thing, and I'll let it lie.

23 THE COURT: Yes, ma'am.

24 MS. HEDGEPATH: This is about money,
25 the money that they want the Cohens to put back in

1 interject one thing into the record.

2 The objection -- we wandered a little
3 bit. The objection was elicited, in my
4 understanding, by Mr. Slotchiver from
5 Ms. Hedgepath's questioning about the timing of
6 visitation, and much of this testimony that's been
7 elicited has been about visitation, and so with
8 respect to the witness's testimony that he was
9 happy with visitation 100 percent on his terms; I
10 think Ms. Hedgepath's questioning with respect to
11 the actual historical timing of the visitation is
12 directly relevant to what's at issue here.

13 THE COURT: Thank you.

14 I'll give you a little bit of
15 latitude, Ms. Hedgepath, but I just want to remind
16 everybody Ms. Moore is the guardian ad litem to
17 represent the best interests of Abbie. I believe
18 she can go into some of these matters if she
19 believes that's necessary.

20 It is 12:30. Mr. Dorn has to leave
21 here at 3:30, and we want to be sure that we
22 conclude his testimony in its entirety. To the
23 extent that we can move along a little bit,
24 eliminate some of the objections, then I would
25 recommend that you limit your cross a little bit.

1 the trust, the money that was spent out of the
2 trust to establish visitation.

3 MR. DAN SLOTCHIVER: And if the money
4 goes back to the trust, it doesn't go to the
5 client. It goes to benefit the beneficiary, and
6 the primary beneficiary, and in some situations,
7 under some readings of it, the sole beneficiary is
8 Abbie. So at this point, we've got the attorney
9 for Abbie arguing essentially against putting
10 money into the trust that would benefit Abbie.

11 THE COURT: Thank you.

12 Anything else, Ms. Hedgepath?

13 MS. HEDGEPATH: No, Your Honor.

14 THE COURT: If you could move along a
15 little bit.

16 MS. HEDGEPATH: Am I not allowed to go
17 into the California litigation and what caused the
18 costs to run up?

19 THE COURT. I think that has been
20 covered by the Cohens' attorneys, and Ms. Moore
21 can cover that some --

22 MR. BOYD: Your Honor --

23 THE COURT: -- if she so chooses.

24 MR. BOYD: I'm sorry. I didn't mean
25 to interrupt, Your Honor, but I would like to just

1 MS. HEDGEPATH: I'm having a difficult
2 time, Your Honor, because to represent Abbie, I'm
3 having to look at what I believe she would want
4 and what's in her best interest, and my hands are
5 tied over here. We'll try.

6 MR. DAN SLOTCHIVER: And it goes, Your
7 Honor, to some extent to the point that I know
8 you've appointed two different persons for similar
9 but different jobs, but I believe that what
10 Ms. Hedgepath can ask is different than what the
11 guardian can ask, because she represents Abbie,
12 but she doesn't stand in the shoes to be able to
13 say, technically: I know what she wants.

14 THE COURT: Thank you, sir.

15 BY MS. HEDGEPATH:

16 Q. Mr. Dorn, how much are you asking that
17 be placed in the Abbie Dorn Special Needs Trust?

18 A. Full restitution.

19 Q. I can't hear you.

20 A. Full restitution.

21 Q. And how much is that?

22 A. I'll let the attorneys figure it out.

23 Q. So sitting there today, you can't tell
24 me how much you want to be placed in Abbie's
25 trust?

1 A. I'm very happy and competent and have
2 a very competent attorney who can figure that out.
3 Q. But your attorney can't take the stand
4 here today, sir.
5 A. That's why I'm saying that he'll
6 figure it out as to how much.
7 Q. And for what matters do you think the
8 trust should be used in connection with it?
9 A. For the medical needs of Abbie.
10 Q. And that's all?
11 A. That's what I believe, yes.
12 Q. Do you believe that from Abbie's
13 trust, she should be able to obtain things that
14 make life more enjoyable for her?
15 A. If you're referring to seeing her
16 children for 15 hours a year at, from what I
17 calculate, \$70,000 an hour, no, I don't think so.
18 Q. Do you believe that Abbie is receiving
19 excellent care?
20 A. I think Susan and Paul, as her
21 guardians, are doing great jobs. I've never
22 contested that. I've never said anything contrary
23 to that as well.
24 Q. Do you want to be conservator of
25 Abbie's trust?

1 A. Definitely not.
2 Q. Who would you like to see be
3 conservator of Abbie's trust? Trustee, excuse me.
4 A. Conservator and trustee? I'd like to
5 see some big nationally-renowned bank.
6 Q. Do you have any bank in particular?
7 A. A national bank.
8 Q. And what is the maximum fees you think
9 would be appropriate to pay that national bank?
10 A. Whatever it is, it's less than what
11 they're spending, even on you, per year.
12 Q. Pardon?
13 A. Even on your fees, per year it's less,
14 whatever a bank will charge.
15 MS. HEDGEPATH: I ask that that be
16 stricken, Your Honor. That was not responsive to
17 any question.
18 THE COURT: Ma'am?
19 MS. HEDGEPATH: I asked that his last
20 comment be stricken, his comment that whatever a
21 bank would charge would be less than what I charge
22 in a year.
23 THE COURT: I'll strike that.
24 BY MS. HEDGEPATH:
25 Q. Now, the issue of child support in the

1 California action was not dropped until a final
2 agreement was entered into recently. Is that
3 correct?
4 A. That's correct.
5 Q. But you knew that Abbie could lose her
6 Medicaid several years prior to that, didn't you?
7 A. Once I found out that she could lose
8 her Medicaid, the issue, although it was not
9 dropped from the court, it was never argued over
10 ever again.
11 Q. Can you tell me why it was not
12 dropped?
13 MR. DAN SLOTCHIVER: Without breaching
14 attorney-client privilege, Your Honor?
15 THE COURT: Yes, sir.
16 THE WITNESS: It's the same reasoning
17 why custody was never dropped until the very end.
18 Nobody --
19 BY MS. HEDGEPATH:
20 Q. Mr. Dorn, you told me nobody was
21 seeking custody.
22 A. Although I never got custody until the
23 very end. Just like I wasn't seeking child
24 support; they weren't seeking custody, but they
25 never were resolved until the very end

1 MS. HEDGEPATH: Your Honor, I believe
2 that's all I have
3 THE COURT: Thank you.
4 CROSS-EXAMINATION
5 BY MS. MOORE:
6 Q. Hi, Mr. Dorn. I just have a few
7 questions of you.
8 Just to follow up on that last
9 comment, you were the only party that filed a
10 pleading asking for custody. Isn't that correct?
11 A. I don't remember what I filed or what
12 they filed. When you're talking about documents,
13 I must have close to 50,000, if not 100,000,
14 different pages of documents.
15 Q. Today, can you identify any document
16 whatsoever that was filed by any party requesting
17 custody other than yourself?
18 A. Well, like I said to Mr. Boyd, I don't
19 remember. From my recollection, they never sought
20 custody, however, I never was granted custody
21 until the very end of the case.
22 Q. Now, bear with me, because I tried to
23 write notes on this. You made a reference in
24 response to some direct testimony from
25 Mr. Slotchiver that even then they were barely on

1 speaking terms, and it was in response to your
2 relationship with the Cohens. What even then,
3 what time frame were we talking about?

4 A. When you said the Cohens, I remember
5 saying Susan, not Paul, but I don't remember
6 talking to Susan very much once they went to
7 Bakersfield.

8 Q. And if you were not on good speaking
9 terms with Susan, yet you felt that it would be
10 well received to tell the Cohens that you were
11 ready to move on. Is that correct?

12 A. What's the question?

13 Q. Even though you weren't on good
14 speaking terms with Susan, you felt that it would
15 be well received for you to tell the Cohens that
16 you were ready to move on?

17 A. I wasn't on bad terms with her. I
18 just wasn't -- we just didn't speak very often,
19 and I owed them the common courtesy and due
20 respect.

21 Q. Was there a benefit in delaying the
22 initiation of the divorce from the standpoint of a
23 medical malpractice case?

24 A. That is totally what I remember, yes.

25 Q. And in fact, you would receive more

1 Q. Yet you never pursued anything as far
2 as LegalZoom was concerned?

3 A. I was constantly focused on the
4 medical malpractice lawsuit, and the day that the
5 medical malpractice lawsuit was finalized, he came
6 to me with the card and told me to get an
7 attorney. I never -- I didn't have any thought
8 process about how to go about it, aside from
9 legalzoom.com.

10 Q. So you never gave any thought as to
11 who would be the one to initiate the lawsuit?

12 A. I never thought it would be,
13 quote-unquote, like what you're saying, a lawsuit.
14 I thought it would be amicable, and we would sit
15 down together and just hash it out and put the
16 details down on legalzoom.com.

17 Q. Did you conduct an investigation into
18 the reputation of Vicki Greene?

19 A. Not the reputation, but -- yeah, I
20 guess you could say reputation. I wanted -- I
21 asked a friend of mine, who's an attorney, if he
22 could give me some recommendations, so I would say
23 recommendations, I asked for recommendations. It
24 also helped that she lived in my neighborhood.

25 Q. Did you receive any information in

1 money if there was a delay in the divorce action.
2 Is that correct?

3 A. I actually think I was not able to
4 close the case if the divorce proceedings started,
5 and therefore, the suit -- the Cohens would never
6 be able to leave California.

7 Q. Now, you indicated that Mr. Cohen, or
8 Dr. Cohen, gave you some type of business card for
9 an attorney. Is that correct?

10 A. It was from Paul's -- what he gave
11 over here in trial. He said that he doesn't
12 remember telling me he got an attorney, to get an
13 attorney, but he does remember him giving me a
14 business card. When he said that, I recollected
15 the same thing. However, I could have sworn I
16 thought he said get an attorney at the same time.

17 Q. So was it a business card for his
18 attorney or a business card suggesting that you
19 contact the attorney?

20 A. No. It was a business card for his
21 attorney that they retained.

22 Q. Now, you had indicated that you never
23 contemplated that they would be the ones to
24 initiate the action. Is that correct?

25 A. I never thought about it, no.

1 your investigation, whether it be communications
2 with friends who were lawyers or doing whatever
3 other type of investigation, as to the level of
4 fees that she typically charges in a domestic
5 case?

6 A. I don't remember anything about fees.
7 I just remember them giving me a few numbers, and
8 I called both of them.

9 Q. When you switched from Shelley Newman
10 to Vicki Greene, would you agree that the fees you
11 incurred dramatically increased?

12 A. No, because I gave Shelley Newman,
13 from what I remember, \$10,000, and I don't
14 remember her doing anything for me, and I don't
15 remember getting anything back from that.

16 Q. So you spent \$10,000 with Shelley, and
17 how many hundreds of thousands of dollars did you
18 spend with Vicki?

19 A. Well, the \$10,000 -- I don't
20 100-percent remember if it was \$10,000. That was
21 whatever her retainer was. I gave her the
22 retainer. I vaguely remember getting any money
23 back from that, so I thought it was a lot of
24 money. And then I went to Vicki Greene. It
25 wasn't a lot of money. It wasn't like, oh, wow,

1 it was so much money. It only became a lot of
2 money later on down the line.

3 Q. And would you agree that a lot of the
4 pleadings that were filed and hearings that were
5 held were at the request of your attorney?

6 A. I would say I would try to resist
7 visitation at any and all costs.

8 Q. Now, Mr. Dorn, you have made various
9 statements that would lead us to believe that you
10 believed the Cohens are responsible for the
11 publicity surrounding the trial. Is that correct?

12 A. That's correct.

13 Q. Do you have any direct evidence to
14 substantiate that belief?

15 A. Not direct evidence.

16 Q. Are the filings in family court
17 public? Are they public record?

18 A. Some of them are.

19 Q. So anybody could go in and find out
20 about the fact that there had been an action filed
21 and issues concerning visitation relative to
22 Abbie. Is that correct?

23 A. The swing on the case was always that
24 Abbie was handicapped, and I was denying a
25 handicapped woman visitation, so that swing on the

1 Q. Maybe not originally, but were there
2 subsequent filings that would have contained
3 information that would give anyone who had access
4 to the public records information about the fact
5 that she was disabled?

6 A. I don't know about disabled. I would
7 say more like in a vegetative state.

8 Q. And the courtroom itself is a public
9 courtroom, is it not?

10 A. Yes.

11 Q. So anyone could come and go and be
12 privy to the information that would be part of the
13 hearings in a public courtroom. Is that correct?

14 A. Yes, yes.

15 Q. Now, Mr. Dorn, once again, if I
16 understood your testimony correctly, you
17 indicated, I believe, in response to some direct
18 examination from Mr. Slotchiver, that you just
19 didn't have any idea that the box as to visitation
20 was checked on your pleading until in the middle
21 of this litigation. Is that correct?

22 A. No. I mean, I vaguely recall, as
23 well, that -- the MOLM firm saying: Did you check
24 this box? Did you check this box? Did you check
25 this box?

1 case, I'm 99.9 percent sure came from her
2 attorneys.

3 Q. And was that swing on the case
4 contained in pleadings that would be a matter of
5 public record?

6 A. I would assume so.

7 Q. And the courtroom itself --

8 A. But you're saying the swing. The
9 swing itself wasn't --

10 Q. That's what you just said.

11 A. I said that the documents themselves
12 are public record; however, the swing on the case
13 came from the attorney.

14 Q. Well, the fact that Abbie had a
15 disability, would that be a matter of public
16 record in the domestic pleadings in California?

17 A. I don't think so, besides for that she
18 had a conservator/trustee.

19 Q. I'm talking about for the domestic
20 case, the marital dissolution case, all the
21 pleadings.

22 A. Yeah. Besides for her having a
23 conservator and trustee, the condition of her
24 health, I don't see that being in any of the
25 filings, originally at least.

1 Q. If you sign a pleading, would you have
2 reviewed it?

3 A. Potentially.

4 Q. If you sign a pleading that says: I
5 declare under penalty of perjury under the laws of
6 the state the California that the foregoing is
7 true and correct, would that carry great import to
8 you in terms of being responsible for reviewing
9 the pleading before signing?

10 A. I take my counsel's weight in great
11 regard.

12 Q. So being under penalty of perjury,
13 that doesn't concern you?

14 A. You're even assuming that I read that.

15 Q. That's exactly what I'm assuming.

16 A. Exactly.

17 Q. In Respondent's R-8, is that your
18 signature?

19 A. Yes.

20 Q. And I'd ask you to read the line that
21 is immediately preceding your signature, and
22 please read that line to the court.

23 A. I just want to clarify. Are you
24 saying the line that's inci binci?

25 Q. The full sentence immediately

1 preceding your signature, what does that say?
 2 A. I declare under penalty of perjury
 3 under the laws of the state of California that the
 4 foregoing is true and correct.
 5 Q. And on this very form, it is checked
 6 that you were granting or requesting that there be
 7 visitation to the petitioner. Is that correct?
 8 A. Correct.
 9 Q. And no question but that you have
 10 testified that you were using the claim for child
 11 support as leverage in this litigation. Is that
 12 correct?
 13 A. Correct, at least in the beginning,
 14 until I found out that it would -- that Abbie
 15 would lose her Medicaid, in which case it all
 16 stopped.
 17 Q. And no question but for the fact that
 18 even after learning that information, you never
 19 filed a formal pleading with the court that
 20 withdrew the claim for child support. Is that
 21 correct?
 22 A. That's correct.
 23 Q. And no question but for the fact that
 24 the issue of child support was not resolved and
 25 included in any order until the very final order.

1 Is that correct?
 2 A. Correct.
 3 MS. MOORE: That's all I have, Your
 4 Honor.
 5 THE COURT: Thank you.
 6 Mr. Kachmarsky?
 7 MR. KACHMARSKY: Nothing for me.
 8 MR. DAN SLOTCHIVER: Just two or three
 9 follow-up, Your Honor.
 10 THE COURT: Yes, sir.
 11 REDIRECT EXAMINATION
 12 BY MR. DAN SLOTCHIVER:
 13 Q. Dan, any benefit that you received
 14 from being plastered all over the press in the LA
 15 Times and deriving 5 million negative hits on your
 16 name?
 17 MS. MOORE: Your Honor, I'm going to
 18 object. That's mischaracterizing my question. I
 19 was not giving any indication that I believed he
 20 to be the one. My question was as to whether
 21 there was any direct evidence that the Cohens had
 22 been the ones.
 23 MR. DAN SLOTCHIVER: And I'm asking
 24 him if there's any benefit that he received from
 25 that publicity.

1 THE COURT: I'll allow it.
 2 THE WITNESS: None whatsoever. In
 3 fact, I would say that it even added threats to my
 4 very children as well.
 5 BY MR. DAN SLOTCHIVER:
 6 Q. Do you have any knowledge or opinion
 7 as to what that publicity did for the MOLM firm?
 8 A. I hear it got them quite a few cases.
 9 Q. In the world of publicity, did you
 10 ever seek out to be on TV shows?
 11 A. I 100-percent refused, and Vicki
 12 was -- I told Vicki to go on --
 13 Q. I know, but let's not talk what Vicki
 14 says, but you yourself.
 15 A. I never went on any show, ever.
 16 Q. Do you know if the Cohens ever went on
 17 any TV shows?
 18 A. Yeah, yes, many.
 19 Q. There was a word you used, the swing,
 20 I believe, the swing that was talked about. You
 21 talked about the swing, which was that you were
 22 precluding a handicapped person from seeing the
 23 children. Did anything about that do anything to
 24 benefit you or your children?
 25 MR. BOYD: Your Honor, I'm going to

1 object to this testimony. There's been no --
 2 there's been no testimony that he benefited from
 3 it. That's not the issue.
 4 MR. DAN SLOTCHIVER: There's lingering
 5 out there who did it. Multiple counsels have
 6 asked him do you have any absolute proof as to who
 7 did it, and I think that the court can consider
 8 the benefit as to what party and what amount each
 9 party would have participated, so at this point,
 10 he's talked about the fact that he had no benefit.
 11 THE COURT: I'll allow it.
 12 MR. DAN SLOTCHIVER: Can you read back
 13 the last question?
 14 (The Court Reporter read the question
 15 commencing on Page 1987, Line 18.)
 16 THE WITNESS: None whatsoever.
 17 MR. DAN SLOTCHIVER: I've got nothing
 18 further. Thank you.
 19 THE WITNESS: I would even go on to
 20 say that it endangered the children more.
 21 MR. DAN SLOTCHIVER: Thank you, sir.
 22 THE COURT: Mr. Boyd, anything else?
 23 MR. BOYD: Nothing further for this
 24 witness, Your Honor.
 25 THE COURT: Ms. Hedgepath?

Page 1990 1 MS HEDGEPATH: Nothing, Your Honor. 2 THE COURT: Did I allow you, 3 Ms. Hedgepath -- if there's anything else you 4 would like to broach with the witness. 5 MS. HEDGEPATH: I think we have 6 enough. 7 THE COURT: The witness may step down. 8 MR. DAN SLOTCHIVER: He may be 9 excused? He can leave when he wants? 10 THE COURT: He can leave when he 11 wants. Anybody can leave when they want. 12 MR. DAN SLOTCHIVER: He was under 13 subpoena, and I wanted to make sure he could leave 14 when he wants. 15 THE COURT: I'm sorry. 16 MR. DAN SLOTCHIVER: I think he'll 17 stick around as long as he can, but I just wanted 18 to make sure technically he had the freedom to 19 leave when he wants. 20 THE COURT: No objection, Mr. Boyd? 21 Mr. Davis? 22 MR. BOYD: No objection. 23 MR. DAVIS: Your Honor, I would like 24 to tell you that I advised Ken Wingate, who's our 25 next witness, we were going to break for lunch,	Page 1992 1 the stand to testify. 2 THE COURT: Thank you. Mr. Wingate? 3 KENNETH WINGATE 4 being first duly sworn, testified as follows: 5 MR. DAVIS: May it please the court? 6 THE COURT: Yes, sir. 7 MR. DAVIS: Thank you, Your Honor. 8 DIRECT EXAMINATION 9 BY MR. DAVIS: 10 Q. Good afternoon, Mr. Wingate. 11 A. Afternoon. 12 Q. Would you please state your full name 13 and address for the record? 14 A. Kenneth Wingate, and my work is 1515 15 Lady Street, Columbia, South Carolina. 16 Q. Would you please provide for the court 17 your educational background, starting with your 18 undergraduate studies? 19 A. Sure. I received an accounting degree 20 from Clemson University in 1981, and then I 21 received a JD from the University of South 22 Carolina School of Law in 1986. 23 Q. What are your professional 24 designations and licenses? 25 A. I practice as -- practiced, past
Page 1991 1 and he would be right after that, and he's 2 available to do that. 3 THE COURT: So why don't we break now 4 for lunch. 5 MR. BOYD: Yes. 6 THE COURT: Start back at 2:00. 7 MR. DAN SLOTCHIVER: Thank you, Judge. 8 THE COURT: Is that good? 9 MR. DAVIS: That's good. He'll be 10 ready, because he's here in the parking lot, and 11 he asked me, and I just assumed. If that's not 12 right, just let me know. 13 THE COURT: That would be fine. Thank 14 you 15 (A luncheon recess transpired from 16 12:50 PM to 2:06 PM.) 17 THE COURT: We're back on the record 18 in the matter of Abbie Dorn. 19 Mr. Boyd, I believe you're up next. 20 MR. BOYD: Yes, Your Honor, we are. 21 And actually, Mr. Davis is going to handle this 22 witness. 23 THE COURT: All right, Mr. Davis. 24 MR. DAVIS: May it please the court, 25 Your Honor, we'd like to call Mr. Ken Wingate to	Page 1993 1 tense -- as a certified public accountant for a 2 number of years before attending law school. My 3 license is in inactive status, because I do not 4 practice public accounting. I also hold a 5 designation by the South Carolina Supreme Court as 6 a certified specialist in estate planning and 7 probate law. I am a fellow in the American 8 College of Trusts and Estates Council and a member 9 of the normal sorts of organizations, such as the 10 AICPA and the American Bar Association, et cetera. 11 Q. Any other professional associations 12 dealing with estate planning? 13 A. Columbia Estate Planning Council, 14 which I chaired a few years, the Richland County 15 Bar Association has an estate planning and probate 16 law section which I'm active in, the South 17 Carolina Bar has an estate planning and probate 18 law section which I'm active in. So that would be 19 a few. 20 Q. Except for your CPA license, which you 21 testified is inactive, are all your other licenses 22 current? Is it just the license to practice law 23 is the only license that you have at this point? 24 A. That's right. I only practice as a 25 lawyer, I do not practice as a CPA, so all my

1 law-related designations are active and current,
2 member of the South Carolina Bar, recertified
3 recently as a certified specialist in estate
4 planning and probate law, et cetera.

5 Q. Have you ever been suspended from
6 using any of your licenses?

7 A. No.

8 Q. Where are you currently employed, and
9 how long have you worked there?

10 A. I am the managing shareholder and one
11 of the founding partners of Sweeney, Wingate &
12 Barrow, a law firm of 17 lawyers which we started
13 in 1993, so it's been 20 years ago.

14 Q. Where did you work prior to Sweeney,
15 Wingate & Barrow?

16 A. I worked for a total of nine years at
17 the McNair Law Firm, based in Columbia, but served
18 as the director of their estate planning and
19 probate and trust practice for all -- I believe it
20 was six offices around the state that they had at
21 that time.

22 Q. Have you ever drafted or worked with
23 trusts commonly referred to as d4A trusts?

24 A. Yes, I have.

25 Q. Do you draft trusts and work with

1 Honor.

2 VOIR DIRE EXAMINATION

3 BY MR. DAN SLOTCHIVER:

4 Q. Mr. Wingate, you've been offered as an
5 expert in trust and fiduciary responsibility, for
6 trust administration, and handling d4A. I'm going
7 to focus my questioning for you with regard to the
8 trust and fiduciary responsibility issue and the
9 administration of trust issue, okay.

10 A. Okay.

11 Q. Is it fair to say that you've only
12 served as an expert witness twice before?

13 A. Where called upon to testify, that is
14 correct.

15 Q. And that one of those occurred about
16 20 years ago, and one occurred about 15 years ago?

17 A. I think that's consistent with the
18 testimony I gave you at my deposition, yes.

19 Q. And that both of those issues dealt
20 with drafting issues and the intent made by the
21 parties?

22 A. One of those was a drafting issue, and
23 one of those was an administration issue, as we
24 discussed.

25 Q. Let me show you a copy of your

1 trusts on a regular basis in your practice?

2 A. Yes, I do.

3 Q. Have you ever served as an expert
4 witness before?

5 A. A few times.

6 Q. And what areas were those in?

7 A. Always something related to trusts or
8 estates in various ways.

9 MR. DAVIS: And Mr. Wingate, Your
10 Honor, I would move for the court to accept
11 Mr. Wingate as an expert witness in the areas of
12 trust and fiduciary responsibility and
13 administration and as an expert on d4A trusts,
14 Your Honor.

15 MR. DAN SLOTCHIVER: Your Honor, I'd
16 like an opportunity to question him for a few
17 moments, if I may.

18 THE COURT: Yes, sir.

19 And just very briefly again,
20 Mr. Davis, could you give me those designations?
21 Trust and fiduciary responsibility and --

22 MR. DAVIS: Trust administration and
23 as an expert on d4A trusts.

24 THE COURT: Thank you.

25 MR. DAN SLOTCHIVER: Thank you, Your

1 deposition and see if it refreshes your
2 recollection to the conversation we had at the
3 time your deposition was taken.

4 MR. DAN SLOTCHIVER: Your Honor, may I
5 approach?

6 THE COURT: Yes, sir.

7 BY MR. DAN SLOTCHIVER:

8 Q. And if you could please refer to
9 Page 15, Line 9, and the question I asked you at
10 that time was: So the experience you've had and
11 the cases you've testified before in court dealt
12 with drafting issues and intent that was made by
13 the parties? And your response at that time, sir?

14 A. On Line 13, I said: Yes. And I also
15 said on Line 25 of the prior page and of Line 1,
16 excuse me, on that Page 15, that in that
17 particular case it was, quote, specific to real
18 estate management. So that's the one I'm
19 referring to was about administration.

20 Q. Now, I believe that -- do you
21 understand that the trust involved in this matter
22 was drafted in the state of California?

23 A. That's what I've been told, yes.

24 Q. And is it my understanding that you're
25 not aware of what was -- you're not aware of

1 California law, you don't practice in California?

2 A. I am a South Carolina lawyer only.

3 Q. And some of the languages you've been
4 asked to look to pose the issue of your opining on
5 intent?

6 A. I think it goes to the question of the
7 governing instrument expressing its own intent and
8 that it cites that it is to be governed by South
9 Carolina law, it the trust agreement.

10 Q. Well, do you remember testifying in
11 your deposition that there were some issues where
12 it depends on what the judge intended?

13 A. I don't remember that testimony.

14 Q. And I don't want to take it out of
15 context. Why don't we look at Page 32.

16 A. Sure.

17 Q. And starting at Page 15, the question
18 was -- and I don't want to take it out of context,
19 so please feel free to explain, but the question
20 here was any of the documents you can refer to
21 that reference or give rise to your opinion that
22 the California and South Carolina court orders
23 justify the payment of the legal fees in this
24 case, and I believe your response was --

25 MR. DAVIS: Your Honor, I object. Are

1 of shall, you shall seek court approval before the
2 payment of fees?

3 A. Yes. I remember we talked about
4 shall.

5 Q. And do you remember talking to me in
6 that context and saying: I don't know who drafted
7 this document, I don't know what they intended by
8 what they drafted? Do you recall that?

9 A. Not in those specific terms. I'd be
10 happy to look at where you're pointing me.

11 Q. If you'll please look at Page 39, and
12 the question was, on Line 12: And is there a
13 second caveat to it which is -- that you would
14 agree with that limits it to compensation being
15 subject to prior approval of a court of competent
16 jurisdiction?

17 MR. DAVIS: Your Honor, I object. Are
18 we talking about his qualifications to serve, or
19 are we talking about his expert opinion? He'll
20 certainly have an opportunity to cross-examine on
21 expert opinion.

22 THE COURT: I'm wondering where we're
23 going, Mr. Slotchiver.

24 MR. DAN SLOTCHIVER: Well, Your Honor,
25 if he is going to opine, but I'm bringing up to

1 we qualifying the witness as an expert, or is he
2 questioning the witness?

3 MR. DAN SLOTCHIVER: I am not moving
4 to qualify him. I'm asking him some questions in
5 order to determine his qualifications.

6 THE COURT: Yes, sir.

7 BY MR. DAN SLOTCHIVER:

8 Q. And your response was: Depending on
9 what the judge intended by this Paragraph 9 could
10 be read in harmony with an authorization for the
11 payment of fees, and then it went on.

12 Do you remember that?

13 A. I do, and that sentence that you're
14 quoting me beginning on Line 20 on Page 32 talks
15 about both the California and South Carolina court
16 orders. Your question referred to both South
17 Carolina law and California law, and I answered
18 that, again, quote: Depending on what the judge
19 intended by this Paragraph 9 could be read in
20 harmony with an authorization for the payment of
21 fees in that it says, and then I quote the
22 instrument.

23 Q. And then later on in your deposition,
24 or in the testimony, do you remember us talking
25 about what I have called the compulsory language

1 the court that he doesn't know what the documents
2 mean, and he stated that in his deposition, and
3 I'm curious if there was a change or if I
4 misunderstood him, and that's what I'm asking him.
5 You'll see the answer to this, for example, is: I
6 don't know who drafted this document. I don't
7 know what they intended.

8 MR. DAVIS: That's cross-examination

9 THE COURT: I tend to agree. I think
10 we're trying to address the issue of whether to
11 qualify Mr. Wingate.

12 MR. DAN SLOTCHIVER: Fair enough.
13 Just a few more, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. DAN SLOTCHIVER:

16 Q. They have asserted to have you
17 qualified as an expert in fiduciary
18 responsibility. Would you agree with me that the
19 court -- that there was a case, an opinion, that
20 came down in just October of 2011, case being
21 Spence versus Wingate, the Wingate being yourself,
22 where there was a dispute, among other things, as
23 to whether or not there was a fiduciary duty and
24 as to whether or not that duty was breached, and
25 would you agree with me that in that context, that

1 you asserted that there was no fiduciary duty?

2 A. Sure, in the context of that specific
3 case, which was a question of whom did I represent
4 at a given point in time in the administration of
5 a probate estate.

6 Q. Would you agree with me that the
7 supreme court in that case came down with a ruling
8 that there was, in fact, a fiduciary duty?

9 A. Absolutely not. What the opinion
10 said, if you'll reread it carefully, is that the
11 circuit judge who granted me summary judgment on
12 that issue should have not granted summary
13 judgment, but should have taken evidence to flesh
14 out that question.

15 MR. DAN SLOTCHIVER: I have a copy of
16 the case I'd like to hand up to the court, if I
17 may, Spence versus Wingate.

18 THE COURT: Yes, sir.

19 MR. DAN SLOTCHIVER: A copy that's
20 from my hotel computer, which does not have good
21 margins. The margins are more than sufficient, I
22 believe, under the conclusion to show, we
23 conclude, Wingate owed a fiduciary duty to his
24 former client, and I can't even tell you what page
25 it's on, Your Honor, but it's on -- I can mark it

1 trustee?

2 A. Not for anyone other than family
3 members.

4 Q. Have you yourself ever administered a
5 trust?

6 A. Again, only for family members

7 Q. Would you agree with me that any --
8 I'll save that for cross-examination.

9 How many times have you served as an
10 administrator of a trust?

11 A. All for family members, probably three
12 trusts as the trustee.

13 Q. Were those family members competent to
14 make their own requests with you? In other words,
15 was it --

16 A. I don't follow you.

17 Q. I'll rephrase that. Was it -- I don't
18 know the types of trusts, obviously, but were they
19 the types of trusts where you had to have a
20 tremendous amount of supervision on your own, by
21 yourself? Did you have to supervise the trust?
22 Did you have a lot of management involvement?

23 A. I was the trustee of the trust.

24 Q. Understanding that, but were your
25 responsibilities excessive? Did they require a

1 with a pen where it exists, and I'll hand up the
2 whole case, if I may.

3 I'll also confirm that the testimony
4 Mr. Wingate gave in his deposition is consistent
5 with what he said just now, but not, in my
6 opinion, consistent with the document.

7 May I proceed, or do you want a few
8 moments?

9 THE COURT: You can proceed.

10 BY MR. DAN SLOTCHIVER:

11 Q. Mr. Wingate, have you ever taught any
12 courses on the specific issue of fiduciary
13 responsibilities?

14 A. As I testified in my deposition, I've
15 done many continuing legal education seminars over
16 a time, South Carolina Bar or various other kinds
17 of groups.

18 Q. But on that specific issue?

19 A. Absolutely.

20 THE COURT: And I'm sorry. I didn't
21 hear what the specific issue was.

22 MR. DAN SLOTCHIVER: The specific
23 issue of fiduciary responsibilities.

24 BY MR. DAN SLOTCHIVER:

25 Q. Have you yourself ever served as a

1 lot of maintenance for you, a lot of time for you
2 to devote as trustee?

3 MR. DAVIS: Your Honor, I object, and
4 let me give you the grounds for the objection. I
5 believe their expert, Mr. Freeman, testified that
6 he had not served as trustee ever, and he was
7 admitted as an expert, I believe, in trust
8 administration.

9 MR. DAN SLOTCHIVER: No, he was not.

10 MR. DAVIS: You have to remind me
11 exactly what it was, but Mr. Freeman had testified
12 that he had not ever served as a trustee.

13 MR. DAN SLOTCHIVER: Mr. Freeman's
14 credentials were testified to. He had served as
15 an expert some 50 times in fiduciary matters. He
16 was listed as an expert with regard to fiduciary
17 matters and business decisions. Mr. Walker was
18 listed as an expert as a trust, having some 30
19 years experience, and on administration, having
20 some 30 years experience.

21 I'm trying to understand from this
22 witness, Your Honor, what real experience he had
23 in the administration of a trust and also with
24 regard to fiduciary responsibilities. I believe
25 the question would still be appropriate.

1 THE COURT: Yes. Overruled.
 2 BY MR. DAN SLOTCHIVER:
 3 Q. Understanding the issues involved in
 4 this particular trust, the amount of monies that
 5 come out on a daily/weekly/monthly basis, just for
 6 the medical expenses alone, regardless of the
 7 legal bills, but even the time consumed with that,
 8 would it be fair to say that the trusts that you
 9 managed for family members did not consume
 10 anywhere near the amount of time that those would?
 11 A. The type of trusts I have done for
 12 family members have not consumed large quantities
 13 of time. They've had some unique challenges, but
 14 not large amounts of time.
 15 Q. And I'm asking because you're being
 16 put up as an expert on trust administration and on
 17 trust and fiduciary responsibility, and I'm trying
 18 to understand your qualifications to testify on
 19 those issues, especially in light of the facts
 20 that we're dealing with today.
 21 A. I think if I might respond, that the
 22 issue's not how many have I administered, it's as
 23 a professional have I drafted and then advised
 24 fiduciaries of trusts, which I've done thousands
 25 of times.

1 Q. And I don't believe you're being put
 2 up as an expert for the creation of trusts, but
 3 for the -- you're being placed, as I understand
 4 it, as an expert on fiduciary responsibility and
 5 administration in this particular type of trust.
 6 MR. DAN SLOTCHIVER: Am I correct,
 7 Your Honor? Did I mis --
 8 THE COURT: Trust and fiduciary
 9 responsibility and trust administration with the
 10 expert also in d4A trusts.
 11 BY MR. DAN SLOTCHIVER:
 12 Q. Have you had experience where people
 13 have come to you -- I'm going to strike that.
 14 MR. DAN SLOTCHIVER: Your Honor, I
 15 don't believe that at this point there is
 16 sufficient information before the court to allow
 17 him to serve as an expert on the trust or
 18 fiduciary responsibilities or the administration,
 19 the basis for that being in part that as I see it,
 20 there's three court matters that he's been
 21 personally involved in, two are as experts in
 22 completely unrelated matters, more interpretation,
 23 and this is a California trust, the third being a
 24 matter where he himself stated there was no
 25 fiduciary duty, and the supreme court determined

1 that there was, and now he's been called upon to
 2 testify as to fiduciary responsibilities when the
 3 court, as recently as a year-and-a-half ago,
 4 disagreed with his interpretation. It doesn't
 5 mean that we can all have different
 6 interpretations, I understand, but there's not
 7 enough information.
 8 As far as the administration of
 9 trusts, likewise, I don't believe there is
 10 sufficient information before the court for him to
 11 be qualified as an expert on the administration of
 12 trusts. The ones that he's been involved with
 13 have been for family members and has had very
 14 little amount of his time, but there's no
 15 information here to show that he can really
 16 testify as to that.
 17 Now, as far as the particular type of
 18 trust that he's been called to testify about, this
 19 special needs trust, the acronym I forget --
 20 THE COURT: D4A.
 21 MR. DAN SLOTCHIVER: -- I certainly
 22 have no objection to him being qualified as an
 23 expert for that.
 24 MR. KACHMARSKY: I do.
 25 THE COURT: Yes, sir.

1 VOIR DIRE EXAMINATION
 2 BY MR. KACHMARSKY:
 3 Q. John Kachmarsky.
 4 A. Good afternoon.
 5 Q. How are you?
 6 A. I'm well. Thank you.
 7 Q. Could you tell me what a d4A trust is,
 8 please?
 9 A. Commonly referred to as a special
 10 needs trust. Some people refer to it as a
 11 Medicaid-type trust.
 12 Q. Do you know what a d4C trust is?
 13 A. Yes.
 14 Q. Could you explain the difference
 15 between the two?
 16 A. I could. Supplemental needs, it's
 17 under a different section of that code and is not
 18 the same as a d4A trust. A d4A trust is for a
 19 disabled or incapacitated person under the age of
 20 65, intended to handle and administer assets for
 21 their benefit to meet supplemental or special
 22 needs that are outside of what Medicaid qualifies
 23 them for and is not, therefore, counted as a
 24 resource against them.
 25 Q. And to your recollection, can you

1 recall what a d4C trust is?

2 MR. DAVIS: Your Honor, I've got one
3 point. He's being called as an expert for a d4A
4 trust, not a d4C trust.

5 THE COURT: I understand.

6 BY MR. KACHMARSKY:

7 Q. With regard to a d4A trust, do you
8 believe that state law fiduciary duties relating
9 to impartiality, prudent administration, prudent
10 investment, do you believe those apply to a
11 special needs trust?

12 A. Generally speaking, yes. Palms talks
13 about that.

14 Q. Have you read this case called
15 Lewis v. Alexander that went down in Pennsylvania
16 recently?

17 A. I'm familiar with the opinion. I have
18 not read the whole thing, no.

19 Q. Do you believe the term sole benefit
20 applies to a special needs trust, a d4A trust?

21 A. Yes, I do.

22 MR. KACHMARSKY: I have nothing else.

23 THE COURT: Thank you.

24 Ms. Hedgepath? Ms. Moore?

25 MS. MOORE: Just a couple questions.

1 A. Of the clients that I advise on estate
2 planning and probate matters, nearly every one of
3 them involves issues either on the drafting side
4 or the administration side with the creation or
5 exercise of fiduciary duties, naming PRs, naming
6 trustees, naming guardians, conservators,
7 whichever type, attorneys-in-fact under powers of
8 attorney, agents under healthcare powers of
9 attorneys, all of those things.

10 Q. How about as far as fiduciary
11 responsibilities that arise under a trust, no
12 matter what type of trust, what percentage would
13 you say of your practice is concentrated in that
14 area?

15 A. Of the 80 percent of my practice that
16 is estate planning and probate or trust law,
17 again, all of it touches on some way -- I do about
18 half planning and about half administration or
19 litigation involving fiduciary responsibilities,
20 and so all of it either touches on the planning
21 end of setting up fiduciary relationships or on
22 the backside, the administration of those same
23 responsibilities.

24 Q. And you indicated that you do a
25 considerable amount of litigation in those areas?

1 VOIR DIRE EXAMINATION

2 BY MS. MOORE:

3 Q. Mr. Wingate, as far as your practice
4 is concerned, do you have a particular
5 concentration?

6 A. Estate planning and probate law and
7 all things related to it.

8 Q. What percentage of your practice would
9 be concentrated in that area?

10 A. Over 80 percent.

11 Q. And for how many years would you
12 estimate that you have practiced where the
13 concentration would be 80 percent?

14 A. At least 26 years, and many of those
15 years, it used to be 100 percent in that area.
16 It's only in more recent years that I've started
17 doing some other business transaction stuff.

18 Q. And when you say in recent years, five
19 years?

20 A. In the last -- certainly in the last
21 ten years at the most.

22 Q. Now, as far as the types of cases that
23 you handle or clients that you have, what
24 percentage, if you can provide, would you say
25 deals with issues of fiduciary responsibility?

1 A. Yes, I do.

2 Q. And when you are participating in
3 litigation, do you typically represent a party
4 attacking the trust or the party that has to be
5 defending the trustee?

6 A. It's probably equally divided. I'll
7 either represent the beneficiaries in some
8 instances, if that's who calls me for service, or
9 represent the fiduciaries, so it's probably about
10 equally mixed.

11 MS. MOORE: That's all the questions I
12 have.

13 THE COURT: Thank you.

14 Mr. Davis?

15 MR. DAVIS: Your Honor, I again move
16 that you accept him as an expert as I previously
17 asked.

18 THE COURT: Mr. Slotchiver, anything
19 else from you?

20 MR. DAN SLOCHIVER: Nothing other
21 than, Your Honor, he's -- on the d4A, I don't
22 object to it, but on the other issues, there's not
23 enough testimony that I see to qualify him as an
24 expert on these matters. As an expert as a lawyer
25 drafting a document, that's a different matter,

1 but as we know, administration of a trust and
2 fiduciary responsibilities of a trustee, that is a
3 different matter completely than the actual
4 drafting of a document, and I don't believe that
5 he's qualified him with enough information at this
6 point -- perhaps he can -- to substantiate that
7 designation of being an expert.

8 MR. DAVIS: Your Honor, I would just
9 have the court recall that Mr. Wingate said he
10 counsels clients, or has, on thousands of cases
11 about trust administration. I don't know how
12 many -- I mean, that's a lot. Thousands are a lot
13 on counseling clients on how to administer a
14 trust, individual trustees and corporate trustees
15 as well. Amply qualified, Your Honor.

16 THE COURT: Do you want to ask him
17 about that, Mr. Davis? Mr. Slotchiver says he
18 doesn't know about that, so --

19 MR. DAVIS: Yes, ma'am.

20 DIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q. Mr. Wingate, can you expound on that?
23 Have you counseled clients in their capacity as
24 trustees their obligations, duties,
25 responsibilities, powers, those types of matters,

1 BY MR. DAN SLOTCHIVER.

2 Q. Mr. Wingate, I understand you've
3 testified two times, once 20 years ago, once 15
4 years ago, where you were talking about the intent
5 of a document. Is that correct?

6 A. I think that's correct, consistent
7 with what we were talking about a few weeks ago,
8 yeah.

9 Q. And if I'm not mistaken, that's the
10 experience you've had in court testifying about
11 intent, that's the limit of it?

12 A. In a courtroom as a testifying expert
13 witness on that narrow basis, the two times, yes.

14 Q. Would you agree with me that the only
15 person -- that you can advise, looking at a
16 document, but at the end of the day, the only
17 person that can tell what the intent is is the
18 court?

19 A. The only person? No, I don't agree
20 with that.

21 Q. Do you believe that an expert has the
22 ability to say what the intent of a document is or
23 to give an opinion about what the intent of a
24 document is?

25 A. Depending upon the expressed words

1 individual and corporate trustees?

2 A. Yes. Those kinds of questions have
3 come up in my practice advising clients on a daily
4 basis for over 26 years.

5 MR. DAN SLOTCHIVER: If I may?

6 THE COURT: Yes, sir.

7 MR. DAN SLOTCHIVER: One of the issues
8 in this case deals not only with the
9 administration, but also with interpretations. I
10 don't know if he's being offered as an expert on
11 interpretation, but based on what I understand, he
12 may be, so I'd like to question him about that, if
13 I may.

14 THE COURT: I don't know that he was
15 offered as an expert on interpretation, but --

16 MR. DAN SLOTCHIVER: Well, then I will
17 leave it alone.

18 MR. DAVIS: Your Honor, I believe --

19 THE COURT: Well, he was offered as an
20 expert in the field of trusts. I suppose that
21 could very well include interpretation.

22 MR. DAN SLOTCHIVER: If it does, I'd
23 like to ask him

24 THE COURT: Sure, go ahead.

25 VOIR DIRE EXAMINATION

1 that are on a page and the circumstances around
2 them, possibly so

3 Q. Well, what would happen, for example,
4 if the words were expressed and were not vague and
5 that someone -- and you were asked to opine on it,
6 such as, for example, the word must or the word
7 shall, from all practical purposes seems to be
8 pretty compulsory, it doesn't seem to be anywhere
9 in the dictionary to be vague, how would you opine
10 on the intent of a document if you disagreed that
11 the word shall or must was compulsory?

12 A. Trust law says you look at more than
13 just simply the words of the document to define
14 the terms of a trust.

15 Q. Fair enough. And understanding that
16 you are not licensed and have not practiced in the
17 state of California, are you intending to opine
18 today on the language that was intended that was
19 in the trust that was drafted in another state for
20 which you do not practice, do not have a license,
21 and have not spoken to the drafter?

22 MR. DAVIS: Your Honor, we have a
23 trust that's been -- jurisdiction is now in South
24 Carolina. We have a South Carolina licensed
25 attorney we're offering as an expert. He's

1 certainly going to be qualified to testify with
2 regard to his opinion on the South Carolina trust.
3 It is not a California trust; it's a South
4 Carolina trust.

5 MR. DAN SLOTCHIVER: Your Honor, in
6 order for him to opine on the intent of a
7 document, you don't -- the intent is based on the
8 drafter.

9 BY MR. DAN SLOTCHIVER:

10 Q. Would you agree with that? The intent
11 was created at the time it was drafted. A good
12 drafter -- if you're going to draft a document,
13 Mr. Wingate, is it important for you to determine
14 what the intent is?

15 A. That's one of the factors, yes.

16 Q. And is it your job, as an attorney
17 drafting a trust, to be sure, to the best of your
18 abilities, that you follow the intent that's
19 determined at the time that you are hired, that
20 you're engaged, to make sure it is on the
21 document?

22 A. I think that's accurate.

23 Q. And your experience is looking at
24 trusts that have been created in South Carolina
25 and trying to determine, on occasion, what the

1 Mr. Davis's position, which I think it is, and
2 he's alluded to it, is that it would include, for
3 example, determining the intent I think
4 determining the intent would not necessarily be
5 included in fiduciary responsibility or
6 administration, so since he wants it to be
7 included, as I understand it, I'm asking him his
8 basis and his background with reference to that.

9 Now, if he wants to limit him to being
10 an expert on administration based on his
11 experience and being a fiduciary based on his
12 experience that he's testified to, and he's not
13 going to call him with regard to his understanding
14 of the intent, then that's a different matter, but
15 I'll represent to the court that among other
16 things that we're going to be discussing is words
17 such as shall, and the substitution of the word
18 may for shall, and before he's qualified as an
19 expert, I think it's important for the court to be
20 able to hear evidence from him that substantiates
21 his ability to do this type of stuff, especially
22 it's my understanding that at the end of the day,
23 the court is the only one that can make that
24 change, but I'm curious what experience he has in
25 making that change. That's what I'm asking him.

1 intent of that document was?

2 A. No. I look at trusts and deal with
3 the administration of trusts on a regular basis
4 that come from any number of jurisdictions. It
5 may be any number of jurisdictions.

6 Q. Is there a protocol that you would
7 follow to determine what the intent of a document
8 was if it was not clear on its face?

9 MR. DAVIS: Your Honor, I have to
10 object. Have we given you enough information to
11 qualify him or not? These questions, I believe,
12 are more appropriate on cross-examination. He's
13 given plenty of evidence to --

14 THE COURT: Let me hear from
15 Mr. Slotchiver, Mr. Davis.

16 MR. DAN SLOTCHIVER: Understanding
17 that counsel has moved to name Mr. Wingate an
18 expert in what I would normally consider to be
19 broad areas, but based on what I understand to be
20 broad areas, I'm trying to -- if Your Honor's
21 going to qualify him, I'm trying to define what
22 area he's qualified to testify in.

23 The area of trust administration is a
24 pretty broad area. The area of fiduciary
25 responsibility can be a pretty broad area. And if

1 THE COURT: Have you concluded your
2 questioning?

3 MR. DAN SLOTCHIVER: I have not.

4 THE COURT: I'll give you a little bit
5 more leeway.

6 MR. DAN SLOTCHIVER: Thank you.

7 BY MR. DAN SLOTCHIVER:

8 Q. So in the world of experience of
9 determining or of being able to determine what a
10 word means, wherein, it's not -- wherein, a word
11 such as shall, which normally is compulsory, it
12 doesn't seem to be vague, what experience do you
13 have in opining differences, opining your opinions
14 as to why an unvague word becomes vague?

15 A. I have frequently advised clients and
16 litigated construction issues, interpretation of
17 trusts and estates issues.

18 Q. Now, let me ask you this: When you
19 advise a client, you are giving him your
20 professional opinion, correct?

21 A. Okay. Sure.

22 Q. But at the end of the day, would you
23 agree with me that the language and the
24 interpretation of a language can only truly be
25 determined by the court?

1 A. The court is the final arbiter of
2 those things, but it's the settlor's intent. It's
3 the circumstances surrounding it. The court is
4 able to look at extrinsic evidence, very often,
5 depending on the type of instrument, the kind of
6 circumstances, to determine what was the intent of
7 the drafter or of the settlor.

8 Q. What are those categories that you
9 need to look at in order to determine what the
10 intent, or is it important to look at who the
11 lawyer is, to talk to the lawyer, to know the law
12 of that particular region, that area?

13 A. That could be one factor.

14 Q. And you testified before that you're
15 not licensed, nor do you practice or have you
16 practiced in the state of California?

17 A. I have not practiced in the state of
18 California.

19 Q. It's my understanding you're being
20 offered as an expert on fiduciary duty and trusts
21 with reference to interpretation of a document
22 that was created in another state for which you
23 haven't spoken to the lawyer and do not practice
24 and are not familiar with what they do in that
25 state.

1 MR. DAN SLOTCHIVER: Is that my
2 understanding, Your Honor? Because if it is, in
3 that regard, I certainly would object, continue to
4 object.

5 MR. DAVIS: Your Honor, I don't know
6 if it's been established that that document was
7 created solely in California. Besides, that's
8 irrelevant. The document now is a South Carolina
9 trust, and we have a South Carolina trust expert
10 who's going to help us work through this difficult
11 matter, Your Honor.

12 MR. DAN SLOTCHIVER: Fair enough.

13 BY MR. DAN SLOTCHIVER:

14 Q. Mr. Wingate, would it be your opinion
15 that if a document is created in another state,
16 that by moving it to a different state that had a
17 different set of rules, the rules in the new state
18 would override the intent of the trust, or does
19 the intent of the trust control?

20 A. It would not override the intent; it
21 would supplement the intent.

22 Q. But the intent of the trust controls.
23 We always look to the purpose of the trust. Would
24 you agree with that?

25 A. Sure.

1 Q. So when counsel says if you move it
2 from California, even if the intent was different,
3 then it would be interpreted in South Carolina,
4 you would still have to follow the intent from
5 California, because that determines what was made
6 at the time it was created?

7 A. Based on all of the circumstances.

8 MR. DAN SLOTCHIVER: Your Honor,
9 Mr. Wingate's a fine attorney, and I'm not trying
10 to pick on him, but he's been asked to be
11 designated an expert in a very broad area for a
12 trust that was created in a different state, and I
13 would ask that he not be designated with reference
14 to the designation, other than as a special needs
15 trust drafter and his knowledge as to a special
16 needs trust, and if you are so inclined to qualify
17 him as an expert, that it be very limited, because
18 it is still a little unknown to me all the facts
19 that Mr. Davis plans to opine.

20 I know what he talked about in the
21 trust, and I'm concerned about interpreting
22 language that I don't believe he can -- he's
23 qualified with reference to California law, and
24 even by his own testimony, it was created in
25 California, and I believe, by his own testimony,

1 he would state that he hasn't spoken to the lawyer
2 that drafted it and that he doesn't know of the
3 customs in California. I believe he would tell
4 you that he's never seen a trust like this before,
5 with some of the provisions in it. I believe he
6 testified to that before. But it doesn't mean
7 that it's not appropriate.

8 BY MR. DAN SLOTCHIVER:

9 Q. Would you agree with that? The mere
10 fact that you haven't seen a document that was
11 created in another state that may have a different
12 custom or protocol or different documents, that
13 doesn't mean that it's not appropriate; it just
14 means that you haven't seen it. Would you agree
15 with that?

16 MR. DAVIS: Your Honor, how far are we
17 going to go with these questions?

18 THE COURT: I'm going to let him
19 finish his questions, Mr. Davis.

20 BY MR. DAN SLOTCHIVER:

21 Q. Would you agree with that?

22 A. I'm sorry. Ask me again.

23 Q. I will. Would you agree that the fact
24 that you, as a lawyer, are unfamiliar with a
25 certain style of drafting or certain language in a

1 document that was created in a different state
2 doesn't necessarily mean that it's bad. It just
3 means you haven't seen it. Would you agree with
4 that?

5 A. I do not agree with that. That's not
6 what we were talking about in the deposition.
7 This is a special needs trust. I've seen many,
8 many, many of these trusts. What we were talking
9 about is, if you recall the conversation, I use
10 the term the inartful drafting of the
11 Paragraphs 10 and 12 of this instrument, and the
12 uniqueness of those sentences, not the entirety of
13 the trust agreement.

14 Q. Are you here to testify today as to
15 the law?

16 A. I think so.

17 MR. DAN SLOCHIVER: Your Honor, I
18 would move to exclude this witness. You may not
19 call a witness to testify as to the law.
20 Witnesses are not allowed to testify to the law.
21 The only person that can determine what the law is
22 is the court.

23 THE COURT: Thank you.

24 Anything else, Mr. Davis?

25 MR. DAVIS: Your Honor, I believe we

1 instruments tied to fiduciary administration of
2 estates and trusts.

3 THE COURT: And so you say it's by
4 invitation only, so a person can't just join as a
5 member of that?

6 THE WITNESS: That's correct. You
7 have to be nominated, first of all, and then have
8 to go through a vetting process where they check
9 credentials, check qualifications, check
10 references, et cetera, within the specific estate
11 planning and probate community, so you have to be
12 sponsored and then vetted to get through the
13 process.

14 THE COURT: Any type of leadership
15 positions you've held in the estate planning
16 community or area?

17 THE WITNESS: For about ten years, I
18 served as the senior articles editor for the
19 Probate & Property magazine, which is the one
20 published nationally by the American Bar
21 Association for Probate Lawyers.

22 THE COURT: And in doing that, did you
23 submit articles? Did you do any legal writing?

24 A. Well, I did. We weren't -- by the
25 rules of the ABA, we weren't allowed to submit our

1 provided ample information about the many
2 qualifications of Mr. Wingate, and we would --

3 THE COURT: Mr. Kachmarsky?

4 MR. KACHMARSKY: I have nothing
5 further, Your Honor.

6 THE COURT: Just a couple questions,
7 Mr. Wingate. How long have you been certified as
8 a specialist in estate planning and probate?

9 THE WITNESS: Since the early '90s.

10 THE COURT: And how long have you been
11 a fellow in the American College of Trusts and
12 Estate Council?

13 THE WITNESS: I believe since the
14 either early or mid '90s, at the latest.

15 THE COURT: Can you tell me what that
16 is?

17 THE WITNESS: The American College of
18 Trusts and Estates Council?

19 THE COURT: Yes, sir.

20 THE WITNESS: It's an invitation-only
21 national organization of attorneys who specialize
22 in estate planning and probate law, trust law, and
23 have substantial expertise in the field as
24 attorneys, practicing attorneys, in the drafting
25 and administration of wills, trusts, and related

1 own articles -- that would look like
2 self-promotion -- so as the senior articles
3 editor, my job was to deal with the tax experts,
4 trusts and estates experts nationally who were
5 writing articles on the host of issues that might
6 be published in Probate & Property by the real
7 property probate and trust law section of the
8 American Bar Association, so I dealt regularly
9 with the presidents of the ABA and of the American
10 College of Trusts and Estates Council of the
11 National Probate Judges Association and other type
12 similar organizations in submitting articles,
13 soliciting articles, editing articles for their
14 substance on anything from probate law to trust
15 law to tax law in the wealth transfer tax area,
16 substantive articles about trusts and estates.

17 I've also been the -- I have served at
18 the request of the South Carolina Supreme Court,
19 and I'm going to get the name of it wrong, but
20 it's on the specialization board that writes the
21 test, administers the test, grades the test for
22 certified specialists in estate planning and
23 probate law. So I've served on that board, and I
24 chaired that panel for a few years in looking at
25 certified specialists in South Carolina.

1 I've been the president of the
 2 Richland Bar Association Estate Planning Council
 3 several times, I've been the president of the
 4 Columbia Estate Planning Council on several
 5 occasions, and I've been the chair of the South
 6 Carolina Bar's estate planning, probate, and trust
 7 law section within their administrative ranks
 8 within the South Carolina Bar, that I can recall.
 9 MR. DAN SLOTCHIVER: If I may ask one
 10 question, Your Honor?
 11 THE COURT: Yes, sir.
 12 MR. DAN SLOTCHIVER: Just one more.
 13 VOIR DIRE EXAMINATION
 14 BY MR. DAN SLOTCHIVER:
 15 Q. Mr. Wingate, are you familiar with
 16 California Probate Code Section 2575?
 17 A. By that number, no, I'm not.
 18 Q. Are you familiar with any particular
 19 sections of the California probate code?
 20 A. That I could cite chapter and verse?
 21 Q. Or that you've studied in connection
 22 with coming here to testify today?
 23 A. There's a section in one of the court
 24 orders from the California court that's relevant
 25 to this case.

1 Q. Have you studied and are you familiar
 2 with that section for purposes of your testimony
 3 today?
 4 A. Only as cited in the order in this
 5 particular case.
 6 Q. So you're familiar with the existence
 7 of it, but not familiar with the substance of it?
 8 A. I don't know that I understand the
 9 distinction.
 10 Q. Well, I can cite a code number and say
 11 I've heard of the code number, or I can read the
 12 Code Section and the reference in the code book.
 13 Have you ever read the language pertinent to it
 14 and familiarized yourself with it so that you
 15 would be comfortable opining on what was meant by
 16 California Code Section?
 17 A. I think I'm familiar enough with it
 18 that I can comment on what I think it says, sure,
 19 looking at the words on paper. Can I recite it
 20 for you by memory? No.
 21 Q. Are you competent to opine on a
 22 statute written in the state of California? Are
 23 you licensed -- you're not licensed to practice in
 24 California?
 25 A. I'm not licensed in California. I

1 think I'm competent to read what a Code Section
 2 says relating to the administration of a trust.
 3 Q. I think we both could read it. The
 4 reason I'm asking is because would you agree with
 5 me that the trust in this case, that the trustees
 6 shall make investment decisions consistent with
 7 those permitted under the California Probate Code
 8 Section 2574, are you here to opine as to your
 9 knowledge of what is encompassed by the reference
 10 to the California code?
 11 A. I don't believe so.
 12 MR. DAN SLOTCHIVER: Your Honor, once
 13 again, this is under Article 4 under the powers of
 14 a trustee under the Abbie Dorn Special Needs
 15 Trust, and this references that it's being
 16 transferred to South Carolina, but it specifically
 17 says: The trustees shall make investment
 18 decisions consistent with those permitted under
 19 the California Probate Code Section 2574; however,
 20 that such investment decision shall be further
 21 governed by the authority granted to the trustees
 22 pursuant to the South Carolina Trust Code and
 23 South Carolina Probate Code, but not basically be
 24 substituted with, and he's being called on now to
 25 give opinions as to trustees which are governed in

1 part, based on this language, by the California
 2 Probate Code.
 3 MR. DAVIS: Your Honor, he needs to
 4 read -- if I may --
 5 THE COURT: Mr. Davis, I've heard
 6 enough. Thank you.
 7 I'm going to certify Mr. Wingate in
 8 the area of trusts, fiduciary responsibility,
 9 trust administration, and as an expert with regard
 10 to d4A trusts.
 11 I think in qualifying him, it's within
 12 the sound discretion of the court. You can
 13 question him, Mr. Slotchiver, with regard to any
 14 of these inconsistent matters. I also note that
 15 the trust specifically says that it's subject to
 16 and shall be construed/regulated/governed in
 17 accordance with the laws of the state of South
 18 Carolina. He's certified in South Carolina. I
 19 will qualify him as an expert.
 20 Any testimony that you elicit that he
 21 provides, I can decide how much weight to give
 22 that based on his qualification as an expert. You
 23 can attack that in any way you see fit, but I am
 24 going to qualify him in those areas.
 25 MR. DAN SLOTCHIVER: Thank you, Your

1 Honor.

2 THE COURT: Thank you.

3 MR. DAVIS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q. Mr. Wingate, I'll move right into the
7 questions, because we've got a little bit of
8 ground to cover here, and I have assured the court
9 that I'm going to move this as expeditiously as
10 possible, because it has definitely been a long
11 trial.

12 THE COURT: And we'll do everything we
13 can to conclude with Mr. Wingate today if we can.
14 I think that's what everybody hopes to do, as well
15 as Mr. Wingate.

16 BY MR. DAVIS:

17 Q. Mr. Wingate, are you familiar with the
18 facts of this matter and the pertinent facts from
19 the California matter relating to this matter?

20 MR. DAN SLOTCHIVER: And I would ask,
21 Your Honor, that he be prohibited from asking
22 leading questions.

23 THE COURT: And I'll give him a little
24 bit of latitude so we can try to move this along.
25 If you have a really substantive objection to a

1 before the court today.

2 Q. Do you understand the details of a
3 medical malpractice action in California and an
4 award from that?

5 A. Well, the rough outline of it being
6 that Abbie Dorn, after the delivery of three
7 children, suffered a tragic accident or injury
8 related to her child-bearing and was rendered
9 incapacitated. And therefore, after a plaintiff's
10 suit was commenced, an award of multiple millions
11 of dollars was made, a portion of which was put
12 into a special needs trust, the Abbie Dorn Trust,
13 a portion of which was separately invested in an
14 annuity that pays some \$30,000-plus per month to
15 the trust. And that's the broad outline of
16 approximately \$900,000, slightly more than that,
17 having been placed into the trust, aside from the
18 purchase of the annuity for about \$3 million.

19 Q. Thank you. What is your understanding
20 of the marital action in California between Dan
21 Dorn and Abbie Dorn, and what did it involve?

22 A. My understanding is that there was a
23 request -- my word -- that a dissolution of the
24 marriage occur, call it a divorce action, a
25 dissolution action, and that, once commenced,

1 leading question, I'm happy to hear that, but if
2 he's just trying to move it along, anybody, I
3 would encourage --

4 MR. DAN SLOTCHIVER: And to some
5 extent, I'll follow whatever Your Honor suggests
6 and requests, certainly, but to some extent when
7 he starts to lead him into giving the responses, I
8 would like the opportunity to voice my objections.

9 THE COURT: Yes, sir, yes, sir. You
10 may certainly do that.

11 MR. DAVIS: Of course, I'll do
12 whatever you instruct me, Your Honor.

13 BY MR. DAVIS:

14 Q. Mr. Wingate, again, are you familiar
15 with the cases, and if you are, can you expound on
16 your understanding of the South Carolina and
17 California cases?

18 A. Yes, I believe I am familiar. I have
19 looked at quite a number of documents and
20 transcripts, court orders, the trust agreement,
21 and have looked at the California orders
22 originally related to the Cohens with respect to
23 the Abbie Dorn Trust, I've looked at the order of
24 transfer to South Carolina, and I believe I am
25 familiar with the pertinent matters and documents

1 other issues related to the marriage and the
2 children -- child custody, child support,
3 visitation -- became issues also in that related
4 set of actions in California.

5 Q. Are you aware of, and if you are, can
6 you explain the fees that were spent in California
7 or the amount of fees per side, or were they
8 similar, or what's your understanding of the legal
9 fees paid in California for the marital action for
10 each side?

11 MR. DAN SLOTCHIVER: And your Honor,
12 I'd like to have a foundation for his ability to
13 answer that question.

14 MR. DAVIS: Your Honor, again, I'm
15 trying to move it along. And I'll ask him this
16 question, if you'd like.

17 BY MR. DAVIS:

18 Q. Mr. Wingate, have you reviewed the
19 prior testimonies in this case? Have you had
20 access to some transcripts? Have you been able to
21 review and kind of keep track of what's been going
22 on?

23 A. I have reviewed the transcripts of
24 John Freeman's deposition. I've reviewed the
25 transcripts of John Freeman's testimony yesterday

1 in this court and of Julian Walker's testimony in
2 this court. I've reviewed various court filings,
3 the pleadings in the case. I've reviewed various
4 affidavits that have been submitted, court orders
5 that have been issued, again, the trust agreement
6 itself, accountings that have been filed in the
7 probate court here in Horry County, to name a few.
8 BY MR. DAVIS:

9 Q. Are you aware of the -- generally
10 aware of the expenses for legal fees in the
11 California action?

12 A. Generally, yes, I am, and I understand
13 that to be that on the side of the trust or of the
14 Cohens, that in excess of \$600,000 of the \$900,000
15 that was in the Abbie Dorn Trust has been expended
16 on legal fees. It is also my understanding,
17 again, from those sources and transcripts that I
18 referenced a minute ago, that the same amount,
19 approximately, if not greater, has been spent on
20 Mr. Dorn's side of the litigation, and that this
21 has become, by virtue of the combined fees, a well
22 in excess of a million dollar case.

23 Q. And your number, the \$600,000 number,
24 you got that from the John Freeman transcript? Is
25 that his testimony?

1 A. I believe that is the one specifically
2 that tried to break down the numbers. Again, I've
3 looked at the accountings that have been filed in
4 the Horry County Probate Court, so the 2009, the
5 2010, the 2011 accountings, which delineate the
6 legal fees that have been paid on the side of the
7 trust or of the Cohens.

8 Q. What is your understanding of the
9 parity of fees between the two sides?

10 A. My understanding, based on the
11 testimony, is that they are in parity, again, that
12 they are at least equal to, if not greater, than
13 the Cohens' fees, if I can refer to them in that
14 manner, the trust's fees, that Mr. Dorn's side is
15 greater.

16 Q. Were you familiar with the term
17 bifurcation in regard to the marital action in
18 California?

19 A. Yes, I have heard the term bifurcation
20 in connection with that.

21 Q. Do you understand the context of that
22 and what that meant for the California action?

23 MR. DAN SLOTCHIVER: Your Honor, I
24 object. He is not licensed to practice in
25 California. I don't believe he can give a legal

1 opinion about the meaning of bifurcation in the
2 state of the California, and I don't believe he's
3 been qualified as an expert to do that.

4 MR. DAVIS: Your Honor, I'm not asking
5 for an expert opinion. I'm just trying to lay
6 some factual foundation so we can move forward.

7 MR. DAN SLOTCHIVER: Your Honor, I
8 don't believe he has the capability to respond to
9 that appropriately, and I don't believe it's
10 relevant for purposes of his testimony. There's
11 no foundation whatsoever that he can lay an
12 opinion on what the California law deals with and
13 the issue of bifurcation.

14 THE COURT: Mr. Davis?

15 MR. DAVIS: Again, Your Honor, I
16 believe you wanted to move this case along. I'd
17 be more than happy to continue to rephrase these
18 questions and go back and forth however we want to
19 do it, but I'm going to eventually get this
20 information before the court. It can be later
21 than sooner if we continue on this route, but I'll
22 do whatever the court wants me to do.

23 THE COURT: Well, there's been an
24 objection. I don't think he can give a legal
25 opinion as to California law.

1 MR. DAVIS: Yes, Your Honor. I'm not
2 asking for a legal opinion. I'm just asking
3 his -- does he understand the case was bifurcated,
4 and the testimony was -- we've had ample testimony
5 about what happened, the marital dissolution
6 severance. I'm just --

7 THE COURT: I think he can testify to
8 his understanding.

9 BY MR. DAVIS:

10 Q. Mr. Wingate, can you testify as to
11 your understanding of the bifurcation and what
12 that meant in the context of the California
13 action, not a legal opinion, but your
14 understanding?

15 A. My understanding of the facts of what
16 occurred was that the marital dissolution aspect
17 of the case was requested by the attorneys to be
18 bifurcated or separated from the other issues in
19 the case.

20 Q. Was it all one case, one case number?

21 A. On the pleadings that I've seen, there
22 was one case number.

23 Q. Have you seen anything that would
24 indicate that the case was terminated and a new
25 case was started for other matters?

1 A. No. I haven't seen any documents such
2 as pleadings filed/orders written from the
3 California courts that contained a different case
4 number, and I have reviewed a number of documents
5 that were filed in California by I believe her
6 name is Vicki Greene, counsel for Mr. Dorn,
7 through at least into 2010, and it might have been
8 into 2011, which continued to address, under the
9 one case number, other aspects of the case, such
10 as child support.

11 Q. And I want to get into that,
12 Mr. Wingate. Tell me your awareness or how
13 familiar you are with the child support claim in
14 the California action.

15 A. What I understand, again, from
16 reviewing the transcripts and testimony of the
17 various parties, in addition to what's referenced
18 in the pleadings in this case --

19 MR. DAN SLOTCHIVER: Your Honor, I
20 don't believe there's been any introduction about
21 the testimony of the various parties in this case
22 that he's testified to at this point.

23 MR. DAVIS: I'll do whatever, Your
24 Honor. We'll just keep along --

25 MR. DAN SLOTCHIVER: I'd like to know

1 A. That does. It notes at Section 3,
2 Subparagraph A4, that a statement of points and
3 authorities is being filed, and it is, in fact,
4 attached to that exhibit, discussing issues
5 related to child support.

6 Q. Thank you, Mr. Wingate.

7 MR. DAVIS: Is that sufficient, Your
8 Honor?

9 BY MR. DAVIS:

10 Q. Mr. Wingate, do you understand that
11 we --

12 MR. DAN SLOTCHIVER: Objection, Your
13 Honor, leading.

14 BY MR. DAVIS:

15 Q. What is your understanding of the
16 pleadings in South Carolina with regard to --

17 MR. DAN SLOTCHIVER: Objection, Your
18 Honor, leading.

19 BY MR. DAVIS:

20 Q. -- initial petition and counterclaims?

21 THE COURT: I'll allow that.

22 THE WITNESS: I'm sorry. The question
23 again?

24 BY MR. DAVIS:

25 Q. I'm sorry too. It's been a week or

1 which parties he would have reviewed the testimony
2 of.

3 MR. DAVIS: I'll do whatever.

4 THE COURT: Maybe you can question him
5 about that.

6 MR. DAVIS: Sure. Be happy to.

7 BY MR. DAVIS:

8 Q. Mr. Wingate, this is Respondent's
9 Exhibit 10. Will you please take a quick look at
10 that and notice the box checked there and who the
11 party is involved there?

12 MR. DAN SLOTCHIVER: And Your Honor, I
13 would ask him not to lead the witness at this
14 point.

15 THE WITNESS: This is a filing by
16 Vicki Greene in California, and it is an order to
17 show cause related to a child support matter, and
18 it's filed in March of 2009. Well, it's signed --
19 dated March of 2009, there's also a date of
20 January of 2009, two places on the same document.
21 BY MR. DAVIS:

22 Q. Does that indicate to you that there
23 has been a child support claim filed by Dan Dorn
24 in the California action seeking child support
25 from the Abbie Dorn Special Needs Trust?

1 two of this. It's been a long trial. I'll just
2 move along, because I think that we've covered
3 that part anyway.

4 My question was: Are you familiar --
5 do you understand that the cases in South Carolina
6 we have here, there's more than one, and they've
7 been consolidated for this trial?

8 MR. DAN SLOTCHIVER: Your Honor, now
9 this is a leading question.

10 THE COURT: Thank you.

11 Mr. Davis?

12 MR. DAVIS: If we can revisit your
13 earlier ruling, Your Honor. We're all trying to
14 move this thing along. You specifically said that
15 if -- that you would give me some latitude with
16 leading questions to lay a foundation, move along.
17 Every single leading question that I've asked was
18 soliciting information that I got in with direct
19 questions immediately thereafter, so none of the
20 objections that were made with regard to my
21 leading questions has accomplished anything
22 substantively, so I would ask --

23 MR. DAN SLOTCHIVER: If he'll ask a
24 nonleading question, I won't oppose it.

25 MR. DAVIS: I'm not finished, please.

1 I would just ask that you please tell
2 Mr. Slotchiver -- remind Mr. Slotchiver again that
3 I've been given a little bit of latitude to lay a
4 foundation.

5 MR. DAN SLOTCHIVER: Your Honor, I
6 believe that he is educating the witness with what
7 he wants to accomplish, and that is exactly what I
8 am allowed to object to. I can object to the
9 leading questions. He can ask him: What do you
10 understand about this, what do you understand
11 about this, but he can't say: Do you understand
12 that this says XYZ?

13 THE COURT: Yes, sir.

14 Mr. Davis, I do want to give you a
15 little bit of latitude, because I want to move
16 this along, but to the extent that Mr. Slotchiver
17 wants to object, I think he certainly can do that.

18 MR. DAVIS: Okay, Your Honor. Of
19 course, I'm going to do whatever you instruct me,
20 as always.

21 BY MR. DAVIS:

22 Q. Mr. Wingate, let me just ask a blanket
23 question. Have you reviewed in this matter -- and
24 I believe you've answered this, but
25 specifically --

1 the Cohens?

2 A. On the one side, a request for the
3 court to remove the Cohens as trustee, and on the
4 other side, a request for a reformation of the
5 trust and, again, my words, an affirmation of the
6 actions that have been taken vis-a-vis the
7 attorneys' fees.

8 Q. And with regard to this action, what
9 items do you think is important to show that there
10 was authority and reasonableness?

11 MR. DAN SLOTCHIVER: Objection, Your
12 Honor. I believe he can ask him what the
13 significance of these items are.

14 I'll withdraw.

15 MR. DAVIS: Thank you.

16 BY MR. DAVIS:

17 Q. What items do you think it's important
18 to cover to determine the efficacy of the actions
19 on behalf -- or the actions of the trustee on
20 behalf of Abbie Dorn?

21 A. Well, certainly, to the extent that
22 actions have been taken by a trustee, the Cohens
23 in this case, which someone objects to and thinks
24 were improper, then an examination of the trust
25 instrument to see what their duties and powers

1 MR. DAN SLOTCHIVER: Objection, Your
2 Honor. I believe he can ask what he has reviewed.

3 MR. DAVIS: I think I can ask him if
4 he's reviewed it, and I was getting ready to ask
5 what is his understanding of it, Your Honor.
6 Again, I don't know how much time we're going to
7 waste on this.

8 THE COURT: I'll allow that.

9 BY MR. DAVIS:

10 Q. Mr. Wingate, have you reviewed the
11 Abbie Dorn Special Needs Trust?

12 A. Yes.

13 Q. The South Carolina order of transfer
14 of jurisdiction?

15 A. Yes.

16 Q. And the California letters of
17 conservatorship?

18 A. Yes.

19 Q. Are you familiar with the pleadings
20 that have been filed in this case and the claims
21 that have been brought against Dr. and Mrs. Cohen
22 as trustees?

23 A. Yes.

24 Q. What is your understanding of the two
25 main issues related to this action with regard to

1 are, an examination of the relevant court orders
2 to see what they've been directed or authorized to
3 do, a factual review of the kind of litigation
4 that has gone on and why it is that it's gotten to
5 be so expensive I think are all relevant issues of
6 inquiry for the court.

7 Q. Is it fair to say that we've got some
8 questions that you would like to address with
9 regard to authority and with regard to
10 reasonableness?

11 MR. DAN SLOTCHIVER: Objection, Your
12 Honor. I believe he can ask him what opinions
13 he's here to offer. I can object all day long,
14 and I will continue until he asks the proper
15 questions.

16 MR. DAVIS: Your Honor, if I may?

17 THE COURT: Mr. Davis, if you --

18 MR. DAVIS: I'll do the best I can.

19 I'll try to rephrase them. Yes, Your Honor

20 Your Honor, if I may, I'd like to give

21 Mr. Wingate Exhibit 1, Plaintiff's Exhibit 1.

22 This is the trust. There's a couple of other
23 documents, Your Honor, that I would like to give
24 to him. I've got the trust, the South Carolina
25 order of transfer of jurisdiction, and the

1 California letters of conservatorship,
2 Plaintiff's 87 and 101.

3 THE COURT: What are those numbers,
4 Mr. Davis?

5 MR. DAVIS: Yes, Your Honor,
6 Plaintiff's 87 and 101. And also, I'm going to
7 hand him Plaintiff's 100, which is the amended
8 petition to affirm fees and reform the trust.

9 BY MR. DAVIS:

10 Q. Mr. Wingate, if you could pull out the
11 two items, the letters of conservatorship and the
12 order of transfer of jurisdiction. I want to ask
13 your opinion on whether, based on these documents
14 or any other information you may have, in your
15 expert opinion --

16 MR. DAN SLOTCHIVER: Your Honor, I
17 would object. He can ask what his opinion is, but
18 I do not believe he can tell him what the opinion
19 is and ask him if that's correct.

20 MR. DAVIS: I'm looking for his
21 opinion with regard to whether the trustees had
22 authority --

23 MR. DAN SLOTCHIVER: I know what he's
24 asking, Your Honor.

25 THE COURT: Mr. Davis, I guess no

1 not direct him to the opinion.

2 MR. DAVIS: I want to know what his --

3 MR. DAN SLOTCHIVER: This is a very
4 document-intensive case with a lot of paragraphs
5 and a lot of provisions, and I want to make sure I
6 understand what the testimony is from the expert.

7 MR. DAVIS: And I believe I laid a
8 proper foundation. I want to know what
9 Mr. Wingate's opinion is with regard to
10 Paragraph 7, and I want to ask --

11 MR. DAN SLOTCHIVER: And your Honor,
12 this is exactly what I'm objecting to. He's now
13 trying to lead him to what he wants him to say, as
14 opposed to saying: What is your opinion?

15 THE COURT: Mr. Davis, I think you can
16 ask him his opinion, and then ask him what the
17 basis of his opinion is, without directing him to
18 that area of the document.

19 MR. DAVIS: Okay.

20 BY MR. DAVIS:

21 Q. Mr. Wingate, what is your opinion with
22 regard to the authority that the trustees had to
23 hire and pay attorneys in California to handle the
24 marital action on behalf of Abbie Dorn?

25 A. It is my opinion that the trustees

1 leading questions.

2 MR. DAVIS: Okay.

3 BY MR. DAVIS:

4 Q. What is your opinion, Mr. Wingate,
5 about whether the trustees had authority to hire
6 and pay attorneys to handle the marital action on
7 behalf of Abbie in California?

8 MR. DAVIS: And if I may approach,
9 just like I did with the previous expert, and go
10 over a couple documents.

11 BY MR. DAVIS:

12 Q. I would draw your attention,
13 Mr. Wingate --

14 MR. DAN SLOTCHIVER: Your Honor, I
15 don't believe it's appropriate for him to draw his
16 attention to a document. He's asked what his
17 opinion is, and I believe now the witness can
18 answer.

19 MR. DAVIS: Your Honor, we had an
20 expert here late last night. I'm just doing
21 virtually the identical thing that we did --

22 MR. DAN SLOTCHIVER: Your Honor, we
23 had an expert here late last night for three hours
24 under cross-examination, but I believe he still
25 has got to ask him the opinion and let him answer,

1 were and are authorized to retain and pay
2 attorneys to defend the trust in that action.

3 Q. How about to bring the action for
4 visitation in California on behalf of Abbie Dorn?

5 A. It is my opinion that the trustees
6 were and are authorized to retain attorneys to
7 prosecute the issues related to that as well.

8 Q. And is there information in these
9 documents that I gave you that would lead you to
10 believe they had that authority?

11 A. Yes, there is.

12 Q. Can you show me where that is?

13 A. Of course, questions of authority for
14 trustees will be broken down into certain specific
15 areas. You would always start with the trust
16 instrument itself, and the Abbie Dorn Special
17 Needs Trust has in its powers provisions, which is
18 Article 4, powers of the trustee, two particular
19 paragraphs, 10 and 12, which I know have been much
20 discussed.

21 Q. Let me come right back to that, if I
22 can, Mr. Wingate.

23 What is your expert opinion on the
24 language --

25 MR. DAN SLOTCHIVER: Objection, Your

1 Honor.
 2 MR. DAVIS:--I can ask him his
 3 opinion --
 4 MR. DAN SLOTCHIVER: Objection, Your
 5 Honor. May I be heard?
 6 MR. DAVIS: -- about the language.
 7 There's nothing wrong with that.
 8 MR. DAN SLOTCHIVER: May I be heard?
 9 THE COURT: Yes, sir.
 10 MR. DAN SLOTCHIVER: I believe, once
 11 again, he's leading him down the road on his
 12 expert opinion about certain language. He's been
 13 called as an expert witness. He's been qualified
 14 as an expert witness. My understanding of the
 15 rules is Mr. Davis can ask him: What are your
 16 opinions, what are they based on, can you tell us
 17 these opinions, and Mr. Wingate can respond to
 18 them, but it's not an opportunity for Mr. Davis to
 19 lead him down the road to those issues and those
 20 paragraphs, those points that he wants to address.
 21 It is not leading questions. This is an
 22 opportunity to ask a proper question.
 23 Mr. Wingate, I'm confident, can respond in kind.
 24 MR. DAVIS: I've got a very
 25 appropriate question, same one I was asking when

1 he made an objection. I'm certainly entitled to
 2 ask Mr. Wingate what is his expert opinion about
 3 the meaning of language in this case. I'm
 4 certainly allowed to do that, Your Honor, and I
 5 can pull the language out and say: What's your
 6 expert opinion?
 7 THE COURT: I'll let him ask that.
 8 MR. DAVIS: There's nothing that would
 9 preclude me from doing that. And I'm sorry that
 10 that bothers Mr. Slotchiver, but we're entitled to
 11 do that, Your Honor.
 12 BY MR. DAVIS:
 13 Q. Mr. Wingate, with regard to the
 14 language here, this attachment, this paragraph
 15 here, can you read that here?
 16 MR. DAN SLOTCHIVER: What document are
 17 we on?
 18 MR. DAVIS: We're on the letters of
 19 conservatorship.
 20 BY MR. DAVIS:
 21 Q. And let me know if that gives you --
 22 what your expert opinion is as far as --
 23 A. The court order granting authority
 24 under the conservatorship to the Cohens recites on
 25 the cited attachment, and I'm reading: The

1 conservators are granted the independent power
 2 under Probate Code Section 2591(a) to settle the
 3 pending personal injury claim brought on behalf of
 4 the proposed conservatee and to compromise or
 5 settle any dissolution action between the proposed
 6 conservatee and her husband, Daniel Bernard Dorn.
 7 Q. That's what we needed.
 8 MR. DAN SLOTCHIVER: What section is
 9 that under? This is under the trust document?
 10 MR. DAVIS: This is under the letters
 11 of conservatorship.
 12 MR. DAN SLOTCHIVER: What exhibit is
 13 that?
 14 MR. DAVIS: 101.
 15 BY MR. DAVIS:
 16 Q. The area where we need your opinion,
 17 Mr. Wingate, is with regard to that paragraph.
 18 MR. DAN SLOTCHIVER: Your Honor, I
 19 object. I object
 20 MR. DAVIS: The court needs to know
 21 what his opinion is about the term any dissolution
 22 action, and we certainly can ask him what his
 23 opinion is of what that language means. There's
 24 nothing that would preclude me from doing that. I
 25 know he doesn't like that language, but, Your

1 Honor, we have an opportunity --we have the
 2 ability and entitlement to do that.
 3 MR. DAN SLOTCHIVER: Your Honor,
 4 Mr. Davis continues to ask inappropriate
 5 questions, leading the witness down the road that
 6 he wants him to go. This is his witness. He
 7 cannot ask a leading question. He is doing it
 8 repeatedly over and over, and I don't know what to
 9 do, other than object, and I'm at the point now
 10 that I almost need to object before it comes out,
 11 because it's so routinely a leading question.
 12 He has brought this witness to testify
 13 as an expert. The witness's deposition has been
 14 taken. He has testified as to what he's going to
 15 talk about. I believe that he can testify as to
 16 what his opinions are.
 17 If he doesn't cover an opinion that
 18 Mr. Davis wants him to cover, I can't control
 19 that, and neither can Mr. Davis, to my knowledge,
 20 but he certainly doesn't have the right to ask him
 21 his opinions about certain language, and what is
 22 your opinion about this, what is your opinion
 23 about this, what is -- I believe that, the way
 24 he's doing it, the way he's phrasing it, is
 25 leading, as he's asking him regarding the

1 particular items, because he's telling him what he
2 wants him to do.

3 THE COURT: I think Mr. Davis can ask
4 him about particular language in the orders and
5 the trust document and ask him his expert legal
6 opinion about that and what his opinion is with
7 respect to that.

8 MR. DAN SLOTCHIVER: Thank you, Your
9 Honor.

10 BY MR. DAVIS:

11 Q. Again, Mr. Wingate, that sentence that
12 we've had a lot of discussion about is what I'd
13 like to ask your opinion about, where it says:
14 Compromise or settle any dissolution action
15 between the proposed conservatee and her husband,
16 Daniel Bernard Dorn. What is your expert opinion
17 about the phrase any dissolution? What does that
18 mean to you?

19 A. That the action filed and the issues
20 raised in those pleadings in that case fall within
21 the scope of any dissolution action, that
22 three-word phrase.

23 Q. If you can pull out the South Carolina
24 order of transfer of jurisdiction. Turn to
25 Page 3, Paragraph 7. What is your expert opinion

1 with trust law in South Carolina, under the South
2 Carolina Trust Code, that the court does not seek
3 to enter into what's referred to as continuing
4 supervisory proceedings of the Abbie Dorn Trust,
5 but rather, that the trustees are authorized and
6 directed to proceed in the carrying out of the
7 administration of the trust according to its terms
8 and within their judgment as trustees exercising
9 their fiduciary duties.

10 Q. Thank you, Mr. Wingate. Now let's
11 move to the Abbie Dorn Special Needs Trust, and
12 can you please point out the provisions in there
13 that you believe give the trustees authority to
14 hire --

15 MR. DAN SLOTCHIVER: Your Honor, I
16 object. What opinion does he have based on this
17 document, I believe he can ask that, but he's
18 leading him again.

19 MR. DAVIS: Actually, this was a less
20 offensive -- less -- easier question because I'm
21 just saying --

22 MR. DAN SLOTCHIVER: I don't think
23 there's a degree of offensive in this position.

24 MR. DAVIS: I'll do whatever, Your
25 Honor. This is an easy question, so I'll --

1 about -- what is your expert opinion about whether
2 the letters of conservatorship were incorporated
3 into the South Carolina order?

4 A. It's my opinion that this Paragraph 7
5 of the order of transfer is referring to one and
6 the same action from -- that originally had been
7 filed in California regarding the dissolution of
8 the marriage between Abbie and Dan Dorn.

9 Q. Mr. Wingate, can you please turn to
10 Page 8 and give me your opinion about Paragraph 9
11 with regard to authority for the trustees?

12 A. As I testified in my deposition, it's
13 my opinion that this Paragraph 9 of the Horry
14 County Probate Court order of transfer of
15 jurisdiction authorizes the payment of legal fees
16 by the trustees, and following the wording here in
17 Paragraph 9, those previously paid and disbursed
18 and those to be paid at the conclusion of these
19 matters.

20 Q. Thank you. Would you please turn now
21 to Page 9 and give me your opinion with regard to
22 Paragraph 16 as it relates to continuing
23 supervision of the trustees?

24 A. My opinion is that -- and, of course,
25 this is consistent not only with this order, but

1 THE COURT: I think it's still a
2 little leading, Mr. Davis.

3 BY MR. DAVIS:

4 Q. Can you explain your opinion with
5 regard to authority as it pertains to --

6 MR. DAN SLOTCHIVER: Your Honor, he
7 has not given that opinion yet with which he could
8 explain.

9 MR. DAVIS: He said that they had
10 authority. He made an expert opinion that they
11 had authority to handle this action. I'm asking
12 is there anything in the trust that would support
13 that opinion is what I'm asking.

14 MR. DAN SLOTCHIVER: He asked what
15 opinions do you have based on the trust.

16 THE COURT: I don't know that you had
17 asked him about the trust yet, had you?

18 MR. DAN SLOTCHIVER: Not to my
19 knowledge.

20 BY MR. DAVIS:

21 Q. Do you have any opinions with regard
22 to the trust?

23 A. I do. With respect to the Abbie Dorn
24 Special Needs Trust, the Article 4, which is the
25 powers of the trustee, contains at least three

different paragraphs that I think are relevant to and, in my opinion, authorize the trustees to retain and pay attorneys, and those would be Paragraphs 10, 12, and 13.

Q. Mr. Wingate, we've gone into great detail over Paragraphs 10 and 12. Please give us more explanation about -- can you give me more explanation about Paragraph 13?

A. First, as to its wording, it says that: The trustees are empowered, quote, to exercise all powers in the management of the trust estate upon such terms and conditions as the trustee may deem best and to do all acts which the trustee reasonably deems necessary or proper to carry out the purposes of this trust and to achieve the proper investment, management, and distribution of the trust property.

And my opinion is that expressly by this provision and expressly by the terms of the South Carolina Trust Code, that the trustees are not only empowered, but in the case of the trust code, have the duty, the affirmative duty, to defend actions against the trust and to, quote, defend actions against the trust, which

Section 62-7-811 of the South Carolina Trust Code

requires that they hire and pay attorneys.

Q. Are there any facts in this case that would bring -- and if there are, please explain them -- that would bring that duty into play?

MR. DAN SLOTCHIVER: Objection, Your Honor.

MR. DAVIS: I'm asking for a large answer. I'm asking him to explain any facts that he knows in this case that would bring that duty that he just testified to into play.

MR. DAN SLOTCHIVER: I'll withdraw.

THE WITNESS: One of the key things to consider in this particular case is that this is a special needs trust, and that by federal and state law, it is for the sole benefit of Abbie Dorn, and that the trustees are to utilize their powers and the trust estate, the corpus of the trust, exclusively for her benefit, disregarding the interests of others.

And this is not a typical kind of trust where a fiduciary would balance the interests of the life tenant or the life beneficiary and the remaindermen, for example, and to the extent that things occurring in the litigation in California threatened the

qualification of Abbie Dorn for Medicaid and threatened the qualification of the Abbie Dorn Trust from being treated as an exempt trust under d4A of the federal law and would therefore have been a, quote, counted resource, rather than an ignored resource of hers.

The litigation seeking, for example, child support, among other things, to be paid from this trust threatened the very exemption and existence of the trust and would have been catastrophic to it, and that therefore the trustees had not merely the power, but the duty to defend such action under the Code Section that I've cited, federal and state law.

BY MR. DAVIS:

Q. Thank you, Mr. Wingate.

A. I further have an opinion that in addition to looking at the wording of Paragraphs 10 and 11, which, as the court and everyone present is well aware, contain the authority to employ and compensate agents, attorneys at law, et cetera, although it contains a second sentence in both Paragraph 10 and 12, in Paragraph 10, the --

Q. Let me stop you. You said 10 and 11

first, and then you said 10 and 12.

A. 10 and 11 was a misstatement, I apologize, 10 and 12.

The second sentence in each of those paragraphs is slightly contradictory -- I used the word inartful in my deposition a few weeks ago -- in that it says in Paragraph 10: However, the compensation of the trustees' attorney at law shall be subject to prior approval of a court of competent jurisdiction, and in a similar vein, the last sentence of Paragraph 12 says that: The compensation of the trustees' attorney at law shall be subject to prior approval of a court of competent jurisdiction.

It is my opinion that under Section 62-7-107 of the South Carolina Trust Code, that the terms of a trust are defined to include extrinsic circumstances that bear upon the purposes of the administration of the trust, and that under the circumstances, the circumstances being the litigation in California which would have disqualified this trust and Abbie Dorn from Medicaid qualification, that those circumstances became additional terms of the trust to be applied by the trustees, the Cohens, in the administration

1 of the Abbie Dorn Trust.

2 Q. Thank you, Mr. Wingate. There have
3 been two main attacks, and we need to get your
4 opinion on both. You've opined as to one, and we
5 need to move on to the second area, and I think it
6 would be helpful to the court and all of us, the
7 first, again, being whether they had the
8 authority. The other iron that has been attacked
9 is whether what the trustees did was reasonable,
10 and we need to get your opinion as far as the
11 actions of the trustee, whether they were
12 reasonable with regard to hiring and paying legal
13 counsel to bring the visitation action on behalf
14 of Abbie.

15 A. It is my opinion that not only were
16 the Cohens authorized to retain and pay attorneys,
17 given the things I've already testified to, but
18 that their doing so, even in the amounts that have
19 been paid, were reasonable, and my opinion is
20 based on two things.

21 One is the South Carolina Trust Code
22 Section 62-7-816, which specifically empowers.
23 Now, this is not a duty like the duty to defend,
24 this is a power. It's a power to retain agents
25 and to pay or compensate agents and to defend

1 actions against the trust. And the language of
2 816 specifically says that such powers, so they're
3 discretionary, are in addition to and not in
4 limitation of the powers referenced under
5 Section 815. And 815 is the portion that refers
6 specifically to the terms of the trust instrument.

7 So my opinion is, first, that the fees
8 were reasonable, because of the fact that 816
9 gives them that power. Secondly, it's my opinion
10 that the fees were reasonable in light of the
11 comparison. When you look at --

12 Q. Let me stop you there, and I'll move
13 into that next part there. So far, just kind of
14 checking off the list, to keep everything kind of
15 streamlined, we're talking about authority and
16 reasonableness of the actions.

17 There's been a lot of attack on -- or
18 a lot of discussion about the amount of legal fees
19 that were paid in California. What is your expert
20 opinion with regard to the actual amount in legal
21 fees?

22 MR. DAN SLOTCHIVER: Your Honor, I
23 don't believe he has been qualified to give an
24 expert opinion on the amount of legal fees.

25 THE COURT: Sustained.

1 MR. DAVIS: Your Honor, what we've got
2 is we've got a claim that the trustees acted
3 unreasonably because they paid too much in legal
4 fees.

5 MR. DAN SLOTCHIVER: Your Honor, if
6 he's going to argue the facts, which is similar to
7 leading, I would ask that we approach. If he
8 wants to move on and ask another question, then
9 certainly, I'll sit down.

10 MR. DAVIS: I'll do, Your Honor,
11 whatever you want me to do.

12 THE COURT: If you want to argue this
13 point, then --

14 MR. DAVIS: That's what I was
15 attempting to do. There's no secret here. I
16 mean, Mr. Wingate is well aware of the issues of
17 the case.

18 MR. DAN SLOTCHIVER: If there's no
19 secret, then Mr. Wingate can testify as to all of
20 his opinions, but I believe that what he's doing
21 now is the equivalent of leading again, and I
22 object.

23 MR. DAVIS: Your Honor, again, I'll
24 remind the court, or indicate, this is not
25 something secret that we have to approach for.

1 MR. DAN SLOTCHIVER: Your Honor, I
2 object. It's not his -- he has a witness on the
3 stand, and he wants to testify again about what he
4 wants to elicit from a witness.

5 MR. DAVIS: No problem. That's no
6 problem.

7 (Bench conference was held outside the
8 hearing of the court reporter.)

9 MS. MOORE: Judge, can we take a
10 five-minute break? We've just got people on
11 standby that we just have to give some idea.

12 THE COURT: Okay. And we're --

13 MR. DAVIS: We're moving along pretty
14 good. I mean, if I can -- without a whole lot
15 more interruptions, I can -- I should be able
16 to bust -- I'm not going to say anything
17 disparaging about Mr. Slotchiver, but I can get
18 through --

19 MS. MOORE: Once again, realistically,
20 I mean, we all like to think it's only going to
21 take an hour or two, but the reality is this
22 testimony and cross and cross is going to take --
23 it's already 3:30, so I'm just trying --

24 THE COURT: It's going to take at
25 least a couple hours.

1 MS. MOORE: I'm just trying to be
2 realistic, and I just hate for these people to be
3 blocking out time of their day.

4 THE COURT: So you were going to
5 release the witnesses?

6 MR. DAVIS: He's going to be the last
7 one? Is that what we're proposing? Do we have a
8 medical -- who do we have? I don't even know.

9 MS. MOORE: Let me finish, Bret.

10 So that's what I'm proposing. We keep
11 thinking it's going to take a lot less time, and
12 it's not.

13 THE COURT: I agree.

14 MS. MOORE: And I've got both of these
15 people -- I don't want them coming at 5:30.

16 THE COURT: Right.

17 MR. DAVIS: I have to agree with them
18 She's exactly right. I don't want to --

19 THE COURT: I agree. I don't know how
20 we're going to finish with this at any reasonable
21 time with Mr. Wingate to have another witness,
22 unless we are going to stay until 9:00. I mean,
23 I'm willing to stay a little bit late this
24 evening. I know Mr. Slotchiver and the others
25 would like to get back to Charleston before too

1 may be witnesses in this matter. I would move at
2 this point to sequester any other potential
3 witnesses to be called in this matter from these
4 hearings from this point forward, including --
5 from the courtroom and from knowledge of the
6 testimony that's given in the proceedings.

7 THE COURT: Anybody?

8 MS. MOORE: Your Honor, I don't know
9 of any automatic entitlement to have the witnesses
10 sequestered. They have to have some showing as to
11 why their testimony would be tainted simply by
12 virtue of the fact of them sitting in the
13 courtroom listening to other testimony.

14 MR. DAN SLOTCHIVER: Your Honor, there
15 are certain witnesses who opined -- for example,
16 the experts, Mr. Wingate, he certainly had an
17 opportunity to sit in the courtroom and listen to
18 everything that's said, because his opinion would
19 be contingent partly on what people said. That's
20 why he reviews testimony, as he stated he did.
21 It's perfectly appropriate. I certainly would
22 never oppose it, and I think I said that the other
23 day. He's allowed to. In fact, I was
24 anticipating he would, because he needs to know
25 what people say in order to give his opinion.

1 terribly late.

2 MR. BOYD: So, your Honor, the other
3 witness that we were contemplating cannot appear
4 after 6:00.

5 MR. DAVIS: So we'll say we'll go with
6 him and try to get him finished today.

7 THE COURT: Yes.

8 MR. DAVIS: That sounds reasonable.

9 THE COURT: I just have to be out of
10 here before 8:00, quarter 'til 8:00, and I'm good.

11 MR. DAVIS: And I'll be honest with
12 you. I am flat tired, Your Honor. I mean, it has
13 been 8:00 nights every -- well, you know. You've
14 been right along with us.

15 THE COURT: Yes, I have.

16 MS. MOORE: If you'll give me a couple
17 minutes.

18 THE COURT: Yeah. Why don't we take
19 ten minutes.

20 (A recess transpired from 3:38 PM to
21 3:55 PM.)

22 MR. DAN SLOTCHIVER: Before we begin,
23 one quick question, if I may.

24 Your Honor, other people have come
25 into the courtroom since you left who I believe

1 But witnesses that are going to be
2 called for other purposes don't need to be in the
3 courtroom, and there's no entitlement for them. I
4 would object to their being here to listen to
5 testimony, to hear what other people say.

6 The purpose of sequestering a witness
7 is to make sure that when the matter comes before
8 the court, that they haven't had the opportunity,
9 if someone objects to it, to hear all of that
10 testimony before they testify. Their testimony is
11 limited to what they know, there's no benefit that
12 I know of for them to be here, and I would object
13 on behalf of my client to any witness being in the
14 courtroom, other than Mr. Wingate, from this point
15 of the trial forward.

16 MR. DAVIS: There's nothing that would
17 prohibit them from getting a copy of the
18 transcript and looking at it.

19 MR. DAN SLOTCHIVER: I object. That's
20 what I -- by sequestering, I would be objecting to
21 looking at the transcript also.

22 MS. HEDGEPAATH. Your Honor, we had
23 Dr. Dean here, and he's certainly not going to --

24 MR. BOYD: One of the witnesses, Your
25 Honor, is a medical witness, and it's clearly -- I

1 don't see how it could in any way prejudice his
2 testimony or convey an unfair advantage by having
3 him be in the courtroom when an expert is
4 testifying.

5 MS. HEDGEPATH: The meaning of the
6 trust will not affect his testimony whatsoever.

7 MR. DAN SLOTCHIVER: The sensitivities
8 that have been raised by pushing this hot button
9 further encourage me to pursue the hot button,
10 Your Honor.

11 The testimony of Mr. Wingate may cover
12 various issues, and it has so far, and it may
13 continue to, and the cross-examination of
14 Mr. Wingate will cover various issues, which may
15 delve into medical conditions, his knowledge, his
16 testimony, what he's reviewed, all of which may be
17 part and parcel, in some way or another, of what
18 the witnesses may testify to.

19 If the witnesses are being called to
20 give their understanding, their knowledge, then I
21 don't understand how they could be assisted by
22 listening to the testimony of Mr. Wingate or
23 reading the transcript of the proceedings. If the
24 witnesses are -- and therefore, there's no
25 prejudice to asking a witness not to be in the

1 Mr. Wingate what he -- does his knowledge of the
2 medical condition of Abbie play a role, and I want
3 to ask him if he's reviewed testimony dealing with
4 issues pertaining to A, B, or C. It's limiting me
5 from asking those issues without having the
6 witness sequestered. There's no benefit to him
7 having the opportunity to see it, there may be a
8 detriment to me, and because we have so much
9 counsel and because the testimony in this case and
10 the questions elicited, typically, by the time
11 we've gone round-robin with everybody, have
12 covered everything from floor to ceiling.

13 THE COURT: I don't see how it's going
14 to prejudice the petitioner or Abbie to sequester
15 the witnesses, so I will ask them to excuse
16 themselves from the courtroom until they're called
17 as a witness.

18 MR. DAVIS: And it would be helpful
19 for them to know what we talked about earlier,
20 about what our attempts are going to be today, who
21 to finish with and what we're going to do. Do we
22 intend to call them, or do we intend to finish
23 with Mr. Wingate?

24 THE COURT: I thought -- and y'all
25 tell me. I thought we're going to finish with

1 courtroom or by asking a witness not to read the
2 transcript in advance of coming to court. If the
3 purpose is to gain knowledge or if the knowledge
4 may, in fact, influence their position, then we
5 would be prejudiced.

6 So there's no harm by what we're
7 asking, and asking for sequestration, in my
8 experience, I've never seen it not -- it's always
9 been in the discretion of the court, but I've
10 never seen a scenario wherein it has not been
11 granted when it's asked for, so at this point, I'm
12 asking for it.

13 THE COURT: Anything, Mr. Davis or
14 Mr. Boyd, on that?

15 MR. DAVIS: Your Honor, I trust your
16 judgment in this matter. I think they can be
17 here, but whatever you rule.

18 THE COURT: I'm not sure what
19 impact -- if this is Dr. Dean in the back of the
20 courtroom, what impact his hearing Mr. Wingate
21 might have on him if he's here to testify
22 regarding medical issues with respect to Abbie.

23 MR. DAN SLOTCHIVER: Correct, but --
24 well, it's not just for this, but it's even
25 forward, but, for example, what if I wanted to ask

1 Mr. Wingate, even if I have to go pick up a child
2 and bring her back.

3 MR. DAVIS: Because they're gone.
4 They can leave the courthouse is what we're
5 saying.

6 MS. HEDGEPATH: And Your Honor, I
7 can --

8 MR. STEVE SLOTCHIVER: Your Honor,
9 Bret indicated that he thought he might --
10 depending on objections, might be able to finish
11 up in 30 minutes, which means --

12 MR. DAN SLOTCHIVER: It's going to
13 take us a long time to do it. That's why --

14 THE COURT: Did everyone anticipate
15 that we were going to go past Mr. Wingate?

16 MR. BOYD: I thought we decided, Your
17 Honor, that witnesses were released. We were just
18 going to try to get through Mr. Wingate today.
19 That was the decision that we made.

20 MS. MOORE: We had called -- he was in
21 transit, and we had called while he was in
22 transit.

23 THE COURT: I see. So we're going to
24 release the witnesses and then call them whenever
25 we reconvene.

MR. DAN SLOTCHIVER: Last, Your Honor, with reference to the sequestration, just to answer a comment that was I think made, my understanding is when a witness is sequestered, it's not just from being in the courtroom, because the purpose of the sequestration is to avoid any potential prejudice, but the same prejudice would be found if they were to review testimony or talk with counsel or talk to anybody about what transpired in the courtroom.

So for purposes of clarity, while we're all here, my understanding then would be that as the witnesses are sequestered, that counsel cannot talk to witnesses about their testimony. Is that correct? Excuse me, not about the testimony -- I said it wrong -- about testimony that has been elicited in the courtroom.

They can certainly -- for example, if Ms. Moore has a witness who you allow her to call, she can certainly talk to the witness about what the witness is going to talk to, but not about testimony that's taken place in the courtroom.

MR. DAVIS: Yeah. That's too intertwined, Your Honor, to separate those things.

THE COURT: I agree.

Q. Are there other factors that go into your consideration or the trustees' consideration with regard to determining whether fees are reasonable based on the facts of this case, I guess comparison of fees, any of the factors that you would think should be considered?

A. Well, you certainly, in a case like this, have to look at the jurisdictions in which the actions are pending, if you're fighting in multiple jurisdictions or if you're fighting at least in part in a very expensive jurisdiction, and California would be one of those, absolutely.

And secondly, or in addition to the quantities and types of fees that would normally be generated in an expensive jurisdiction, the tenor and the tone of the litigation. As one party either initiates or defends the action, what resources, what claims are they throwing at it, what counterclaims are they bringing up, how is the case being prosecuted by both sides, and if people are particularly argumentative and litigious, then that's absolutely going to drive up the length of time and, therefore, the amount of fees.

Likewise, it's relevant to look at

MR. DAN SLOTCHIVER: Thank you, Your Honor.

THE COURT: Thank you.

MR. DAVIS: You agree with me or agree with him?

THE COURT: I agree with Mr. Slotchiver. You can talk to your witnesses about their testimony, but not about the testimony that's been provided thus far in the trial.

MR. DAVIS: May it please the court?

THE COURT: Yes, sir.

BY MR. DAVIS:

Q. Mr. Wingate, when you counsel trustees, how do you counsel them on the reasonableness of fees, legal fees?

A. It always depends on the type of action that is under consideration. It goes to -- the relevant questions that go to what's reasonable are the type of case, the complexity of it, the number of parties involved, the experience of the attorneys involved, the extent to which it takes the attorneys away from other cases that they may have to pursue. The standard kinds of things in considering the reasonableness of fees would apply in the fiduciary arena.

what both sides or all sides are incurring and to be able to weigh whether one side is acting reasonably or not. That's the standard that a fiduciary is held to. So the question of whether their fees were reasonable would necessarily cause the eye to be cast on how much fees are incurred on the other side and put it all on the table and weigh the two against each other.

Q. Are there any facts in this case that you're aware of that indicate that litigation was being driven by any certain side?

MR. DAN SLOTCHIVER: Objection, Your Honor. I don't know the relevancy of this question, nor do I know -- nor do I understand that he is here or qualified to opine on that issue, and I don't know how it's relevant to it as phrased by Mr. Davis.

MR. DAVIS: Thank you, Your Honor. We've had multiple parties testify about who drove litigation costs and --

MR. DAN SLOTCHIVER: Your Honor, I object once again. He's now advising the client, or the witness, what it is that he's going to be getting out of him by telling you: This is what I'm going to get out of him. Then he's going to

1 ask him a question and see if he can get it out of
2 him.

3 I believe Mr. Wingate's been called
4 here as an expert. Mr. Wingate's given expert
5 testimony in a deposition. Mr. Wingate's told
6 everybody what he's going to testify to. Once
7 again, I believe Mr. Davis can ask him: What
8 opinions are you going to give, and he can give
9 those opinions.

10 I will tell the court we have gone far
11 beyond what we discussed at deposition. That's
12 why I'm standing up and objecting.

13 THE COURT: Mr. Davis?

14 MR. DAVIS: Thank you, Mr. Slotchiver.
15 BY MR. DAVIS:

16 Q. Are there any facts in this matter
17 that are relevant, in your expert opinion, with
18 regard to the expenditure of legal fees?

19 A. In reviewing the deposition portion of
20 transcripts -- I've certainly seen Mr. Freeman's
21 both his deposition and his testimony, the
22 transcript of Mr. Julian Walker. I've seen
23 attached to the pleadings portions of transcripts
24 of Mr. Cohen and -- of Dr. Cohen and of
25 Mrs. Cohen. I've seen portions of the transcript

1 the trustees. I can't recall exactly the comment
2 that you were on.

3 Would the results obtained, in your
4 opinion, have any bearing on it from a factual
5 standpoint?

6 A. The length of time that litigation
7 goes on affects the reasonableness of the amount
8 of fees incurred, as I've already indicated, the
9 complexity and the number of issues involved, and
10 it is common to consider the success in those
11 activities as one more measuring stick in whether
12 trustees have acted reasonably. So all of those
13 factors, broadly speaking, are weighed in the
14 interests of justice sort of a concept.

15 Q. How about the reputation --

16 MR. DAN SLOTCHIVER: Objection, Your
17 Honor, leading. I believe he can ask him what
18 other, if anything.

19 THE COURT: Thank you.

20 BY MR. DAVIS:

21 Q. Are you familiar with any other
22 factors related to the attorneys with regard to
23 legal fees?

24 A. I've already talked about, I believe,
25 the experience, skill, the type of work that they

1 of a deposition of Mrs. Cohen. I've seen an
2 affidavit that was given by Attorney Meyer in the
3 California litigation which delineate, in their
4 various parts, the kinds of claims that have been
5 raised in this particular California litigation
6 and the inflammatory and litigious nature in which
7 they have been pursued, all of which absolutely
8 drive up the costs and cause the analysis of
9 whether or not the fees paid by the Cohens,
10 whether those fees are reasonable, cause an
11 examination of the fees on both sides to be looked
12 at simultaneously.

13 (Interruption in proceedings from
14 4:08 PM to 4:30 PM.)

15 THE COURT: We are back on the record.
16 Mr. Wingate is on the stand. Mr. Davis is doing
17 his direct.

18 MR. DAVIS: Thank you, Your Honor.
19 May it please the court?

20 THE COURT: Thank you.

21 BY MR. DAVIS:

22 Q. Mr. Wingate, when we got interrupted
23 by the fire alarm, we were talking about the
24 factors related to the reasonableness of
25 attorneys' fees in light of the reasonableness of

1 do, the types of cases they handle, so broadly
2 speaking, in the interests of justice, analyzing
3 the work that they've done in this particular case
4 and how they've gone about it. I've already used
5 the phrase litigiousness. I think everybody knows
6 what that means. So that's a factor.

7 Q. There were two items that you've
8 already gone over -- nothing new here -- about the
9 visitation action and the child support action.
10 You just testified that the results obtained would
11 be a factor. Assuming that -- are you aware of
12 the success of the Cohens as trustees in this
13 matter with regard to those two items?

14 A. I know that from what I've reviewed,
15 that, of course, the marital dissolution aspect
16 has been completed. I understand from reviewing
17 the transcripts, affidavits, et cetera, that the
18 effort to obtain child support against this trust
19 was defeated by the Cohens. I understand that
20 visitation was awarded, based upon what I've seen
21 in the pleadings and in the transcripts and in
22 some of the affidavits, like Attorney Meyer's
23 affidavit, that they were able to obtain for
24 Abbie, the ward, visitation. And so it looks
25 across the board, as to the scope of issues, as if

1 it was successful, and that goes to not
2 exclusively the factor of reasonableness, but that
3 is certainly a factor in reasonableness.

4 Q. And Mr. Wingate, I want to ask you
5 about your opinion with regard to a petition that
6 was actually filed by the Cohens. There's been --

7 MR. DAN SLOTCHIVER: Your Honor, I
8 don't believe he was qualified as an expert to
9 give an opinion on any petitions. If I may, Your
10 Honor, I do believe that I've given latitude in
11 this. I do believe that Mr. Wingate's been called
12 as an expert in two particular fields, and
13 generally speaking, the experts, when they're
14 called to testify, give their opinions on those
15 fields with which they've been called to testify.

16 And we've been sitting here, even
17 despite the time we took outside, for several
18 hours, talking about issues and throwing issues,
19 instead of asking the opinions, and repeatedly,
20 I'm objecting to leading questions that are asked
21 by Mr. Davis over and over again, and it's to the
22 point now, Your Honor, that I would like to end
23 this testimony with reference to the examination
24 by Mr. Davis because it is improper and unfair to
25 continue and continue and continue to ask leading

1 THE COURT: I was waiting on Mr. Davis
2 to respond to your objection.

3 MR. DAVIS: As you're aware, Your
4 Honor, Mr. Slotchiver, as attorney, has brought a
5 claim and made particular reference --

6 MR. DAN SLOTCHIVER: My objection is
7 leading. It's not about the nature of the
8 question. I'm not opposing to the nature of the
9 question; I'm opposing that it's a leading
10 question.

11 MR. DAVIS: Well, I'll rephrase it.

12 THE COURT: Thank you. If you could,
13 Mr. Davis, try to refrain from leading questions.

14 MR. DAVIS: Okay, Your Honor.

15 THE COURT: Thank you.

16 MR. DAVIS: And I do apologize.

17 BY MR. DAVIS:

18 Q. Mr. Wingate, are you aware of any --
19 are you aware of the nature --

20 MR. DAN SLOTCHIVER: Your Honor, once
21 again, are you aware is the precursor for a
22 leading question. I object again.

23 MR. DAVIS: Your Honor, I'm looking at
24 Exhibit 100 and then also Plaintiff's Exhibit
25 No. 2.

1 questions in an effort to get out that
2 information.

3 If he'd please be limited to asking
4 proper questions and not continuing to lead and
5 try to continue to get what he wants to get,
6 without just asking: What are your opinions?
7 What are you here to testify about? Mr. Wingate,
8 I'm sure, will give those responses, but I do
9 continue to object.

10 THE COURT: Thank you.

11 MR. DAVIS: Your Honor, as you know, a
12 claim has been brought forward saying that the --

13 MR. DAN SLOTCHIVER: Your Honor, I
14 don't believe this is an objection -- or a
15 response to my objection

16 MR. DAVIS: I'm just saying now what
17 I'm going to ask him. I believe he made an
18 objection about a question, and I'm explaining
19 what I'm going to ask, Your Honor.

20 MR. DAN SLOTCHIVER. Being leading.
21 Being leading, Your Honor. Leading or not -- if
22 it's leading, I would ask you to sustain it, if
23 it's not leading, overrule it. Then I would ask
24 him to move forward with the next question without
25 commentary.

1 BY MR. DAVIS:

2 Q. My question is based on the
3 allegations in --

4 MR. DAN SLOTCHIVER: Objection, Your
5 Honor, leading.

6 MR. DAVIS: Your Honor, I'm asking for
7 an expert opinion. I don't know how else to ask
8 him.

9 MR. DAN SLOTCHIVER. He's asking an
10 improper leading question again, Your Honor.

11 MR. DAVIS: I'm asking his expert
12 opinion based on allegations in a lawsuit. Can I
13 ask him what his expert opinion is? Do I need to
14 rephrase some way?

15 MR. DAN SLOTCHIVER: Yes, Your Honor,
16 I do object to this. It, once again, is a leading
17 question. He's leading him down the road of where
18 he wants him to go. That's exactly what the rules
19 were designed to prevent. Mr. Davis is allowed to
20 ask any proper question he asks without me
21 objecting anymore.

22 BY MR. DAVIS:

23 Q. In your work in this case,
24 Mr. Wingate, did you form any opinions with regard
25 to the authority of the trustees based on the two

1 documents that I just gave you?

2 A. With respect to the authority of the
3 trustees, as I've testified, the basis of
4 authority in my opinion that they were authorized,
5 number one, and reasonable, number two, in
6 incurring and paying legal fees connected with the
7 California action were based in part upon the
8 court orders, were based in part upon the terms of
9 the trust instrument, the governing instrument,
10 and are based in part upon South Carolina law,
11 which is the governing law, and an effort to
12 pursue the litigation, notwithstanding the
13 language of Paragraphs 10 and 12, the second
14 sentence in each of those two paragraphs of the
15 trust instrument, is based upon the statutory duty
16 to defend claims against a trust, the statutory
17 power, which is in addition to the terms of the
18 trust instrument to retain and pay attorneys and
19 other agents, and that it is, in the broad sense
20 under trust law in South Carolina, measured by the
21 interests of justice weighed against what is in
22 the best interest of the beneficiary, which in
23 this case is a sole benefit case.

24 Q. Let me ask you this: In your expert
25 opinion, based on your review of those documents,

1 his expert opinion, as trustees. We're talking
2 about the authority that the trustees believed
3 they had, and was there something in those
4 documents that would indicate otherwise.

5 THE COURT: I'll allow that.

6 THE WITNESS: To the extent that in
7 filing pleadings and seeking guidance from the
8 court and from counsel, fiduciaries are properly
9 authorized and, in fact, encouraged to look to and
10 seek advice of counsel in the administration of
11 trusts and in carrying out their duties, and so an
12 effort to seek a reformation of the trust or to
13 affirm the payment of the fees, as has been done
14 in this action before the court today, is proper
15 and is normal and is within the powers and
16 authorities of a fiduciary to pursue.

17 BY MR. DAVIS:

18 Q. Do any of the allegations contained in
19 that petition change your earlier opinion that the
20 co-trustees were duly authorized to do what they
21 did in California?

22 A. No.

23 Q. And that one includes, Mr. Wingate,
24 anything in this email --

25 MR. DAN SLOTCHIVER: Objection, Your

1 did you find anything in there that would indicate
2 that the --

3 MR. DAN SLOTCHIVER: Objection, Your
4 Honor. Objection, Your Honor. Objection. He is
5 asking a leading question.

6 MR. DAVIS: I'm asking his expert
7 opinion based on the review of the documents.

8 MR. DAN SLOTCHIVER: He is asking his
9 expert opinion in a leading question.

10 MR. DAVIS: I'm asking a very fair
11 and -- fair questions. I'm entitled to ask his
12 expert opinion --

13 MR. DAN SLOTCHIVER: It's an improper
14 question.

15 MR. DAVIS: -- a specific expert
16 opinion based on the review of two documents. I
17 have not even pointed him to --

18 THE COURT: Let me hear from Mr. Davis
19 just real quick, Mr. Slotchiver.

20 MR. DAVIS: I have not pointed to any
21 specific provision. I've handed the expert
22 witness, who's been duly qualified, two documents,
23 and I've asked him a very pointed question with
24 regard to authority, which we're all discussing
25 here, and I'm entitled to his answer, his opinion,

1 Honor. Objection, Your Honor. He's leading him
2 asking does it include these particular items.

3 BY MR. DAVIS:

4 Q. Would you like to expound on your
5 answer at all, Mr. Wingate?

6 A. Nothing about my testimony would
7 change based upon those two instruments.

8 Q. Thank you, Mr. Wingate. Please bear
9 with me, Mr. Wingate. I'm just getting to the end
10 of this, making sure I've gotten everything
11 covered.

12 Is it your -- in your expert opinion,
13 who's the beneficiary of the Abbie Dorn Special
14 Needs Trust?

15 A. It's clear that Abbie Dorn is the
16 beneficiary of the trust, and as the language of
17 the trust agreement points out, it, by virtue of
18 being a d4A trust, is for her sole benefit.

19 Q. Mr. Wingate, yesterday, the expert,
20 Mr. Walker, testified about the duty of
21 impartiality, and I am very hopeful that I can
22 turn right to that section in the trust code.

23 MR. DAN SLOTCHIVER: Your Honor, I
24 object to any testimony that Mr. Wingate's going
25 to opine about regarding testimony from

1 Mr. Walker. He certainly can opine within the
2 opinions that he's been authorized, but as you are
3 aware, you cannot pit witnesses against each
4 other, if that's the attempt of Mr. Davis.

5 Mr. Wingate cannot rely upon Mr. Walker in
6 formulating his opinion, because that would be
7 hearsay. He's not a party to this case. So I
8 object to this line of questioning by Mr. Davis.

9 THE COURT: Thank you.

10 BY MR. DAVIS:

11 Q. In your expert opinion, is there a
12 case where --

13 MR. DAN SLOTCHIVER: Objection, Your
14 Honor. Objection, Your Honor. Once again, he's
15 leading him.

16 BY MR. DAVIS:

17 Q. In your expert opinion after review of
18 this case and, of course, your understanding of
19 the South Carolina Trust Code as you testified to
20 in your qualifications, is there any -- what are
21 the varying interests of the beneficiaries with
22 regard to choosing -- impartiality, choosing one
23 over the other, preserving assets for the other
24 one?

25 A. In my opinion, the fact that this is a

1 would argue to Mr. Davis that you cannot pit a
2 witness against another. You cannot -- it is
3 improper to ask a witness to opine about another
4 witness in an effort to pit him against that
5 witness.

6 MR. DAVIS: I don't think --

7 MR. DAN SLOTCHIVER: I further would
8 argue, Your Honor, and I'll discuss it in
9 cross-examination, that Mr. Wingate's
10 consideration of the testimony of Mr. Walker would
11 not be a proper basis to form any kind of opinion,
12 but I'll address that later on when I'm able to
13 cross-examine him, but at this point, I certainly
14 would object to that testimony.

15 THE COURT: Sustained

16 BY MR. DAVIS:

17 Q. In the context of a d4A special needs
18 trust, what is the normal course of records of
19 deliberations of the trustees?

20 A. The fact that the sole beneficiary is
21 in this case Abbie Dorn would mean that the
22 actions of the trustees should be in the exercise
23 of reasonable care, skill, and caution, standard
24 terminology from South Carolina trust law, in
25 caring for her needs as required by the trust

1 d4A trust, which, as I've already said, is for the
2 sole benefit of Abbie Dorn, absolutely changes the
3 analysis that a trustee would normally go through
4 in trying to weigh and preserve the interests of
5 both the life beneficiary and the remaindermen,
6 and the law with respect to a special needs trust
7 is that even if the whole of the trust corpus is
8 used for the exclusive benefit of the life
9 beneficiary, who is the sole beneficiary, that
10 that is no breach of any duty to any other
11 contingent beneficiaries, because they are to be
12 disregarded. They are not vested remaindermen in
13 that common sense of the analysis.

14 And my opinion reviewing Julian
15 Walker's testimony was that he was --

16 MR. DAN SLOTCHIVER: Objection, Your
17 Honor. He should not be able to testify about
18 pitting -- he should not be able to pit one
19 witness against another.

20 MR. DAVIS: Your Honor, I appreciate
21 that comment, I really do; however, that's part of
22 the underlying facts that Mr. Wingate has reviewed
23 in preparing for this case, so I believe he's
24 entitled to rely on that, Your Honor.

25 MR. DAN SLOTCHIVER: Mr. Davis -- I

1 instrument, and that there's not a specific
2 process; it's the interests of the ward of the
3 beneficiary that are to be considered.

4 Q. Explain for us the difference between
5 individual trustees and corporate trustees with
6 regard to record keeping and formality of
7 procedures.

8 A. There is, in the South Carolina Trust
9 Code, a requirement that trustees who have special
10 skill, and you would think traditionally of a
11 corporate fiduciary, that they are, under I think
12 it's Section 805 of the code, to exercise that
13 special skill in the carrying out of their duties.

14 Such would be not applicable in this
15 case, where you've got individuals who are not
16 professional fiduciaries -- I believe Dr. Cohen's
17 a medical doctor, I'm not sure about Mrs. Cohen's
18 background or training -- they're just individual
19 trustees. They are laymen charged with being
20 reasonable trustees.

21 Q. And is it your expert opinion -- what
22 is your expert opinion about the deliberations as
23 trustees and their exercise of their authority as
24 trustees, what is your expert opinion about has
25 that been prudent?

1 A. The trust law in South Carolina is
2 that trustees must exercise, as I said, reasonable
3 care, skill, and caution, and so the question
4 becomes in each case the standard that the
5 trustees are held to, did they perform to that
6 standard. Their own evaluation and their own
7 estimation of what is in Abbie Dorn's interest is
8 the process that they are to go through with
9 respect to making decisions such as to hire and
10 pay attorneys and to defend actions against the
11 trust. There's not a specific requirement of
12 meetings or of going through other processes that
13 is required outside of that analysis of
14 reasonableness.

15 Q. Have they exercised reasonable care,
16 in your expert opinion, in this matter?

17 A. Based on everything that I have seen
18 and read, yes.

19 Q. Is your expert opinion also that they
20 have been prudent in the administration of this
21 trust?

22 A. Yes. Reasonableness would bring with
23 it prudence, the standard of care, again, a
24 prudent fiduciary under the Prudent Investor Act
25 and the related sections of the South Carolina

1 Trust Code.

2 Q. Mr. Wingate, are you aware of any
3 facts related to the payment to Jeffrey Cohen from
4 the trust?

5 A. I've seen some of the testimony,
6 again, in reviewing transcripts of Mr. Freeman, of
7 Mr. Walker, and of Susan Cohen in connection to
8 reference to Jeffrey Cohen.

9 Q. If it is found that Abbie, the
10 beneficiary, receives a benefit from the
11 appointment of Jeffrey Cohen, would that be a
12 reasonable expense of a trust?

13 A. I really think the analysis in my
14 opinion is not if it's found to be. The question
15 is when the Cohens, as trustees, are exercising
16 their discretion, their job is to be prudent
17 fiduciaries and to exercise reasonable care to use
18 the assets of the trust to benefit Abbie Dorn, her
19 sole benefit, and so they are given the power and
20 the duty to use the trust assets as they deem
21 reasonably appropriate for her care.

22 Q. Can you compare for us the difference
23 between a d4A trust and other types of trusts, say
24 a QTIP trust or a credit shelter trust, with
25 regard to investment of assets, accumulation of

1 assets, income investment, and --

2 MR. DAN SLOTCHIVER: Objection, Your
3 Honor. I'm not sure what the relevancy is of
4 comparing the type of trust that he's been called
5 upon to testify in this case has to do with
6 talking about other types of trusts.

7 MR. DAVIS: Your Honor, as you recall,
8 the expert was qualified as an expert in d4A
9 trusts, and d4A trusts are different than other
10 kind of trusts, and I'm simply asking the expert
11 to explain why they're different.

12 MR. DAN SLOTCHIVER: And Your Honor,
13 what difference does it make if this trust is
14 different from another trust? He can opine as to
15 what this trust requires, he has, he can opine as
16 to his opinion as how it applies to the ward, he
17 has, but now to ask him to compare this trust to a
18 variety of other types of trusts, it has no
19 bearing on this case. It is absolutely
20 irrelevant, and I would object to it.

21 THE COURT: Overruled. I'll allow it.
22 BY MR. DAVIS:

23 Q. Thank you, Mr. Wingate. Would you
24 like me to repeat the question?

25 A. I would.

1 Q. Can you compare for us the differences
2 with regard to expenditures of income and assets
3 and accumulation of assets in a d4A trust versus,
4 say, a credit shelter trust or a QTIP trust?

5 A. As I said earlier, if in another type
6 of trust the trustee is required to weigh the
7 interests of a group of beneficiaries, a life
8 tenant or a life beneficiary and remainderman, and
9 has duties from an investment perspective to grow
10 the trust to preserve the corpus, to hit a certain
11 income return level/rate of return for the sake of
12 the income beneficiary, then the duties of the
13 trustee in that type of trust is watching all of
14 those things.

15 In this particular type of trust and
16 in this case, the duties of the Cohens with
17 respect to Abbie Dorn were to use the assets
18 solely for her benefit. What was happening in
19 this case clearly was the litigation, it was the
20 800-pound gorilla in the room, and so what was
21 being done was with respect to the use of trust
22 assets for the litigation.

23 Q. Can you explain for us the difference
24 between the terms of trust and the interests of
25 justice and which prevails?

1 A. In connection with the administration
2 of trusts, the South Carolina law is that the
3 interests of justice prevail, that in construing
4 the terms of the instrument, in evaluating the
5 conduct of trustees and whether they have been
6 reasonable and prudent in their performance, that
7 the interests of justice are the final determining
8 factor, and if there's a conflict between the
9 terms of a trust and the circumstances in which it
10 is governed, the extrinsic matters and the
11 interests of justice would drive how the trustees
12 should conduct themselves.

13 Q. I want to ask your opinion about a
14 specific paragraph.

15 MR. DAN SLOTCHIVER: I would object.

16 MR. DAVIS: And it's the same thing we
17 did earlier, Your Honor, so that objection was
18 overruled, if I recall correctly.

19 THE COURT: As long as you can phrase
20 your question so it's not leading, I'll allow it.

21 MR. DAVIS: Yes, Your Honor.

22 BY MR. DAVIS:

23 Q. I'm on Plaintiff's 86, the statement
24 of the case that we've been working off of. I'm
25 on Page 4. Does this paragraph here -- and you've

1 certainly a relevant factor in determining whether
2 the conduct of the trustees has been appropriate.

3 Q. What's your experience with regard to
4 trust litigation cases in South Carolina with
5 regard to the amount of fees, in particular, large
6 amounts of fees?

7 A. My opinion is that though it's
8 regrettable, the amount of fees that have been
9 incurred in this case, that given the nature, the
10 scope, the length, and the type of the litigation
11 that is in the court today, these sums are not
12 unusual.

13 MR. DAN SLOTCHIVER: Your Honor, I
14 would object. I don't believe he's qualified --
15 he's qualified about payment of fees and about
16 hiring attorneys and about authority and
17 reasonableness of taking on actions, but I don't
18 believe he's qualified to comment on the amounts
19 of fees being reasonable.

20 MR. DAVIS: Your Honor, that's exactly
21 why we called him as an expert, to help us
22 determine whether the actions of the trustees were
23 reasonable, and the actions that's been claimed
24 about are the payment of legal fees, so that's
25 exactly why we called him.

1 said you've reviewed this in your testimony. How
2 does this paragraph affect your opinion with
3 regard to the efficacy of the trustees' behavior?

4 THE COURT: What page is that,
5 Mr. Davis?

6 THE WITNESS: Page 4.

7 MS. MOORE: Four of, I'm sorry, what?

8 MR. DAVIS: It's just four.

9 MS. MOORE: I'm sorry. Of which
10 document?

11 MR. DAVIS: Statement of the case.

12 THE WITNESS: And I'm sorry. The
13 question?

14 BY MR. DAVIS:

15 Q. Do those facts bear on your opinion,
16 your expert opinion, about the efficacy of the
17 actions of the trustees?

18 A. To the extent that court decisions
19 have been rendered which shed light on the conduct
20 of the litigants, yes, it is a relevant factor,
21 and to the extent that the conduct of the trustees
22 has, as pointed out there, tended to be for the
23 benefit of Abbie Dorn and that she has received,
24 in the words of that document, that court, a
25 positive benefit and has made progress is

1 THE COURT: I don't think he can give
2 an expert opinion as to the amount of the fees and
3 whether they are reasonable based on an expert
4 legal opinion.

5 MR. DAVIS: Well, I guess, then, we
6 would phrase it in terms of were the actions of
7 the trustees in regard to the payment reasonable.
8 That's why we're calling him
9 BY MR. DAVIS:

10 Q. Were the actions reasonable of the
11 trustees?

12 A. My opinion is that the amount of fees
13 that the trustees have paid in this litigation,
14 given those factors that I just mentioned, that
15 the payment of those fees is reasonable.

16 Q. Are you familiar with cases in South
17 Carolina where fees have gotten as high as they
18 have in this case in California?

19 A. Yes, multiple.

20 Q. Even more than these fees?

21 A. Absolutely, multiple cases with
22 substantially more fees, two in this county.

23 Q. Are you aware, in your opinion, of any
24 statutory requirements that a trustee would have
25 to defend claims against a trust?

1 MR. DAN SLOTCHIVER: Your Honor, this
2 has been asked and answered and covered.

3 THE COURT: I believe so.

4 MR. DAVIS: We covered a lot, Your
5 Honor, and then we had a fire alarm in the middle
6 of it. I just want to make sure I get everything
7 on the record. I apologize if it's already been
8 covered.

9 THE COURT: That's all right.

10 BY MR. DAVIS:

11 Q. Mr. Wingate, give me one second. Beg
12 your indulgence.

13 Mr. Wingate, all of the opinions that
14 you have rendered today in this case and testified
15 to today, are they rendered to a reasonable degree
16 of professional certainty?

17 A. Yes, they are.

18 Q. Thank you.

19 MR. DAVIS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 Ms. Hedgepath?

22 MS. HEDGEPATH: I have nothing, Your
23 Honor.

24 THE COURT: Thank you.

25 Ms. Moore?

1 factor in looking at the reasonableness of the
2 steps that the fiduciary, the trustee, took in
3 making a decision on each and every thing?

4 A. It always is the prudent investor
5 rule, the prudent man rule, and the code in South
6 Carolina goes on to say and other similar phrases
7 found in trust instruments shall be uniformly
8 applied to trusts in South Carolina.

9 Q. So simply the fact that you only made
10 one reference to that phrase, that didn't mean
11 that that's not an important and very primary
12 consideration to be taken into account. Is that
13 correct?

14 A. It's always an important consideration
15 to be taken into account.

16 Q. Don't the trustees have an obligation
17 to be reasonable in terms of the level of expenses
18 and not simply the type of expense? And I'm
19 talking specifically as to a d4A.

20 A. There's a broad set of factors, and
21 without question, the amount of expenses can be
22 one of those factors, but not in isolation, so the
23 type of the action, the length of the action, the
24 kinds of factors that I earlier testified to,
25 would also come into play. Other resources, both

1 MS. MOORE: Yes, ma'am, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. MOORE:

4 Q. Mr. Wingate, you referred to the
5 trustees of the Abbie Dorn Special Needs Trust as
6 laymen trustees. Is that correct?

7 A. Correct.

8 Q. Are you saying that a layman trustee
9 would not be held to the same standard as a
10 corporate trustee?

11 A. Essentially, what I said was that the
12 South Carolina Trust Code specifically says that
13 if a trustee has special skill, then in the
14 exercise of their fiduciary duties, they are to
15 bring that special skill to bear upon their
16 execution of the office of trustee. By silence,
17 the reverse of that would be true. It's not that
18 they're being held to a lower standard as
19 individuals, they're just not held to the, quote,
20 special care standard of other trustees.

21 Q. And I only heard you make one
22 reference to the prudent man standard. Why is
23 that?

24 A. Why did I only make one --

25 Q. One reference. Was that an important

1 in the trust and outside of the trust, that may be
2 within the -- available for the benefit of the
3 beneficiary would be examples of other things to
4 consider as well, so there are really a host of
5 issues to consider.

6 Q. How much weight, if any, would you
7 give to the possible depletion of a trust by the
8 expenditure of attorneys' fees?

9 A. That would be a relevant factor. I
10 don't know that I can answer it with a percentage
11 or an amount of weight to put on it, but to the
12 extent, in this case, that there is the annuity,
13 which pays something in excess of \$30,000 per
14 month, with respect to other government program
15 resources that are available through the
16 state-operated Medicaid program, then taking into
17 account all of those different pots and pockets of
18 funds would be a relevant factor.

19 Q. Did you have any concern over the fact
20 that money was being paid to a family member,
21 specifically Jeffrey Cohen?

22 MR. DAN SLOTCHIVER: Objection. I
23 don't believe there's a foundation for him to
24 answer that question.

25 MS. MOORE: There was a question posed

1 to him about money that was being paid to Jeffrey
2 Cohen.

3 MR. DAN SLOCHIVER: But I know at
4 least at one point he testified he didn't know who
5 Jeffrey Cohen was. That's why I'm asking for a
6 foundation.

7 MS. MOORE: I missed that.

8 BY MS. MOORE:

9 Q. Are you aware of who Jeffrey Cohen is?

10 A. I've become aware, yes.

11 Q. And can you tell us what the
12 relationship of Jeffrey Cohen is to any of the
13 parties here?

14 A. I understand that he is the sibling of
15 Abbie Dorn.

16 Q. Were you aware that Jeffrey Cohen was
17 being paid money from this trust?

18 A. I have been made aware of that from
19 the review of the transcripts, yes, such as the
20 John Freeman deposition and other things.

21 Q. And did you see information about
22 payments to Jeffrey Cohen, did you also see that
23 in the transcripts from Mrs. Cohen?

24 A. I saw -- yes, I did. I saw that
25 there's been a lot of discussion about that.

1 any expenditure?

2 A. The process in decision-making should
3 be is this action or is this expenditure within
4 the purposes of the trust, and that's broadly
5 defined as the terms of the trust instrument,
6 court orders that are in existence, and state law
7 that governs that trust, and will it be for the
8 benefit of the beneficiary, and if the analysis is
9 authorized and beneficial, then that's the process
10 that the trustee should go through in making a
11 decision about expenditures.

12 Q. Mr. Wingate, how much weight do you
13 give to the information that you gleaned from the
14 order in determining whether or not the trustees'
15 actions were reasonable?

16 A. The order meaning?

17 Q. The final order of California.

18 A. And I'm sorry. Ask the question
19 again.

20 Q. How much weight do you attribute to
21 the decision, the final order of the California
22 court, in making a determination as to the
23 reasonableness of the trustees' actions?

24 A. Certainly not sole weight, I wouldn't
25 say greatest weight of the various factors, but it

1 Q. Were you aware, by looking at the
2 accountings, of the fact that monies had been paid
3 to Jeffrey Cohen?

4 A. There is a reference in the Horry
5 County Probate Court accountings to that fact, or
6 to reimbursements.

7 Q. And do you have any idea today how
8 much that would have been?

9 A. I do not.

10 Q. Would simply the fact that there is
11 money paid to a family member, would that give you
12 concern?

13 A. Not in isolation or not in and of
14 itself. It would raise the question of how much
15 was paid, what was it paid for, what was the
16 benefit to the beneficiary, the usual kind of
17 analysis in keeping with what I've discussed
18 already.

19 Q. Is there any requirement that a
20 trustee in a d4A trust, is there any requirement
21 that they take steps to maintain the corpus or
22 grow the corpus?

23 A. No, there is not, in a d4A trust.

24 Q. What process, if any, would you expect
25 a trustee to go through in making a decision as to

1 is a factor.

2 Q. Isn't it true that parties, when
3 they're engaged in litigation, certainly do not
4 know what the ultimate outcome will be?

5 A. Both who the winner will be, who the
6 loser will be, or how long the ride's going to
7 last and how much it's going to cost. It's an
8 uncertain venture for anyone that goes there.

9 Q. Is it reasonable to judge the
10 trustees' actions by using 20/20 hindsight in
11 terms of looking at the final order?

12 A. No. In fact, the South Carolina Trust
13 Code specifically says that the outcome looking
14 backwards is not the measure of reasonableness.
15 It's in the shoes of the trustees at the moment
16 the decision is made, based upon those relevant
17 authorities, as I said, terms of the instrument,
18 general trust law, court orders that may apply, is
19 it reasonable at that moment that they made the
20 decision, and if, in hindsight, it turns out to
21 have been a bad decision, common example might be
22 an investment that declined in value, rather than
23 increased, then they are not liable for, in
24 retrospect, having made a bad decision, as long as
25 it was proper within the framework that I just

1 discussed at the time it was made.

2 Q. How often would you expect a trustee
3 to evaluate a decision in an ongoing matter that
4 is resulting in the expenditure of money?

5 A. Any time there's an opportunity to
6 make a decision of can we get off the train or any
7 time there's a decision of this is going to
8 perpetuate the litigation, then I think there'd be
9 a need to say where are we in this expenditure.
10 And the record here apparently is replete with
11 claims and counterclaims, petitions and
12 counterpetitions, so I can't put my finger on a
13 point in time and say that's where Mr. Dorn turned
14 up the heat and really caused a great deal of
15 expenditure. I can't pinpoint a specific thing,
16 but it has that flavor.

17 Q. Is it your opinion that the trustee
18 had authority to retain an attorney to initiate
19 the action for marital dissolution?

20 A. Yes.

21 Q. And upon what do you base that
22 opinion?

23 A. The most direct example is the
24 California order regarding conservatorship, which
25 specifically makes the reference in the

1 visitation. All of those are clearly within the
2 authority of trustees under South Carolina law to
3 retain and pay counsel.

4 Q. Mr. Wingate, should any consideration
5 be given to either the fact that Medicaid is a
6 contingent beneficiary or the fact that there are
7 minor children contingent beneficiaries? Should
8 any consideration be given to that fact?

9 A. No, it should not. And I would -- if
10 I may respectfully disagree with the language even
11 of the children being contingent beneficiaries.

12 Q. And why is that?

13 A. Because of the fact that a d4A trust
14 is for the sole benefit of the incapacitated
15 purpose. It sets forth a sequence that after her
16 death, if there's any remaining corpus, that the
17 Medicaid lien first would be dealt with to the
18 State of South Carolina, and then if after that
19 has been satisfied, if there's yet remaining
20 corpus, then it would pass, in this instance, per
21 the terms of the trust, to the three individuals,
22 but they would have a diminished role that I would
23 not call a contingent remainderman or a
24 remainderman.

25 Q. Mr. Wingate, you indicated that you

1 attachment, it's 3D, to them being authorized to
2 do so.

3 Q. Do you have an opinion as to whether
4 or not that same order also gives them the
5 authority to pay the attorney in the marital
6 dissolution action?

7 A. I do, and I think it did.

8 Q. Were there any -- excuse me.

9 Do you have an opinion as to whether
10 or not authority of the trustee to retain the
11 attorney, whether or not that authority ended once
12 the order was issued as to the marital dissolution
13 status only?

14 A. I do have an opinion on that.

15 Q. And what opinion is that?

16 A. My authority is that the -- my
17 opinion, I'm sorry, is that the authority did not
18 end, as I've already testified to, that they had
19 the duty to defend actions against the trust, and
20 to the extent that the marital action resulted in,
21 at various points, additional claims for child
22 support, which would have been catastrophic to
23 this trust, for legal fees of Mr. Dorn's to be
24 charged against this trust, which would have had
25 the same result, and for the litigation over the

1 have reviewed the accountings that have been filed
2 with the Horry County Probate Court. Is that
3 correct?

4 A. That is correct.

5 Q. In your review of those accountings,
6 did you discover any expenditures that gave you
7 pause for concern?

8 A. No. I looked at the legal fees. I
9 looked at the accounting fees. I looked at the
10 other normal categories of income and expense of
11 the trust. You're here fighting today about the
12 legal fees. That's, by far, the biggest item, and
13 I've already given an opinion on that.

14 Q. As far as any additional opinions that
15 you may have given during the cross-examination,
16 have they all been within a reasonable degree of
17 professional certainty?

18 A. Yes, they have.

19 Q. Thank you.

20 MS. MOORE: That's all I have.

21 THE COURT: Mr. Kachmarsky?

22 CROSS-EXAMINATION

23 BY MR. KACHMARSKY:

24 Q. Previously, you testified that if the
25 trust were to pay child support, that it may

1 disqualify the -- or make the assets of the trust
2 disqualify Abbie from Medicaid eligibility. Is
3 that correct?

4 A. Correct.

5 Q. If I were to tell you that -- what
6 would be your opinion if the trust were to pay GAL
7 fees for the minor remainder beneficiaries, or
8 contingent beneficiaries as they've been referred
9 to, and you said they weren't even that, how would
10 that -- what would your opinion be about Medicaid
11 eligibility if that happened?

12 A. That's a slightly different animal. I
13 think this court has ruled, and I think logically
14 it would make sense, that if GAL fees are part of
15 the litigation, in other words, trust law would
16 require that a guardian ad litem for the kids be
17 involved in the types of pleadings that have been
18 filed, then I think that is a different animal.

19 Q. Well, what if the child support was
20 paid pursuant to a court order?

21 A. I think that's different from GAL
22 fees.

23 Q. I asked you earlier, when I first got
24 up, if you thought that special needs trusts were
25 generally subject to state law, trust duties of

1 A. I think the premise of your question
2 is false. Certainly, a trustee can never act in
3 reckless disregard of something to which they owe
4 a duty, but for there to have been any form of
5 breach of fiduciary duty, there must have been a
6 duty owed before there's a duty breached, and so I
7 don't understand or agree with the premise of the
8 question.

9 Q. Well, how about in reckless disregard
10 of the income beneficiary?

11 A. It would not be proper for trustees to
12 act in reckless disregard of the interests of the
13 income beneficiary.

14 Q. So how is the spending of the entire
15 trust principle for the benefit of the income
16 beneficiary?

17 A. I'm sorry. Ask again.

18 Q. How is the spending of the entire
19 trust principle, how is that in the best interest
20 of the income beneficiary, Abbie in this case?

21 A. It's there for her benefit, and if, in
22 the discretion of the trustees, using all of the
23 trust assets for her benefit is proper, then they
24 are authorized to do so.

25 Q. The benefit that she received is to

1 loyalty, and I specifically said impartiality,
2 prudent administration and prudent investment, and
3 you said generally you thought they were?

4 A. Yes.

5 Q. In spite of those duties, it's your
6 opinion that the entire corpus of the trust can be
7 spent, and that's impartial to the remainder
8 beneficiaries?

9 A. I've already testified as to the
10 distinction. When I responded yes, or
11 affirmatively, to your first question, it was as
12 to the general nature of the administration of
13 trusts. You don't disregard any element of
14 duties, but for a d4A trust, the sole beneficiary,
15 as I've said so many times and as others have
16 testified, is Abbie Dorn, and that becomes the
17 predominant analysis. It's not impartiality,
18 which is then translated into and therefore we're
19 going to protect and preserve a corpus for the
20 benefit of the minor children. I think that's an
21 extrapolation that's not proper.

22 Q. Do you think a trustee of a special
23 needs trust has the right to act in a reckless
24 disregard of the remainder beneficiaries'
25 interests?

1 have visitation I think four or five days a year,
2 and the cost is a million dollars.

3 MR. DAVIS: Your Honor, I object. I
4 don't think there's any foundation for that. I
5 don't think it's been established. I don't know
6 the times. I mean, that's kind of an unfair
7 question. I don't think a foundation has been
8 properly laid, Your Honor.

9 MR. KACHMARSKY: Is that not the facts
10 submitted into evidence already? I think it is.

11 THE COURT: I don't know,
12 Mr. Kachmarsky. I don't think the facts have
13 necessarily shown that all those funds were used
14 for that. I think your question was limited to
15 visitation.

16 BY MR. KACHMARSKY:

17 Q. I just have one more question. Would
18 your opinion change -- if the income beneficiary
19 was in a vegetative state, lacked consciousness,
20 and had no ability to appreciate visitation with
21 her children, how would that change your opinion?

22 A. The analysis, I believe, that should
23 be given is what do the trustees believe, in the
24 reasonable exercise of their duties, to be for the
25 benefit of the beneficiary, and if they reasonably

1 believe that it is for her benefit in this case,
2 then they are authorized to so expend the funds.

3 Q. Hypothetically, what if it were
4 contrary to all of the evidence available to them?

5 A. Hypothetically, if it were contrary to
6 all of the evidence, then they are authorized to
7 proceed in the expenditure if it's within their
8 reasonable judgment that it's in her best
9 interest, and it would probably, using your
10 hypothetical, be surcharged to them later if it
11 was proved that there was no benefit and, more
12 importantly, that they were unreasonable in that
13 exercise of discretion. As I testified earlier,
14 it's not the outcome that is the important thing;
15 it's did they have a reasonable basis to believe
16 it was in her best interest at the time it was
17 expended.

18 MR. KACHMARSKY: Thank you.

19 THE COURT: Mr. Slotchiver?

20 CROSS-EXAMINATION

21 BY MR. DAN SLOTCHIVER:

22 Q. Mr. Wingate, we're going to be a few
23 minutes. Do you need a quick break, or are you
24 ready to roll?

25 A. I'm ready. Let's go. You said you

1 A. Hypothetical, let's assume.

2 Q. And that person happens to be
3 appointed as a trustee, and what's reasonable to
4 that person would not be reasonable to anybody
5 else you'd ever meet in the whole world, but it's
6 reasonable to that person. Follow me?

7 A. I do.

8 Q. Is the standard that as long as it's
9 reasonable to that person, it's okay, or is it
10 that it has to be reasonable to a reasonable
11 person, reasonable people based on you and I,
12 considering that we're reasonable people?

13 A. In your hypothetical, it's to that
14 broader standard.

15 Q. So when you refer to the trustees in
16 this case having to determine if it's reasonable,
17 you're not referring to the Cohens, per se, as I
18 understand it, you're referring to the -- my
19 understanding would be that the Cohens, in their
20 actions as trustees, must act in accordance with
21 the reasonable man standard -- reasonable person
22 standard, excuse me, based on the restatement --
23 in exercising their duties?

24 A. I think I agree with you.

25 Q. I was just trying to clarify, because

1 need to get to Charleston.

2 Q. I got a little while to go. I'm not
3 driving anyhow.

4 I've got a bunch of things to cover
5 with you, but let's start with this. I heard you
6 use the term layman trustee and prudent man. Do
7 you remember that?

8 A. I do.

9 Q. And then I heard you speak to the fact
10 that the trustees had to be reasonable in what
11 they do?

12 A. Yes.

13 Q. Is it -- would you agree with me that
14 it's not -- let me ask you not even --rephrase
15 it.

16 Is it what a reasonable person would
17 do, a prudent person would do, or is it the person
18 that happens to be appointed as trustee, what they
19 do?

20 A. Ask the question again. I don't
21 follow your distinction.

22 Q. I'd be happy to. Let's assume,
23 hypothetically, that you have an unreasonable
24 person, a person who just doesn't follow logic in
25 anything they do, that type of a person.

1 it was just word play, but I wanted to make sure
2 we were on the same page, but that was my
3 understanding, so thank you.

4 Now, I believe you testified that
5 conduct is relevant. Is that correct?

6 A. I don't remember what phrase I used.

7 Q. Let's talk about prudence. Let's talk
8 about prudence. We talked about prudence, and I
9 think one of the words you talked about earlier
10 was process. Is it required in the process -- in
11 exercising prudence, is it required that you
12 always have a process?

13 A. No.

14 Q. What would be an example of something
15 that would not require a process? When you're
16 acting in your capacity as a trustee in making a
17 decision which is going to spend your ward's
18 money, under what scenario would you not have to
19 have a process?

20 A. Where you have a duty that's black and
21 white, that's clear.

22 Q. So what's an example of a duty that
23 would be black and white and clear?

24 A. Well, the one that's relevant today is
25 the duty to defend an action against the trust

1 under the section of the South Carolina Trust Code
2 that I cited earlier, which is 7-811.

3 Q. So under your hypothetical, you have a
4 duty to defend, and a duty to defend is an
5 absolute duty, and you do not have to have any
6 process. Is that your testimony?

7 A. Again, the question is so broad, I
8 don't know how to answer. I don't see any flaw in
9 just the simple statement. The question is the
10 application to the facts of the case.

11 Q. Let's talk about this case. Let's
12 talk about what you referenced just now as an
13 example, the duty to defend. So in your capacity
14 as a trustee, the trust is sued. Is it your
15 testimony, then, that there's no process, there's
16 no prudence that has to be undertaken in deciding
17 to defend it, you have to go defend?

18 A. I've testified and I believe in my
19 opinion they are duty-bound to defend

20 Q. Now, in the real world, would you
21 agree with me that reasonable people weigh risk
22 versus reward in making decisions on a regular
23 basis?

24 A. I don't disagree with that statement.

25 Q. Let's assume the lawsuit that is

1 this particular case, defending the action, which
2 is why I was giving you an example to understand
3 more clearly how that works. But what I'm hearing
4 now is your response, sir, is a little bit
5 different than that, there would be a process that
6 would have to be undertaken?

7 A. Your question assumes that a defense
8 to the end, at whatever the end is, at all costs
9 is incumbent on the trustees, and that's not what
10 I said in my testimony.

11 Q. So walk me through. How would you
12 change this scenario? So you've got a duty to
13 defend, you don't have to exercise a process, but
14 my scenario didn't -- wasn't clear enough. So
15 let's say you hire a lawyer to defend, and the
16 lawyer comes to you and says: Hey, Ken, it's
17 going to cost you \$2 million to defend a
18 \$1 million case. Is that something that you have
19 a duty to seek out and to understand and to know,
20 or do you just get to say: No, I've made my
21 commitment, I'm in, I get to defend because I'm
22 authorized, and I'm actually bound to do it?

23 A. Seeking advice of counsel is -- you
24 said what's part of the process. That's a fair
25 part of the process, a normal part of the process,

1 brought is seeking \$1 million, and it's
2 conceivable that they can win, but the person
3 bringing it says: Hey, it's going to cost you --
4 it's going to cost you \$2 million to defend this
5 case. It is cheaper for you to actually pay it
6 than to defend it. I know you don't like to hear
7 it, but it's cheaper to pay the entire claim than
8 to defend the claim.

9 Now, in that scenario, is it my
10 understanding, based on your expert opinion, that
11 there's a duty to defend and to spend the
12 \$2 million to defend a \$1 million claim?

13 A. That's not what I said. The duty --

14 Q. How would the application of what we
15 just talked about apply to that scenario?

16 A. The duty to defend is in addition to
17 the burden on the trustees, the duty of
18 reasonableness, care, and skill.

19 Q. And the reason I'm asking that is
20 because I thought a few minutes ago, you told me
21 that that -- you would not have to exercise
22 prudence, that you would not have to have a
23 process, and I said under what scenario would you
24 not have to exercise prudence or have a process,
25 and you said the duty to defend, and you said in

1 a reasonable part of the process.

2 Q. So the process does apply?

3 A. Sure. There's the duty to defend, but
4 with it go certain additional steps or actions.

5 Q. So there's still a process that goes
6 with the duty to defend?

7 A. Yes.

8 Q. Would it be fair to say, perhaps, that
9 there's a duty to consider defending based on the
10 process, the process being let me see what's going
11 on, let me talk to an attorney, let me make a
12 reasonable investigation and understand this, and
13 then if I have to defend, I can defend, in fact,
14 I've got a duty to defend, but I do have to
15 exercise a process. Is that fair?

16 A. I would agree with those things since
17 a duty to exercise reasonable care, skill, and
18 caution, as I've already testified, is part of the
19 matrix of decision-making for a fiduciary.

20 Q. Mr. Wingate, would you agree with me
21 that when someone comes to you for advice, that
22 you can give them advice to the best of your
23 ability -- and let me put it in a particular
24 context.

25 Someone comes to you and says:

1 Mr. Wingate, I don't -- I'm going to get sued over
 2 this contract. Let's say you're a contract
 3 lawyer. I'm going to be sued over this contract
 4 if it's not done right. Will you do it? And you
 5 could do it to the best of your ability, but you
 6 still don't know for sure that it's perfect, do
 7 you?
 8 A. No.
 9 Q. And the ultimate place you can go
 10 to --
 11 A. Maybe better than average.
 12 Q. You're familiar with a -- I'm sure it
 13 is.
 14 You're familiar with a declaratory
 15 action that can be filed with the court. You're
 16 familiar with that process, aren't you?
 17 A. Yes, I am.
 18 Q. Have you ever been involved in one
 19 before?
 20 A. Yes, I have.
 21 Q. So you're familiar that if you want to
 22 be sure, safe, we as lawyers, we can recommend
 23 things to people, we can tell them what we think
 24 will happen, but if you want to be safe, you go to
 25 the court and let the court tell us?

1 A. That can be done.
 2 Q. Is that something that likewise would
 3 be prudent to consider in the right set of
 4 circumstances?
 5 A. Possibly so, sure.
 6 Q. Have you ever had an opportunity to
 7 read an email that was sent to this court in this
 8 case from Mr. Davis?
 9 A. Yes, I have.
 10 Q. And looking at the email as it is
 11 written, would you agree with me -- and I can get
 12 you a copy if you'd like to see it.
 13 A. I'd love to see it.
 14 Q. Let me show you the email, if you want
 15 to familiarize yourself with it.
 16 A. Yeah, if you don't mind. Let me
 17 just --
 18 Q. Take your time, and then I'll ask you
 19 a question.
 20 A. Thank you. I've refreshed my memory.
 21 Q. And my recollection, there was a stack
 22 of documents that you had at your deposition, and
 23 I remember talking to you there, and one thing I
 24 remember that you had not reviewed was any of the
 25 deposition transcripts, any of the depositions

1 whatsoever of either Dr. Cohen or Susan Cohen.
 2 A. I don't believe that's right. I think
 3 I had said at my deposition that I had reviewed
 4 excerpts of their transcripts, because among other
 5 things, there are some excerpts that are attached
 6 to some of the pleadings in this case that go to
 7 the questions of the amounts of fees, and I don't
 8 know if those were transcripts from a court
 9 hearing or from a depo, but they were attached to
 10 some of the pleadings. What I told you, I think,
 11 is that I have not read the entire transcript of
 12 either Dr. Cohen or Mrs. Cohen.
 13 Q. Fair enough. Do you recall maybe
 14 saying something different at your deposition?
 15 A. No, I don't. I'd love to see it if
 16 you've got it.
 17 Q. Sure. Do you have your deposition in
 18 front of you still?
 19 A. I do.
 20 Q. Let's look at Page 52.
 21 A. 52?
 22 Q. Yes, sir.
 23 A. Where?
 24 Q. Well, I guess we can start at Line 10.
 25 Just for clarity, while we're here,

1 you also testified you hadn't spoken to them at
 2 that point, correct?
 3 A. That is correct.
 4 Q. And on Line 10, I asked you: Have you
 5 reviewed the trustees' sworn testimony? And you
 6 said: Meaning? I said: Have you reviewed their
 7 depositions? And you said: Transcripts or
 8 hearings? And I said: Sure, deposition
 9 transcripts. And your response, as I understand
 10 it, was: I have not reviewed -- unless it's right
 11 here, I have not reviewed any transcripts of their
 12 depositions, and I don't recall anything of that
 13 nature.
 14 Do you recall that?
 15 A. Give me a second to look at the --
 16 what you and I were talking about. You asked me
 17 have I spoken to the trustees, and I said no, I
 18 have not.
 19 Q. Well, first, let me ask you: The
 20 language I just read, would you agree that is
 21 exactly verbatim from the deposition?
 22 A. No. You changed a word.
 23 Q. Which word did I change?
 24 A. In Line 14, you read: Transcripts or
 25 hearings, and it says: Transcripts of hearings.

1 Just a second ago, you said or.
 2 Q. I lost my page number. Which page was
 3 I on?
 4 A. Page 52, Line 14.
 5 Q. Thank you. Transcripts of hearings.
 6 That's what I said, correct?
 7 A. No. You said: Transcripts or
 8 hearings.
 9 Q. Well, I apologize if I misspoke. I
 10 didn't think I did, but if I did, I apologize.
 11 Other than that word, is the rest of
 12 it correct, just the language that I read?
 13 A. Yes. You asked the question: Have
 14 you reviewed their depositions? My answer was:
 15 Transcripts of hearings? And your question was:
 16 Sure, deposition transcripts. And I said: I have
 17 not reviewed -- unless it's right here, meaning
 18 the stuff that was on the conference table in
 19 front of me from my file, I have not reviewed any
 20 transcripts of their depositions, and I don't
 21 recall anything of that nature.
 22 Q. Then I believe you testified that you
 23 did have some maybe ten pages of what may be
 24 testimony?
 25 A. That's right, yeah. It was attached

1 to some of those pleadings.
 2 Q. Mr. Wingate, let me ask you this: At
 3 the time that we met, you gave essentially the
 4 same opinions that you've given today?
 5 A. Yes.
 6 Q. And that was without ever having
 7 spoken to the Cohens?
 8 A. Correct.
 9 Q. And without ever having read their
 10 depositions, other than maybe some little portions
 11 of them?
 12 A. Excerpts, that's correct.
 13 Q. Now, the email that was submitted to
 14 the court from Mr. Davis represented that -- and
 15 I'm going to summarize this, as opposed to reading
 16 the whole thing, if that's okay, represented:
 17 I've got some concerns -- there's some concerns --
 18 MS. MOORE: Dan, which exhibit is
 19 that?
 20 MR. DAN SLOTCHIVER: This is
 21 Exhibit 2.
 22 MS. MOORE: Thanks.
 23 BY MR. DAN SLOTCHIVER:
 24 Q. My clients, I represent the Cohens.
 25 They've asked me to contact you regarding some

1 concerns about the abilities to pay attorneys'
 2 fees.
 3 Is that the kind of stuff that a
 4 prudent person would do, seek advice if they had
 5 concerns?
 6 A. That the trustee would do, to seek
 7 advice of an attorney?
 8 Q. Is it consistent that a prudent person
 9 would say: I'll go to the counsel and say I've
 10 got concerns, would you please contact the court
 11 and find out what I can do?
 12 A. It's certainly normal and appropriate
 13 to contact an attorney to seek counsel. I don't
 14 know that that trustee, the client in your
 15 hypothetical, would be knowledgeable enough or
 16 have any basis to say to the lawyer: Hey, I want
 17 you to go talk to the court.
 18 Q. Let me represent to you, sir, that in
 19 the deposition of Paul Cohen, he actually
 20 confirmed: Yes, I never saw the email and never
 21 looked at it, but yes, I did do that. I did go to
 22 him and ask him to do it.
 23 A. Okay.
 24 Q. Would that be prudent, in your
 25 opinion? Is that an example of being prudent:

1 I've got some issues, take it to the court?
 2 A. It is not imprudent.
 3 Q. Now, once you recognize you have
 4 issues and once you've gone to counsel and asked
 5 counsel to contact the court, would it be prudent
 6 in your opinion to not follow through, or would it
 7 be prudent to follow through?
 8 A. Since I don't know what communications
 9 came back to the client from the attorney --
 10 Q. Doesn't matter.
 11 A. -- I have no idea.
 12 Q. Doesn't matter. Doesn't matter. If
 13 you have enough concern to go through the process,
 14 to raise the issue, and you talked earlier, I
 15 believe, under examination that sometimes you got
 16 to revisit issues, you got to depend on a prudent
 17 time to do it, if you raise the issue, wouldn't it
 18 be prudent to follow through with the issue?
 19 A. I will not agree with you that the
 20 failure to follow through on that is indicative of
 21 any failure or breach. Clients make lots of
 22 recommendations, and whether, in the carrying out
 23 of that, it's followed through to some degree of
 24 completion, that doesn't happen often for a host
 25 of reasons.

1 Q. How do you possibly know that?
 2 A. How could I possibly know what?
 3 Q. In the context that you're discussing
 4 as a general rule, giving a global answer that
 5 clients raise concerns and then oftentimes don't
 6 follow through with those concerns. Do you have
 7 experience to testify --
 8 A. That's what I do for a living,
 9 absolutely. I advise trustees day in and day out.
 10 Q. So would you advise somebody that if
 11 they have a concern that they've recognized, that
 12 it would be prudent just not to follow through
 13 with that concern?
 14 A. That's not what I said.
 15 Q. I'm asking would you ever give
 16 somebody that advice?
 17 A. No. That's not what I said.
 18 Q. Trustee's duty in a special needs
 19 trust, would it be permissible for a trustee to
 20 waste assets?
 21 A. You've use the word waste as --
 22 Q. I'm using the word waste on purpose.
 23 A. -- a legal term, and so no, it
 24 would -- how did you phrase it, would it be
 25 proper? Is that what the question was?

1 Q. Is a trustee authorized to waste
 2 assets in a trust, so long as it does not have any
 3 effect on the ward?
 4 A. I don't understand the hypothetical
 5 because it --
 6 Q. Well, I think we can agree in a
 7 special needs trust, the ward benefits from the
 8 money if the trust can give the money for the sole
 9 benefit of the ward, correct?
 10 A. We agree on that, yes.
 11 Q. And once you get to that, let's assume
 12 that there's so much money that realistically, the
 13 ward's never going to need it. Let's take that as
 14 a hypothetical. That being the case, would it be
 15 okay and acceptable and authorized for a trustee
 16 to waste assets?
 17 A. No.
 18 Q. Can you refer me to the sections --
 19 and if you can point them out -- which you state
 20 establish the authority for the trustees in this
 21 case to act and pay attorneys' fees?
 22 A. Of the court orders or of the trust
 23 agreement?
 24 Q. Well, let's start with either one you
 25 want. We'll go through them all.

1 A. This one's on top.
 2 Q. Which one are you looking at, sir?
 3 A. Bear with me one second. Let me make
 4 sure this is the one. The California order
 5 regarding the conservatorship.
 6 Q. What exhibit number is that one?
 7 A. This is 101. I'm trying to decide if
 8 this is the one.
 9 Q. That's the one I didn't bring up with
 10 me.
 11 A. Yes, this is the right one, 101. Do
 12 you want to take a look at it?
 13 Q. Well, I've got a copy.
 14 A. It's the one that refers to the
 15 attachments.
 16 Q. Read me the page that you're referring
 17 to that gives that authority.
 18 A. At the bottom of it, it says Page 1,
 19 but I think that means Page 1 of the attachment.
 20 It's the fourth page of Exhibit 101, and it's
 21 headed: Order Appointing Probate Conservator.
 22 Q. And where within this document does it
 23 authorize the payment of attorneys' fees?
 24 A. On the page that I'm referring to, it
 25 says that there are two attachments, Attachment 23

1 and Attachment 25, so if you go to those two
 2 attachments, Attachment 23 --
 3 Q. I see that Attachment 23 is dealing
 4 with conservators, not trustees.
 5 A. Correct.
 6 Q. Where is it that the trustee is
 7 authorized to spend the money? Is it in this
 8 particular document?
 9 A. To the extent that the Cohens were
 10 appointed as conservators in California, and they
 11 have the authority to do these things, and we've
 12 already been through, you and I, the litany of
 13 what it says that they're authorized to do.
 14 Q. I want to go through it again and make
 15 sure I have a good understanding.
 16 A. Let me just read it. The conservators
 17 are granted the independent power under Probate
 18 Code Section 2591(a) to settle the pending
 19 personal injury claim brought on behalf of the
 20 proposed conservatee and to compromise or settle
 21 any dissolution action between the proposed
 22 conservatee and her husband, Daniel Bernard Dorn.
 23 Q. Do you agree with me, Mr. Wingate,
 24 there's a distinction between a conservator and a
 25 trustee and a guardian?

1 A. Yes.

2 Q. And is it your opinion that -- do you
3 understand that in this particular case that the
4 monies that were used to pay the fees that we're
5 talking about in California were paid by the
6 trustees and not by the conservators?

7 A. They were paid out of the trust, yes.

8 Q. And who has the authority to pay money
9 out of a trust?

10 A. Trustees.

11 Q. So how does the language here dealing
12 with conservators apply to my question to you,
13 which was: Can you tell me on what authority
14 you're relying on that the trustees were
15 authorized to spend the money and pay all this
16 money in attorneys' fees?

17 A. My understanding is because of the
18 fact that Abbie is qualified for Medicaid, or was
19 qualified for Medicaid, that the only resources
20 that she had were the two remaining portions of
21 the settlement, the \$3 million that ultimately
22 went into the annuity and then the \$910,000 that
23 went into this trust, and that the court, in
24 authorizing the Cohens, who had two hats,
25 conservators and trustees, authorizing them to go

1 settle the pending personal injury claim,
2 et cetera.

3 Q. But Mr. Wingate, you're reading under
4 the section on conservators. I'm asking you to
5 show me the language that says that the trustees
6 have the authority. If you can just refer me to
7 that language, I'd appreciate it.

8 A. The word trustee does not appear on
9 this document that I'm looking at.

10 Q. It's not on the document you're
11 looking at.

12 A. No, it's not. As conservators -- I'll
13 answer the question.

14 Q. I'm not asking about conservators.

15 A. I'm answering the question. I'm
16 finishing the answer that I just gave, and that is
17 that the conservators have, according to the
18 California court order, the power to settle the
19 pending personal injury claim.

20 Q. I'm asking you, once again, to show me
21 any authority that you're relying on, any language
22 you're relying on in the documents, that gives the
23 trustees the power to pay the monies without court
24 approval for the attorneys' fees in California?

25 A. The order of transfer of jurisdiction,

1 which is Plaintiff's Exhibit 87.

2 Q. Well, let's first talk about this
3 order.

4 A. This one meaning the transfer --

5 Q. Yes, sir.

6 A. -- or this one meaning the California?

7 Q. The order of transfer of jurisdiction.

8 A. Okay.

9 Q. Would you agree with me that this
10 matter came before the court -- or that any matter
11 that goes before the court is based on a pleading,
12 pleading, motion, in some sort?

13 A. Some form of petition, complaint, or
14 application would be a term used in probate court
15 matters.

16 Q. Fair enough. And that when you make a
17 pleading, encompassing everything you've just
18 discussed, that you plead the subject of what
19 you're asking for? For example here, the pleading
20 says: Order of transfer of jurisdiction. I'm
21 assuming here the pleading would be a pleading to
22 effectuate the transfer of jurisdiction. If this
23 was for an order transferring jurisdiction, it
24 would say that. If this was for an order granting
25 the right to do discovery in some type of lawsuit,

1 it would say motion or pleading for discovery.

2 But here it says order of transfer of
3 jurisdiction. Would you agree with me, based on
4 that, that the pleading that had to come along
5 with this would have been a pleading requesting
6 the right to transfer jurisdiction?

7 A. I apologize. I don't follow your
8 question.

9 Q. What gives rise -- when you go to
10 court -- you've gone to court, and you've filed
11 pleadings, I'm assuming, many, many times?

12 A. Many times.

13 Q. Probate court, circuit court, wherever
14 you are?

15 A. Yes.

16 Q. When you go to court, and you want --
17 let's say someone comes to you in your capacity
18 representing a trustee, and have you ever,
19 representing a trustee, found it to be necessary
20 or found yourself involved in petitioning the
21 court for approval to make expenditures?

22 A. Yes.

23 Q. And when you petition the court for
24 approval to make expenditures, what's the heading
25 that you would put on the case?

1 A. It might be using the phrase
2 expenditures in some way, might be for declaratory
3 judgment. You or someone asked me about that
4 earlier. It could be any number of things.
5 There's not -- we have code pleading -- notice
6 pleading, I'm sorry. We don't have specific,
7 required language in order to hit the magic
8 button.

9 Q. But is it something that gives the
10 court an idea of what you're trying to accomplish,
11 what the purpose of this particular legal action
12 is for?

13 A. Absolutely, and in this case, the
14 caption that's on the order of transfer of
15 jurisdiction says: In regarding the
16 conservatorship of the estate, the guardianship of
17 the person, and the special needs trust of Abbie
18 Dorn. It's putting three things before the court.

19 Q. But that's the caption. Wouldn't that
20 be an equivalent of saying John Smith versus James
21 Smith, and you never say what the case is for, you
22 don't say civil complaint, you don't say anything
23 else, you just say John versus James, but here --

24 A. If that's all you did.

25 MR. DAVIS: Your Honor, I object. I

1 it's for?

2 A. It says in the first paragraph that --

3 Q. No, sir, on the heading, not the first
4 paragraph. What does the heading say it's for?

5 A. The heading says: Order of transfer
6 of jurisdiction.

7 Q. Thank you. Now would you show me the
8 language you're relying on within the document
9 that gives authority?

10 A. Thank you. First paragraph: This
11 matter came for hearing, and it gives a date.

12 Q. This matter. What matter are we
13 talking about?

14 A. The matter that I'll get to at the end
15 of this same sentence, if you would allow me.
16 This matter came for hearing, and then it gives a
17 date, and it says before the judge, says who filed
18 the petition, and then it says: Requesting a
19 transfer of jurisdiction of, one, the
20 conservatorship of the estate and, two, the
21 conservatorship of the person from Superior Court
22 of California, three, and also requesting an order
23 accepting jurisdiction over the Abbie Dorn Special
24 Needs Trust that was previously approved and
25 established by a California court.

1 want to go back to the reason why this expert was
2 qualified, for trust administration. I was
3 objected to earlier. He's not qualified to
4 provide an expert opinion on the caption of a
5 legal document. He's here to talk about trusts,
6 d4A trusts, trust administration. That's what
7 he's qualified for, Your Honor.

8 THE COURT: I'm going to let
9 Mr. Slotchiver go forward.

10 BY MR. DAN SLOTCHIVER:

11 Q. So you would agree that the order
12 here -- well, let's go further down the process.
13 At the end -- at the end of a court matter,
14 whatever that matter might be, whether it's for
15 divorce, whether it's for petition for a minor
16 settlement, whatever it is, the courts issue
17 orders?

18 A. Sure.

19 Q. And generally, when they issue an
20 order, the order tells you what the order's for?

21 A. Yes.

22 Q. And what is this order, 87? What is
23 it for?

24 A. It says in the first --

25 Q. And I'm going ask you what does it say

1 Q. Thank you. As I understand it, that
2 first paragraph is the background of what came
3 before the court?

4 A. Yes.

5 Q. Can you tell me where in that
6 paragraph there's any reference to authority to
7 pay fees, period?

8 A. The word fees does not appear in the
9 first paragraph.

10 Q. Or the authority to do anything other
11 than transfer the jurisdiction of these documents?

12 A. I certainly didn't write the order.
13 That one sentence is all that's in that first
14 paragraph.

15 Q. Thank you, sir. If you can point me,
16 then, please, to the language that gives that
17 authority.

18 A. On Page 8 of the order at Paragraph 9,
19 it says, and I'll just read: That the sums and
20 amounts referred to hereinabove and previously
21 paid and disbursed and those to be paid at the
22 conclusion of these matters to the attorney for
23 Petitioners Cohen are approved and constitute a
24 proper disbursement from the estate and funds of
25 the Abbie Dorn Special Needs Trust.

1 Q. What do you think the reference to
2 these matters is referring to, in light of the
3 fact that this is an action before the court based
4 on Paragraph 1 that we've talked about, it says:
5 The action before the court is the following, and
6 then later on at Page 8, it refers to these
7 matters? Would you agree that these matters is
8 referring back to those matters addressed in
9 Paragraph 1?

10 A. Broadly speaking, yes, and it
11 anticipates that there will be ongoing matters.
12 It says: And to the conclusion of these matters.

13 Q. Ongoing matters related to the trust
14 itself for as long as it exists or ongoing matters
15 related to the order of transfer of jurisdiction?

16 A. I read it broadly, but ultimately,
17 it's in the mind of the judge who signed the
18 order, I suppose.

19 Q. If there's a question about the order,
20 what is the prudent thing to do?

21 A. You can seek advice of counsel.

22 Q. But counsel's advice is only advice.
23 It's not the answer, is it?

24 A. There are a lot of things you can do.

25 Q. You can file a declaratory action,

1 Q. What basis do you have, having not
2 spoken to the trustees, having not read their
3 depositions, and knowing that this is in 2008, to
4 quantify that explanation? How do you
5 substantiate what you said that this court knows?
6 Is there any evidence to support that this court
7 knew at this juncture and could have contemplated
8 the type of actions that had not even yet come
9 into existence?

10 A. As I testified earlier today, one of
11 the things that I reviewed in this record is,
12 among other things, the affidavit of Attorney
13 Meyer.

14 Q. Was that in existence at the time
15 that -- or was even Attorney Meyer hired at the
16 time that this order was signed?

17 A. I do not know.

18 Q. Would it be important for you to know
19 that? Would that have an effect on your opinion?

20 A. No, it would not, because the
21 paragraph --

22 Q. If it would not have an effect, then
23 why would you reference it?

24 A. -- I'm reading says: And to the
25 conclusion.

1 can't you?

2 A. That would be one thing you absolutely
3 could do.

4 Q. You could go back to the court that
5 wrote it and say: Judge, what does this mean?

6 A. Sure.

7 Q. Would you agree with me that the
8 exhibit that we referred to earlier, the email to
9 the judge, seemed to indicate that we have some
10 concerns?

11 A. I'll let the wording of the email
12 speak for itself. It's a lawyer raising a
13 question.

14 Q. Would you agree with me that the
15 language you're reviewing, even in the light that
16 you're reviewing it and attesting to it, is, we'll
17 call it, inartfully drawn as it leads to some
18 multiple interpretations?

19 A. Maybe that. I mean, that's one
20 possibility. Another possibility is that at this
21 date, which I think it's dated 2008, many of the
22 wrinkles, additional claims to be filed by
23 Mr. Dorn in the case, had not yet been filed, but
24 the court anticipates that there will be more
25 action before the conclusion of the matter.

1 MR. DAVIS: Your Honor, I object. He
2 needs an opportunity to --

3 MR. DAN SLOTCHIVER: I apologize.

4 MR. DAVIS: He's constantly cutting
5 him off, Your Honor.

6 THE COURT: Thank you.

7 BY MR. DAN SLOTCHIVER:

8 Q. I'm sorry. No intention.

9 A. No offense taken.

10 Q. And if you wanted to finish. I asked
11 you if she hadn't even come into existence, she
12 hadn't even been hired, then would that be a
13 consideration, would it affect your opinion that
14 you just rendered?

15 A. And I said no, it would not affect my
16 opinion, because that same Paragraph 9 has that
17 phrase: And to the conclusion.

18 Q. So then it's your testimony that the
19 order accepting jurisdiction of these documents
20 that was entered into well before the divorce
21 action became contentious authorized --

22 MR. DAVIS: Your Honor, I object.
23 He's offered testimony into the record. I don't
24 think there it says this was done before this --

25 THE COURT: It's on cross, Mr. Davis.

1 I think he can do a little leading.
 2 BY MR. DAN SLOTCHIVER:
 3 Q. I know you haven't seen every
 4 document, and I'm not trying to be unfair. I'm
 5 trying to ask you based on the documents you see.
 6 You've been provided some and not all of the
 7 documents, correct?
 8 A. Yes.
 9 Q. So it's not a trick question, but I'm
 10 trying to understand. Is it your opinion that
 11 this document and the authority that you say was
 12 given in this document at the time the order was
 13 transferred provided authority for a trustee to
 14 spend money, whatever monies they thought were
 15 reasonable and necessary in an action that had not
 16 yet even come to fruition for matters which had
 17 not yet even been addressed?
 18 A. Not exclusively that one thing, but
 19 that being one of several things.
 20 Q. Well, my understanding is that orders
 21 don't work in conjunction with orders. In other
 22 words, we can't take a fourth of each order and
 23 put them together and have an order. You need to
 24 either have authority or you don't. So let's rely
 25 on this one. This document, in and of itself --

1 this is the only document you can look at -- does
 2 it give that authority?
 3 MR. DAVIS: Your Honor, I object.
 4 Mr. Slotchiver's making statements that are not
 5 correct. They're not accurate with regard to the
 6 facts of this case. He's stating facts that are
 7 just simply not true, not accurate. He mentioned
 8 that this order was done prior to any dissolution
 9 action had ever been arranged or whatever. This
 10 was filed in, what, 2008. I believe it's been
 11 established that the dissolution act was also in
 12 2008 as well, mentioned in the document, as we've
 13 established. So he said it was before, so I don't
 14 know if that's a fair characterization for our
 15 witness.
 16 THE COURT: Mr. Slotchiver?
 17 MR. DAN SLOTCHIVER: I stand by what I
 18 asked and what I stated, Your Honor.
 19 THE COURT: Overruled.
 20 BY MR. DAN SLOTCHIVER
 21 Q. This document alone, without any other
 22 documents, if this was the only one that had
 23 ever -- that you had ever seen related to this
 24 matter, would your opinion still be or is it still
 25 that this document, in and of itself, grants the

1 authority for them to spend all of the money they
 2 spent in the California action?
 3 A. Possibly so, but --
 4 Q. I'm asking for your opinion, though.
 5 I think it has to be -- for purpose of an opinion,
 6 I'm going to ask you to say yes or no.
 7 A. Ask me again, then, please.
 8 Q. Is it your testimony that in your
 9 professional opinion, the language you referred to
 10 in this document marked 87, this document,
 11 standing on itself, without any other assistance
 12 from any other document, but this document, gave
 13 you the authority -- gave the Cohens the authority
 14 to spend money in California in litigating and
 15 prosecuting and defending actions related to the
 16 divorce?
 17 A. Yes.
 18 Q. Let's move along. What other
 19 documents do you believe granted authority to the
 20 Cohens to spend the money in California?
 21 A. I think I've testified.
 22 Q. I'm going to ask you again, because I
 23 want to go through them with you, and I want to
 24 make sure I understand them. And I apologize if
 25 it's redundant, but I want to see them and

1 understand the language and go through it. So if
 2 you can point me to that document. I've got a
 3 bunch in front of me. I bet I have the one you're
 4 looking at, so if you can tell me what you're
 5 looking at.
 6 A. The three principle documents that
 7 I've relied upon on my opinion are that order of
 8 transfer of jurisdiction that we just talked
 9 about, that California order regarding the
 10 conservatorship, the Exhibit 101 that we talked
 11 about a little while ago.
 12 Q. Well, actually, Mr. Wingate, let's go
 13 back to that one.
 14 A. Happy to.
 15 Q. You relied on this as giving the
 16 authority, but will you at least concede that this
 17 document does not reference any authority for a
 18 trustee?
 19 A. I concede that the word trustee is not
 20 in that I don't think you can isolate it on
 21 that, but they have two hats as conservators and
 22 trustees. The order of transfer of jurisdiction
 23 links what they're directed to do as trustees to
 24 pay funds out of the trust to satisfy legal fees
 25 that were incurred on account of their role as

conservators.

Q. You agree with me, I believe we spoke earlier, that there is a separate role for a trustee and a conservator. They're two different entities. They're governed by different regulations, correct?

A. It is two separate hats, yes --

Q. And the trust code --

A. -- and two bodies of law and two different sections of the trust code, sure.

Q. So two bodies of law, two separate sections, but nonetheless, you're relying on language that doesn't even reference the word trustee?

A. Yes.

Q. Fair enough. What else are you relying on? You said there was a third document.

A. The trust agreement.

Q. Let's look at the trust agreement. I'm curious, if you would please tell me, under Paragraph 10, which you referred to, on Page 10, the last sentence: However, the compensation of the trustees' attorneys at law shall be subject to prior approval of a court of competent jurisdiction, how do you get around the word

A. This is a South Carolina trust.

Q. I'm not asking you to interpret the language yet. I'm asking what authority do you have to substitute the language?

MR. DAVIS: Your Honor, he's trying to answer.

BY MR. DAN SLOTCHIVER:

Q. I'm asking the question. I'm asking a particular question. You, as an attorney who's represented -- been involved in thousands of trusts --

A. Yes, I have.

Q. -- do you have any authority to substitute the word -- switch words such as shall for might or may?

MR. DAVIS: Your Honor, I object. He's not being asked to substitute words; he's been asked to explain his opinion.

MR. DAN SLOTCHIVER: I'm actually asking him what authority he has to do that.

THE COURT: Overruled.

THE WITNESS: South Carolina trust law, and in particular, the South Carolina Trust Code, which says that trustees have a duty to defend actions against the trust and which says

shall? Would you agree that shall is a compulsory word?

A. I believe I testified in my deposition, and I still have the same opinion today, that it, in this context, does not mean shall as in a limiting or mandatory fashion because of other powers and duties of trustees.

Q. Well, I don't believe -- let's look at this. I believe you testified, when we spoke earlier, that you would substitute the word shall. I believe I asked you.

A. No. I think I said I'd substitute the word may for shall.

Q. Correct, substitute shall for might or may?

A. Uh-huh.

Q. You don't practice law in California. We've established that. You don't have a license in California?

A. I do not

Q. What authority do you, as an attorney, not the court, but do you, as an attorney, have to unilaterally substitute language which I would argue would be very clear? What authority do you have, if any, to substitute the language?

that trustees have, in addition to the powers delineated in the trust agreement, the power to retain and pay agents.

BY MR. DAN SLOTCHIVER:

Q. I heard that earlier when you testified to it. What I'm asking you, though, sir, what authority do you have to change words in a document?

A. That's not changing words in a document, that's adding words to a document, and those words being added are the sections of the South Carolina Trust Code.

Q. No, sir. That's not what I'm asking you. I understand your responses. I understand a good response is to say what you want to say, and I know you want to do that, but first, before you go to that, I'm asking you once again what authority do you, Ken Wingate, have to make the determination that you can change language in a trust document?

A. You're using the phrase --

MR. DAN SLOTCHIVER: Your Honor, I would ask that you ask him to answer the question.

THE WITNESS: I'm trying to answer the question, Your Honor.

1 Ask it again. I'll try to answer it
 2 the way you --
 3 BY MR. DAN SLOTCHIVER:
 4 Q. Do you remember testifying, when I
 5 asked you in your deposition you would substitute
 6 shall for might or may, and you said yes? Do you
 7 remember that?
 8 A. I do remember that.
 9 Q. What authority do you have to do that?
 10 A. What I was saying, what I intended, is
 11 that I don't -- in my professional opinion view,
 12 that last sentence of Paragraph 10 to have the
 13 final limiting power that you seek to put into it
 14 because of the broader scope of South Carolina
 15 trust law.
 16 Q. You didn't discuss any of that with me
 17 at your deposition, did you?
 18 A. Let's go to it.
 19 Q. You show me. Let's go to Page 44. It
 20 probably starts before then. I believe we started
 21 at Page 43. We can read responsively if you like
 22 and go through it.
 23 A. Let's do it.
 24 Q. In the trust document, would you agree
 25 with me that the trust document says --

1 A. And I'm saying: We're on 43?
 2 Q. 43, on Line 11.
 3 A. I'm sorry. Go ahead.
 4 Q. It says, starting at Line 13: Shall
 5 be subject to prior approval at the court of
 6 competent jurisdiction.
 7 A. The last sentence of Paragraph 10 says
 8 the compensation of the trustees' attorney at law
 9 shall be subject to prior approval of a court of
 10 competent jurisdiction.
 11 Q. Fair enough. Any other language in
 12 the trust that supports your opinion with
 13 reference to IA, California and South Carolina
 14 court orders?
 15 A. I think we're now under --
 16 Q. Or excuse me, trust document.
 17 A. Sure. At the bottom of Page 10,
 18 Paragraph 12, similar language saying the trustee
 19 may employ attorneys, accountants, and financial
 20 advisers and consultants at the expense of the
 21 trust estate to represent the beneficiary in
 22 connection with any and all matters involving or
 23 in any way relating to beneficiary or any property
 24 in which the beneficiary has or may have any
 25 interest or responsibilities, any and all legal,

1 equitable, judicial or administrative hearings,
 2 actions, suits, proceedings, attachments, or
 3 distresses involving beneficiary in any way,
 4 including, but not limited to, claims by a
 5 beneficiary arising out of property damages or
 6 personal injuries suffered by a beneficiary,
 7 actions in any court, and otherwise engage in
 8 litigation involving beneficiary.
 9 Of course, then it goes on to say, as
 10 the second sentence of that paragraph, the
 11 compensation of the trustees' attorney at law
 12 shall be subject to prior approval of a court of
 13 competent jurisdiction, so we would have the same
 14 discussion that we just had moments ago regarding
 15 Paragraph 10.
 16 Q. So once again, you would substitute
 17 shall for might or may?
 18 A. Yes, I would.
 19 Q. Can you show me where it is that you
 20 reference to the trust sections that you're now
 21 referencing today?
 22 A. You were asking about the trust
 23 document.
 24 Q. Mr. Wingate --
 25 A. Line 8 on Page 43, you're saying:

1 Subject to the terms of the trust document, and I
 2 said: Yes. You said: Okay. And the trust
 3 document -- and then we went into the analysis
 4 about the various provisions of the trust
 5 document. And so I referred you in that colloquy
 6 to Paragraph 10, Paragraph 12, and if you'll
 7 remember a few pages later, there's a Paragraph, I
 8 think, 13 as well, all within the trust
 9 instrument.
 10 Q. I believe if you look back at Page 41
 11 was the background to this, and at the bottom of
 12 Page 41 -- or excuse me, at the top of Page 42, I
 13 asked you: Are you exchanging the word shall for
 14 might, and you responded?
 15 A. Yes, I am
 16 Q. What authority do you have in the
 17 trust code that allows the change of documents?
 18 What authority can you provide to the court that
 19 allows you to interpret a document changing, not
 20 to further express your opinion about why you
 21 believe it based on the trust code, but to give
 22 you the basis to give an opinion that you can
 23 change a document from shall to might?
 24 A. 62-7-103, and I think it's
 25 Subparagraph 17, that defines the terms of a

1 trust. That's the term of art. The terms of a
2 trust include, and I'm paraphrasing now, but I'd
3 love to pull out the statute if you want to. The
4 terms of the written document and such other
5 circumstances as are needed under -- in the
6 pursuit of the interest of justice.

7 Q. Would it have been very difficult to
8 file a declaratory action or file for a hearing in
9 front of the court here to understand what
10 authority existed? Is that a difficult process?

11 A. Yes, it is difficult.

12 Q. How long does it usually take?

13 A. Depending on the jurisdiction in which
14 it's filed, it can easily take a year or two.

15 Q. To get that simple understanding?

16 A. Yes.

17 Q. How about this jurisdiction? Do you
18 believe it would take that long to get a simple
19 understanding as to is this shall or might?

20 A. I do. In fact, this is one of the
21 busier jurisdictions.

22 Q. And how expensive would it be to seek
23 out that limited question?

24 A. I can't put a dollar limit on it.

25 Q. Could it be \$100,000?

1 Do you think it would take a whole lot longer to
2 do that?

3 A. I do. I've done it many times.

4 Q. How much would it cost, in your
5 estimation, to get the answer for that small
6 point?

7 A. In this case, with the litigious
8 nature of these parties, it would be huge.

9 Q. This limited matter, only the
10 understanding, nothing else, not litigating this
11 case, not litigating fees, litigating nothing,
12 only asking for a declaratory action, a judgment
13 from the court asking the court to tell us: Can I
14 do this?

15 A. I can't put a specific dollar figure
16 on it.

17 Q. Do you agree that it would have been
18 prudent to have done it in this case?

19 A. Not necessarily. To file an action is
20 always a discretionary act, and it bears its own
21 risks, not just the fees.

22 Q. Are you saying that if you file an
23 action, that there's a risk in filing the action
24 that it could be explosive, it could become very
25 expensive?

1 A. Easily.

2 Q. To seek a petition to go in front of a
3 court and say: Judge, I'm filing a declaratory
4 action seeking confirmation and understanding of
5 Paragraph 10 of this document to know if we have
6 the authority to do it, does it mean shall or
7 might, that could be \$100,000?

8 A. In this action, absolutely. The
9 history --

10 Q. Seeking that limited understanding.

11 A. -- is that it results in counterclaims
12 and new issues continually arising.

13 Q. No, sir. I'm not suggesting that.

14 What I'm asking you is how difficult would it have
15 been for counsel to have filed a declaratory
16 action -- as was suggested by counsel in this case
17 when the email was sent to the court, how
18 difficult would it have been to file a simple
19 declaratory action saying: Judge, there's
20 language in this document. Paragraph 10 says we
21 shall seek authority. We want to know if that
22 means shall or if it can be substituted with the
23 word may. Because I believe -- and I'm not a
24 witness, and I'm going ask you, but I believe I
25 could draft out that thing in about five minutes.

1 A. Yes.

2 Q. And that when you're acting as a
3 trustee in filing an action, you could have
4 exposure for unreasonably filing an action? Could
5 there be exposure if somebody filed this action in
6 the court and spent money in this court trying to
7 seek a declaratory judgment? Could they actually
8 have exposure for that?

9 A. To seek a DJ?

10 Q. Yes. Could they have exposure for
11 creating the fees that you said could be \$100,000
12 associated with trying to find out if they have
13 the authority?

14 A. If they deemed that they needed an
15 answer, that going to the court to get the answer
16 was the prudent way to get it resolved, then they
17 certainly could go that route. They're not
18 required to go that route. They're not pushed
19 that way.

20 Q. Well, assume that that route would
21 have cost \$5,000, which I believe is far more than
22 it would ever cost, but assuming it would cost
23 \$5,000, would you agree with me that it would be
24 considerably less than the expense involved in the
25 litigation in California over the visitation

1 issue, which I believe you referenced you don't
 2 know the answer, but you know from Freeman's
 3 deposition that it was somewhere in the
 4 neighborhood of \$600,000?
 5 A. Yes.
 6 Q So on a --
 7 A. I'm going to answer the question.
 8 Yes, if you assume -- and again, I think you've
 9 built a false premise into the question, that
 10 you're weighing \$5,000 against \$600,000, and that
 11 one was a known, certain, short, easy, quick,
 12 inexpensive route to certainty, whereas, the other
 13 was a long, expensive, and uncertain outcome, and
 14 the trustees cannot have known, at the moment that
 15 they were involved in the domestic litigation,
 16 where all it was going to go and how expensive it
 17 was going to be.
 18 Q. But they could have filed both,
 19 couldn't they?
 20 A. Both being?
 21 Q. They could have simultaneously filed
 22 an action in the court and at the same time filed
 23 an action in California. They could have done
 24 that, couldn't they?
 25 A. Could they have? Yes, they could

1 have.
 2 Q. And they could have -- when the
 3 expenses in California started to get expensive,
 4 if they hadn't filed it in South Carolina, they
 5 could have revisited the action and filed it then
 6 in South Carolina?
 7 A. The it being the declaratory judgment?
 8 Q. Yes.
 9 A. Yes, they could have.
 10 Q. And had they done that and gotten into
 11 court in some period of time before the action in
 12 California was over, they could have gotten an
 13 answer from the court?
 14 A. Possibly.
 15 Q. And if the answer from the court was
 16 no, you can't do that, you have no authority to do
 17 that, then they could have stopped spending the
 18 trust money?
 19 A. Possibly.
 20 Q. Is there a difference in the trust
 21 code between a duty to defend an action and
 22 bringing an action? I noticed a lot of times in
 23 your testimony, you talked about the duty to
 24 defend, but I never heard you say you have a duty
 25 to bring an action, a duty to bring an action.

1 A. I think there is a difference because
 2 the specific particular language of the South
 3 Carolina Trust Code says, in that section that I
 4 cited, duty to defend an action against the trust.
 5 Q. Now, I know you've had limited
 6 knowledge as far as what you've read, and I know
 7 you've seen some documents from Freeman, but
 8 under -- you've testified, I think, I may be
 9 mistaken, that you have an opinion that the Cohens
 10 had a duty to bring the action? Was I mistaken,
 11 or was it the authority to bring the action?
 12 A. The authority.
 13 Q. Would you agree with me that --
 14 A. That was my analysis, it was
 15 authorized and reasonable.
 16 Q. That their analysis was authorized and
 17 reasonable?
 18 A. That was my analysis, that their
 19 action in bringing -- in litigating was authorized
 20 and was reasonable.
 21 Q. In making a decision and looking at a
 22 trust to see -- or looking after the fact --
 23 you're coming in after the fact. You weren't
 24 there when the decision-making was done?
 25 A. Correct.

1 Q. Is it important for your -- does it
 2 make a difference if your decision as to why
 3 something can be done is the same as the trustees'
 4 decision?
 5 A. And I'm in what capacity? I'm a
 6 lawyer for the trustees?
 7 Q. No. I'll rephrase it. Let's assume
 8 that the trustees didn't rely on any of the
 9 documents you talk about in believing they had
 10 authority, but instead, they relied on this email.
 11 For whatever reason, they thought it was okay to
 12 rely on the email.
 13 A. So I'm assuming they didn't rely on
 14 these other things, and they relied on an email.
 15 Q. And it's really -- the purpose is they
 16 relied on something that you did not.
 17 A. Okay
 18 Q. Is the fact that -- is the decision as
 19 to whether they were reasonable based on the fact
 20 that they could have done it based on this
 21 document, or does it have to be based on the fact
 22 that they relied on something that gave them
 23 authority?
 24 A. I'm not sure I understand your
 25 question.

Q. Let me rephrase it. Let's assume they relied -- they didn't rely on any of the things we've talked about, the three documents we talked about. They didn't rely on those at all. My understanding is that your position is that the authority is based on these three documents. If you relied on these three documents or perhaps one of these three or maybe the combination of these three, this gives you the authority, correct?

A. That's not what I've testified. I've said there are three different things that they could rely on.

Q. You've given the word I was looking to go for, and I apologize.

What if -- you said these are three things they could rely on. What if they relied on something else? At the end of the day, you got to the same place. They still spent the same amount of money, but they relied on something they had no right to rely on. I'm assuming that your position would be that their actions then would not be authorized. Same end result, but you have to go through a reliable protocol or reliable document or reliable basis in order to get there?

A. I agree that the end does not justify

I knew from the accountings that I had reviewed and from the pleadings that I had reviewed that they were in excess of \$600,000.

Q. But I think what I then asked you was could you differentiate the fees related to the dissolution, the support -- I had four categories, if I remember right.

A. The visitation.

Q. Dissolution, divorce, visitation in South Carolina, and I believe your answer was no.

A. Correct.

Q. So my question to you, Mr. Wingate, is without having spoken to them about what they relied on, how can you opine that their reliance was authorized and reasonable, and without having an understanding as to what the expenses were, not the number, but what was related to these different sections, how can you opine that paying these expenses was reasonable when you don't even know what process they did, what prudence they took?

A. Easily, because what you're assuming is that their process is the sole factor. You're putting all of the weight in the analysis on that process.

the means. The question before us today is did they pursue the right means, what authorities did they have --

Q. Correct.

A. -- and my opinion has been that they were authorized.

Q. I asked them what their process was, and I asked them both what prudence they used, what the process was, and I know what their answers were. Have you seen their answers?

A. No.

Q. Have you spoken with either of them, other than pleasantly?

A. No.

Q. Have you read either of their depositions?

A. Only the small excerpts that we talked about earlier.

Q. I believe, unless it's changed, but at least at the time of the deposition, you weren't familiar with the -- and I know you're somehow familiar now with Freeman, but you weren't familiar at the time of the deposition with how much the fees were, correct?

A. What I said at the deposition was that

Q. Let's assume there was no process, okay, for purposes of conversation.

A. Assume that there was no process.

Q. Assume there was no process. Assume it was more along the lines of what choice do I have? I've got to do it. I don't decide these things. I got to do it. Let's make that assumption. They just paid whatever came.

A. I'll assume that.

Q. Then what would you rely on to say that they -- and without knowing what they looked at, what are you relying on in giving these opinions that it was reasonable and authorized?

A. Could be the trust instrument, could be the court orders, could be advice of counsel, as we've talked about, could be trust law.

Q. No. I'm not asking a hypothetical. I'm asking you, sir, what are you relying on in giving these opinions, not what the atmosphere is that you could look at. What are you relying on in giving the opinions to the court today?

A. The kinds of things that we've talked about today.

Q. Tell me which ones, please.

A. The court orders.

1 Q. The court orders that we talked about,
2 just to make sure, the same ones that we've just
3 talked about?
4 A. Yeah, right.
5 Q. What else?
6 A. The trust agreement.
7 Q. Same one we just talked about with
8 that language that we talked about?
9 A. Right.
10 Q. What else?
11 A. The trust law, meaning the South
12 Carolina Trust Code.
13 Q. You're relying on trust law to say
14 that what you did was reasonable?
15 A. Sure.
16 Q. How could the trust law say that what
17 somebody did was reasonable when you haven't
18 spoken to them or read their testimony to know
19 what they did or the basis of what they did under
20 the assumption that there was no prudence?
21 A. Under the assumption that there was no
22 prudence?
23 Q. We talked about the fact earlier that
24 we're going to make an assumption there's no
25 prudence. There was no process. They just did

1 it.
2 A. Process you said to assume.
3 Q. No prudence, no process. Under that
4 assumption, how could the trust law support what
5 they did?
6 A. You're asking me whether my opinions
7 could be formed solely on the basis of -- or
8 without any input from having reviewed the
9 deposition or trial testimony of the Cohens.
10 Q. No. I'm asking you considering the
11 fact that I know you haven't looked at the
12 testimony --
13 A. I have not.
14 Q. -- other than a small amount, that you
15 haven't spoken to them, that you don't know what
16 the breakdown of the fees is, I'm asking you what
17 you're relying on, other than the three documents
18 that we talked about, to give your opinion that
19 you've given today to the court that they were
20 authorized and that the expenditure of these fees,
21 whatever they were, was reasonable?
22 A. Also the pleadings in the case.
23 Q. Mr. Wingate, pleadings in the case are
24 pleadings. They're not -- were they verified, do
25 you know?

1 A. Would you let me finish?
2 Q. Yes, sir. Well, I really want to deal
3 with them one at a time so we get it and then go.
4 Were the pleadings verified?
5 A. I don't remember. I'd be glad to look
6 at them.
7 Q. Well, without knowing that, how could
8 you rely on that?
9 A. Ignore that if you'd like to.
10 Q. Well, it's not me. I'm asking this:
11 There's hearsay testimony that's within the
12 record.
13 A. I've reviewed the pleadings -- I'm
14 sorry, the accountings that have been filed in the
15 Horry County Probate Court.
16 Q. Absolutely. No dispute over the
17 accountings. The accountings of expenditures,
18 they, in and of themselves, can tell you if what
19 was done was authorized or reasonable?
20 A. They give some indication of the time
21 frame over which they were paid, to whom they were
22 paid, and what action or part of the action they
23 were paid. There's a fair amount of information
24 in those accountings.
25 Q. Well, let's talk about the attorneys'

1 fees. We know over a time period -- over a period
2 of time, I'm going to represent to you that the
3 trust had as -- it had -- it got to the point that
4 its debt equaled its assets. You know what that
5 means from an accounting perspective?
6 A. I do.
7 Q. So how does that show you -- without
8 more, how does that show you that what they did
9 was reasonable? It just shows you how much money
10 they spent. And we know that in the year 2010,
11 they spent -- I have a document.
12 MR. DAVIS: Your Honor, I object. He
13 made a statement the debts exceeded or equaled the
14 assets. I don't think that's been -- a
15 foundation's been laid. It's not accurate.
16 MR. DAN SLOTCHIVER: It absolutely has
17 been testified to.
18 MR. DAVIS: The annuity is not taken
19 into account on that that brings money in. I
20 don't know about debt. There's no evidence that
21 the trust has debt. So, I mean, it's completely
22 without foundation, and actually, it's not
23 accurate.
24 MR. DAN SLOTCHIVER: Your Honor, at
25 one point Mrs. Cohen testified that the whole

Page 2182 1 \$900,000, as it was completed, the debt owed to 2 the Meyer firm ultimately was reduced down some, 3 but the debt owed to the Meyer firm -- we can pull 4 it from the deposition, we talked about it -- was 5 as much as the assets in it, in other words, it 6 was washed out. 7 THE COURT: Sustained. 8 MR. DAN SLOTCHIVER: I'm not making 9 anything up. 10 BY MR. DAN SLOTCHIVER: 11 Q. Representing to you that in the year 12 2010, the legal fees paid from the trust were 13 \$747,000 and change -- 14 A. Okay. 15 Q. -- what does that -- how does that 16 help you -- in that one-year period, just one, how 17 does that help you in analyzing and determining 18 that what they did was authorized or reasonable? 19 A. That, in isolation, doesn't. 20 Q. Thank you. I'll move on. 21 What else? So we talked about the 22 accountings. We talked about the three documents 23 here. What else have you relied -- what else do 24 you rely on in this case to give that opinion? 25 A. The transcripts also of the testimony	Page 2184 1 the file that I pushed across the table and handed 2 to you, so -- 3 Q. I'll be happy to provide it to you. 4 A. I think there was that affidavit of 5 Meyer. 6 Q. This is the documents. These are your 7 documents. 8 A. Is this the document set up top? 9 What's that here? 10 Q. I believe this is the documents that 11 you provided to us at your deposition, and you 12 gave that to the court reporter, and she copied 13 it. That's from the document I just opened a few 14 moments ago, so take your time. 15 THE COURT: I'm going to give 16 Mr. Wingate five minutes to look at that, that 17 stack of documents. We'll take a very quick 18 break. 19 (A recess transpired from 6:34 PM to 20 6:41 PM.) 21 THE COURT: Go back on the record. 22 BY MR. DAN SLOTCHIVER: 23 Q. Are you ready? 24 A. Yeah. 25 Q. Mr. Wingate, when we left off, I had
Page 2183 1 of your experts, Freeman and Walker. 2 Q. Well, at the time that your deposition 3 was taken, and you said your opinions are still 4 the same, you gave the same opinion before you 5 read their transcripts, correct? 6 A. My deposition took place first. 7 Q. Correct. So at the time you gave your 8 deposition and you gave your opinions, which I 9 believe was earlier today, an hour ago, 45 minutes 10 ago, you still had the same opinions you hold now? 11 A. I see what you're saying. 12 Q. You had not yet seen their 13 depositions, so let's just -- 14 A. I agree with you. I sat through being 15 deposed first with John Freeman across the table, 16 and then I sat in the room and listened to John 17 Freeman, so I'm mixing what I heard of his 18 testimony just prior to and just after my 19 testimony. 20 Q. I understand. And that's why I'd 21 asked you if you had -- 22 A. Sure. Fair enough. 23 Q. But what else in forming your 24 opinions? 25 A. The other stuff, again, it was all in	Page 2185 1 asked you what else you relied on. We talked 2 about the fact that you hadn't spoken to the 3 Cohens or read the testimony, other than the small 4 amount of pages, we talked about the fact that you 5 hadn't looked at the legal -- at the bills from 6 the staff when it was breaking it down what was 7 spent for what. You testified you were relying on 8 the three documents that we've talked about, and 9 you mentioned at one point the accounting, and we 10 talked about that to some extent. You mentioned 11 Freeman, but then you said -- we talked about the 12 fact that your opinions were actually granted 13 before Freeman, and then you asked -- you said 14 maybe some other documents in your file. I'm not 15 trying to mischaracterize what you said. And I 16 think you wanted to look at them to see if there 17 was anything else in your file that you had relied 18 on, so I want to ask you about that. 19 A. Yes. And I reviewed my file while we 20 were on the break, and the things that I had 21 reviewed prior to my deposition and on which and 22 various parts I relied were the trust agreement, 23 the various court orders that we've discussed, the 24 accountings in the Horry County Probate Court, the 25 transcript of Dan Dorn's deposition, and all of

1 the attachments to it, such as a couple of
2 pleadings, memoranda of law, an affidavit of Vicki
3 Greene, and some motions, all of which were
4 attachments to his depo. I had reviewed Bret
5 Davis's memo regarding the payment of legal fees
6 that he filed in this court. I reviewed the
7 proposed Horry County orders of fairly recent date
8 denying a motion to remove the trustees and an
9 order regarding the payment of Mr. Kachmarsky's
10 fees. I reviewed three letters of the court, this
11 court, dated October of 2012. I read the amended
12 petition to affirm payment of fees, with its
13 attachments. I read an affidavit of Attorney
14 Meyer, and I read a motion for temporary
15 restraining order.

16 Q. Would you agree with me that the
17 affidavit of Attorney Meyer, the letters or the
18 affidavit from Vicki Greene, the letter from Bret
19 Davis or Reese Boyd, they're not parties in this
20 case, correct?

21 A. Correct.

22 Q. And is it your testimony that you
23 relied on them as substantive evidence for the
24 truth of the matter asserted, or did you rely on
25 them just to kind of get a general feel of what

1 other side?

2 A. Yes.

3 Q. What was it within his deposition that
4 assisted you in determining that the trustees were
5 reasonable in exercising their conduct?

6 A. First of all, let me say that it is
7 116 pages in length.

8 Q. Take your time. I want to know
9 exactly what we're talking about. I will ask you
10 when you're looking, did you happen to look at the
11 section in there where he talked about the fact
12 that he asserted in his deposition that the Cohens
13 were actually attempting to exert grandparent
14 visitation?

15 A. I did read that part, yes.

16 Q. And did that in any way increase or
17 decrease your reliance on him for purposes of
18 determining that the Cohens were reasonable?

19 A. No.

20 Q. Did you ever see anywhere in there
21 where he talked about the process that the Cohens
22 would have undertaken?

23 A. The process of what?

24 Q. The process they took in undertaking a
25 decision or the prudence that they undertook in

1 was going on?

2 A. The latter.

3 Q. So understanding what you reviewed to
4 give your opinions, and now we're a little more
5 fine-tuned than I think we were at the time that
6 we took the deposition, at least I got my hands
7 around it a little bit differently, I'm asking you
8 other than those items that we talked about
9 earlier, what, in the documents that you have, did
10 you specifically -- or what, within the documents
11 you have that you just reviewed with us, gives
12 you -- gives authority and assists you in the
13 opinions you have rendered today?

14 And if you refer to a particular
15 document, I'm going to ask you what section of
16 that document, so I can understand exactly what it
17 is that you've used to assist you in determining
18 that the payments made were authorized and/or
19 reasonable.

20 A. One of the principle things of the
21 list that I gave you was the Dan Dorn deposition
22 transcript.

23 Q. Now, it's interesting you read the Dan
24 Dorn deposition transcript, but not the other
25 ones. And you understand he's the party on the

1 making a decision? If you tell me what part of it
2 that you relied on.

3 A. Well, let me say first of all,
4 generally what jumps off the page is, in my view,
5 an argumentative nature in Mr. Dorn, which relates
6 to not just the give and take of a question and
7 answer, but the way that this litigation has been
8 pursued.

9 Q. Well, let's address that one.

10 A. Sure.

11 Q. Would you agree with me, sir, that
12 Mr. Dorn's been involved in litigation now since
13 his children were born? For almost seven years,
14 he has consistently been in litigation with the
15 Cohens?

16 A. He's very experienced at it, yes.

17 Q. That wasn't my question, sir. Would
18 you agree with me that he's been involved with the
19 Cohens in litigation for six-plus years?

20 A. At least.

21 Q. And would you agree with me that if
22 you assume what he represented to be true, that he
23 was litigating because he was trying to keep his
24 children, and he believed that the Cohens were
25 doing nothing more than trying to exert

1 grandparent rights, and he needed to protect his
 2 kids, assuming that to be true, would you agree
 3 with me that he would have just a little bit of
 4 cause to be a little bit protective and a little
 5 bit defensive?
 6 A. No.
 7 Q. Have you ever met him? Have you met
 8 Dan Dorn?
 9 A. I glimpsed him across the room earlier
 10 today.
 11 Q. Have you sat down and talked to him?
 12 A. Never.
 13 Q. Have you ever spoke to him on the
 14 phone?
 15 A. Yes.
 16 Q. You've spoken to him on the phone?
 17 A. Yes.
 18 Q. To Dan Dorn?
 19 A. Yes.
 20 Q. Really?
 21 A. Yeah. You and I talked about it in my
 22 deposition.
 23 Q. Oh, I thought he'd left a message, and
 24 you never got back to him, or he left a message,
 25 and you responded and never heard back from him?

1 A. We had a brief conversation.
 2 Q. The context, looking for an attorney
 3 in South Carolina. It's a small world.
 4 THE COURT: Before he found you?
 5 MR. DAN SLOTCHIVER: Yes. I don't
 6 know what that says, but --
 7 THE COURT: Mr. Wingate referred him
 8 to you.
 9 MR. DAN SLOTCHIVER: I'm honored to be
 10 in the same category. He referred him to me, and
 11 now look where we are.
 12 THE COURT: Too bad you didn't take
 13 this case.
 14 MR. DAN SLOTCHIVER: Thank you for
 15 the --
 16 THE COURT: I only meant from a
 17 standpoint of fees once you got involved. I
 18 apologize. It's late, right?
 19 MR. DAN SLOTCHIVER: I know.
 20 BY MR. DAN SLOTCHIVER:
 21 Q. You don't know him, do you?
 22 A. I do not know Mr. Dorn
 23 Q. You don't know what his normal
 24 character is, do you, or what he has -- do you
 25 believe that you truly understand what it's like

1 to walk in his shoes with reference to all of the
 2 matters pertaining to litigation?
 3 A. As much as someone other than the
 4 litigant can, yes, because I go through that day
 5 to day in my work experience.
 6 Q. Have you ever had, in your work
 7 experience, a client who was ostracized from his
 8 community?
 9 A. Yes, I have.
 10 Q. Have you had a client that was on the
 11 front page of a national newspaper multiple times,
 12 attacking him?
 13 A. National newspaper multiple times, no.
 14 Q. Have you had a client who, when you
 15 look up his name at one point, you have 5 million
 16 hits, all derogatory?
 17 A. Not that I know of.
 18 Q. I don't believe you know how to walk
 19 in his shoes, okay.
 20 A. You think I don't. I think I do.
 21 Let's move on.
 22 Q. Tell me why you believe you can --
 23 tell me how it is that you believe that you
 24 understand him if you've talked to him once on the
 25 phone for a moment, and you saw him in the

1 courtroom. How do you know him?
 2 Isn't it true, Mr. Wingate, that you
 3 were involved or are involved in some capacity in
 4 the James Brown matter?
 5 A. That is correct
 6 Q. And isn't it true that one of the
 7 allegations in the James Brown matter, one of the
 8 things that's been fought over and ultimately led
 9 to the removal was there was a comment by one of
 10 the trustees or guardians or whatever role --
 11 A. Trustees.
 12 Q. -- trustees, that she knew what
 13 Mr. Brown wanted. Do you remember that?
 14 A. Yes.
 15 Q. And isn't it true that she had never
 16 met Mr. Brown?
 17 A. That I don't know.
 18 Q. I'm representing that to you.
 19 A. Say again? I'm sorry.
 20 Q. You're not aware of that? You're not
 21 aware of the fact that she never met Mr. Brown,
 22 but nonetheless, she was claiming she knew what he
 23 wanted?
 24 A. I know that Ms. Pope, whom you're
 25 referring to, has stated that she alone knows his

1 intentions. I don't know what any personal
2 dealings they ever had with each other.

3 Q. Do you agree with her statement?

4 MR. DAVIS: Your Honor, I want to
5 object. This is not what he's qualified for.

6 THE COURT: I'll allow it.

7 BY MR. DAN SLOTCHIVER:

8 Q. How do you, then, in this case, not
9 knowing Dan Dorn, how do you put yourself into the
10 same position which Ms. Pope did in the James
11 Brown case, which you don't agree with?

12 A. I don't believe I've done that.

13 Q. If you can tell me what you relied
14 upon, other than his demeanor and your belief that
15 you understand what it's like to walk in his
16 shoes?

17 A. One of the other things that was
18 discussed in his testimony was the -- and/or in
19 the attachments to it, I don't remember how much
20 in the attachments, how much in his testimony,
21 his --

22 Q. If you could show it to me.

23 A. The child support claim that his
24 attorneys were filing on his behalf against the
25 Abbie Dorn Trust.

1 that he believes that she is in a persistent
2 vegetative state and can have no benefit
3 whatsoever from being with the children. How does
4 that help you? How does that help you in forming
5 your decision that what the Cohens did was
6 reasonable?

7 A. If I'm assuming that, and so I'm
8 therefore taking his testimony off the table --

9 Q. Well, show me where it said otherwise,
10 if you will.

11 A. There's discussion of the relative
12 merits or not of visitation in the court order
13 from California that deals with the visitation
14 issue, and I think --

15 Q. If you're looking at that, I'll be
16 happy to show you a copy of it. There is
17 reference to --

18 A. Hand me an extra copy, if you don't
19 mind --

20 Q. Yes, sir.

21 A. -- so I don't have to find it here.

22 Q. I had it a moment ago.

23 A. I think it's in this notebook.

24 Q. 86. I'll give it to you. Let me get
25 to 86. I'll show it to you. It looks like this.

1 Q. Let's not talk about child support,
2 okay. Let's take that out of the equation.

3 A. Okay.

4 Q. Let's instead talk about the
5 visitation, which I'll represent to you was
6 virtually all of the money spent. Let's take that
7 as a given, because you don't know, but assume
8 that out of a million dollars, \$800,000 is related
9 to visitation.

10 A. I'll assume that.

11 Q. How does his deposition assist you in
12 making a determination that what the Cohens did as
13 trustees was reasonable?

14 A. He talks about the relative merit or
15 not of what benefit she, Abbie, might receive from
16 visitation. There's discussion about that in his
17 testimony.

18 Q. I will tell you that he has clearly
19 stated in this court repeatedly and in his
20 deposition, in my understanding, that his opinion,
21 she is in a vegetative state and can receive no
22 benefit, so take that as a given.

23 A. Okay. Assume that she's in a
24 vegetative state.

25 Q. No, assume that he testified -- assume

1 A. I've got it. Does it say -- look at
2 this and see if that's what you're looking at.

3 Q. Yes, it is. That's 86. Can you tell
4 me what reference on that document, what page
5 you're looking at?

6 A. Sure. Bear with me. At least in
7 part, I'm at the bottom of Page 1 and over to the
8 top of Page 2 in which the California court
9 discusses one of their statutes and is
10 articulating Susan Cohen's argument that the court
11 must grant reasonable visitation to a requesting
12 parent, unless it is shown that visitation with
13 that parent would be detrimental to the children.
14 That's one part.

15 Q. That assists you in determining that
16 what the Cohens did was reasonable and authorized?
17 Is that your testimony?

18 A. That is my testimony because if the
19 trustee, Susan Cohen, is asserting, under
20 California law, the right of a requesting parent
21 to have visitation, unless it can be shown that
22 such visitation would be detrimental to the
23 children, then that would be one element,
24 absolutely, that I would rely on.

25 Q. Let me ask you this: Is it your

1 understanding that this case was tried to a
2 conclusion, the Abbie Dorn case in California?

3 A. I can't point to any particular thing.
4 I'm under the impression that it has been, but I
5 can't cite to you where I got that information.

6 Q. I'm going to represent to you,
7 Mr. Wingate, that it was not, okay, that instead,
8 the parties agreed to allow this statement, this
9 here, to be incorporated into an order reflecting
10 the language, but this is incorporated into the
11 order as part of the order, okay.

12 A. Sure. Into which order, may I ask?

13 Q. There was a final order that came out
14 after this one that incorporated this into it. It
15 particularly said it's incorporating this
16 language, so the order was more of a formality.

17 A. So there has been some sort of
18 finality in that case?

19 Q. There has been, but it absorbed this.
20 So this is the law. It's just contained within
21 another order.

22 A. Sure.

23 Q. I'm going to ask you to look at the
24 bottom of Page 3. Or actually, before you look,
25 let me ask you this -- maybe you've seen it

1 that they --

2 MR. DAN SLOTCHIVER: They absolutely
3 have not disputed the language, Your Honor. They
4 may not agree with the language, but they don't
5 dispute the language. This is the language
6 everybody agreed to. That's why it's part of the
7 order.

8 THE COURT: I'm going to allow it.
9 BY MR. DAN SLOTCHIVER:

10 Q. Page 3, last paragraph. I think this
11 is probably what you're referring to where it
12 says: Dan additionally argues that this really is
13 a case of disguised grandparent visitation because
14 Susan's ulterior motive in this case is to gain
15 visitation for herself and not for Abbie. On that
16 latter point, Dan has a point.

17 A. I follow where you are, and that is
18 the section that I was referring to.

19 Q. A little concerning to you?

20 A. Not in and of itself.

21 Q. A finding of a court that's been
22 accepted and consented to by a party, would you
23 agree that's different than a finding of a court
24 that the party just doesn't like?

25 A. This is unusual language by a court to

1 before, maybe you haven't, before you look -- are
2 you familiar with any findings by the court which
3 seem to indicate that Susan or Paul Cohen's
4 motivation was less than honorable in this matter?

5 A. I don't know that I would call it
6 using that terminology. I have seen reference in
7 here somewhere that there's some idea that the
8 court might have had that the -- I think that uses
9 the phrase disguised grandparent visitation, or
10 something to that effect.

11 Q. And are you familiar with the fact the
12 Cohens -- now that I've advised you, does the fact
13 that the Cohens ultimately consented to this as
14 being a finding of fact, does that concern you
15 that they're not disputing the court's finding?
16 In fact, I'll read it to you, Page -- you can look
17 at it with me, Page 3.

18 A. Where are you?

19 MR. DAVIS: Your Honor, I object. It
20 does not say -- their testimony does not say --

21 MR. DAN SLOTCHIVER: I'm going to read
22 it to him. We'll discuss it, Your Honor.

23 MR. DAVIS: Does not dispute the
24 language, because they specifically testified that
25 they do dispute the language, and he represented

1 say: Dan has a point.

2 Q. It really is unusual language. I
3 would agree with you. I've never really seen
4 where the court would go out and go as far as to
5 make that comment. Would you agree?

6 A. It's an unusual comment.

7 Q. Correct. And it's not a positive
8 comment, is it, on behalf of Susan? It's not a
9 flattering comment, is it?

10 A. Not particularly, no.

11 Q. Does that language -- looking at that,
12 looking at the order of the court and keeping in
13 mind this was a consent, this was not a finding --
14 and let's talk about that for a second. We've all
15 tried cases, and we win some, we lose some,
16 correct? I'm assuming you have; I have.

17 A. I'll add my name to that pot.

18 Q. When you lose a case, it doesn't mean
19 you were necessarily wrong, it just means you
20 lost?

21 A. Correct.

22 Q. And you aren't happy, nobody's happy,
23 but you lost. But when you consent to something,
24 you really can't go complaining, can you?

25 A. It depends on the wording of the

1 consent.
 2 Q. Have you been involved in mediation
 3 before?
 4 A Yes.
 5 Q. Resolved cases at mediation?
 6 A. Many times.
 7 Q. Clients generally don't come back and
 8 complain after they resolve it at mediation
 9 because they agreed to it. Would you agree with
 10 that?
 11 A. Usually they don't. That's not
 12 exclusively.
 13 Q. It's like buyer's remorse, I know.
 14 But any evidence that you're aware of to show
 15 that -- any evidence you know of, and I'm assuming
 16 not, because I know you haven't talked to the
 17 Cohens, to say that they had buyers' remorse on
 18 the language that was agreed to?
 19 A. I don't have any knowledge on that.
 20 Q. Are you aware that the court in the
 21 same decision -- I can look for it if you want --
 22 but found that there was compelling evidence to
 23 show that Abbie would not have a benefit from
 24 seeing the children?
 25 MR. DAVIS: Your Honor, I object. It

1 says that there is no compelling evidence. It
 2 does not say that there is compelling evidence.
 3 MR. DAN SLOTCHIVER: I agree, I agree
 4 completely, and that's what I meant to say, and I
 5 appreciate your correcting the word. It actually
 6 makes the question more clear and proper.
 7 BY MR. DAN SLOTCHIVER:
 8 Q. Would you agree with the reference --
 9 I'm going to paraphrase. I can find it if you
 10 want But are you familiar with the reference
 11 that there is no -- by the court in this order,
 12 which was agreed to by all the parties, that
 13 there's no compelling evidence that Abbie would
 14 have any benefit from visiting with the children?
 15 A. I'm not familiar with that wording.
 16 I'd be glad to look at it, if you'll point it out.
 17 Q. Let me find it for you real quickly.
 18 A. Is it in the Page 4 area, the best
 19 interests?
 20 Q. I'll find it in one moment.
 21 THE COURT: Last sentence, Page 7.
 22 MR. DAN SLOTCHIVER: Thank you.
 23 BY MR. DAN SLOTCHIVER:
 24 Q. Look at the last sentence on Page 7.
 25 Understanding that you weren't familiar with this

1 and understanding that you, Mr. Wingate, have the
 2 right, as you've given an opinion, to back off of
 3 that opinion if you feel necessary, based on new
 4 information we're discussing -- and it's not
 5 hearsay. This is part of the order they agreed
 6 to. Does it change your opinion at all that the
 7 Cohens, for whom you're testifying to as having
 8 acted reasonably and authorized, that the evidence
 9 here says there's no compelling evidence that the
 10 visitation by the children will have any benefit
 11 to Abbie?
 12 A. No, because as I said earlier in
 13 response to questioning, there is not an absolute
 14 standard of you've got to win in order for it to
 15 have been proved in hindsight to have been proper
 16 and authorized, nor is there a looking back to say
 17 that if you lose on a point or lose on an
 18 investment, that you're liable for that thing.
 19 The question is at the moment that the decision
 20 was made by the fiduciary, were they acting
 21 reasonably under those circumstances.
 22 Q. Now, seeing this language here, seeing
 23 the reference that the court gave with reference
 24 to Dan Dorn and grandparent visitation, and not
 25 having knowledge of what the Cohens considered at

1 the time they made the decision to get involved in
 2 the visitation litigation, which we've already
 3 established, I believe, are you still able to
 4 opine that what they did was reasonable? I'm
 5 trying to use the words that you've just given me.
 6 A. I have not changed my opinion.
 7 Q. Do you believe -- have you ever heard
 8 the phrase you don't have to -- about proving a
 9 negative?
 10 A. Yes.
 11 Q. Are you, for purposes of giving your
 12 opinion, making assumptions, making an assumption
 13 that they acted and they exercised prudence? Is
 14 that part of your opinion is making that
 15 assumption?
 16 A. I don't think so.
 17 Q. If you don't make that assumption, how
 18 can you tell us how -- what they considered? You
 19 just told us a moment ago that it depends on what
 20 they considered at the time they made a decision,
 21 but then you told us you don't know what they
 22 considered at the time they made the decision, so
 23 if you need to exercise this test in order to make
 24 the opinion, and they didn't exercise it, how are
 25 you able to opine that what they did was

1 reasonable?

2 A. Maybe we're hung in a loop here of a
3 hypothetical inside of a hypothetical.

4 Q. I'm not in a hypothetical. I'm using
5 your exact language.

6 A. No. You had asked -- let me just
7 clarify. You had asked me to assume that there
8 was no part of the action other than the
9 visitation, correct?

10 Q. Well, actually, I didn't. Actually, I
11 said I'm assuming that the spousal defense
12 action -- that was defense, visitation. They were
13 the movants. Let's assume that defending the
14 spousal action -- let's agree -- for purposes of
15 today, I will agree, only for purposes of now, for
16 conversation, that it was absolutely appropriate
17 and reasonable for the Cohens to defend the action
18 pertaining to the spouse. They had to. They were
19 worried about Medicare invasion. They had to do
20 it.

21 A. We'll assume that. I follow. I'm
22 assuming.

23 Q. So all we're talking about now is the
24 expenditure of that -- I think you said the
25 800-pound gorilla in the room?

1 A. Yeah.

2 Q. Let's talk about that 800-pound
3 gorilla. How do we get there? If the way to get
4 there is you have to look at a process, and we
5 don't know what it is, so how do you, in your
6 chair, with the information you have, giving the
7 opinion you gave today -- or would you like to
8 change it?

9 A. Not changing it. So if, under that
10 narrow assumption --

11 Q. Not making any assumptions. We're
12 stating givens. Let's look at this case. Look at
13 what we have right here, no assumptions. Looking
14 at the evidence that we have, please tell me.

15 A. And you're saying looking exclusively
16 at that one finding at the bottom of Page 7, that
17 there is no compelling evidence?

18 Q. Did you read Lisa Meyer's deposition?

19 A. I did. That was one of the things
20 that I listed.

21 Q. Her testimony, excuse me. Did you
22 read her testimony?

23 A. Lisa Meyer's testimony, no. I read
24 her affidavit.

25 Q. I'm going to represent to you that in

1 her testimony she stated that in California, you
2 have the right to dismiss an action, meaning that
3 they could have dismissed the action for
4 visitation if they wanted to and still -- which
5 they brought, and still defend the spousal action.
6 So I think that you have to compartmentalize those
7 things. They're separate issues. That's my
8 thought, at least. I'm not telling you, but I'm
9 just -- that's my thought. How do you justify the
10 spending of money on -- how do you opine --

11 MR. DAVIS: Your Honor, I object. I
12 believe the question that was asked of Ms. Meyer
13 was a general California law question, very
14 simple, can a party dismiss an action, and I
15 believe she said: Sure. In any jurisdiction, I
16 think a party can dismiss an action. But here,
17 he's oversimplified it, because this action was so
18 intertwined, and I don't believe her testimony
19 went so far as to say you could parse out part
20 without the other part. I don't believe she went
21 that far.

22 MR. DAN SLOTCHIVER: And I stand
23 exactly by what I've represented to counsel here.
24 We spoke specifically about that issue. So I'd
25 like to proceed with my question, if I may.

1 THE COURT: Go ahead.

2 BY MR. DAN SLOTCHIVER:

3 Q. How do you substantiate -- do you
4 still have the opinion that they were authorized,
5 that it was -- excuse me. Do you still have the
6 opinion that it was reasonable for them to spend
7 the money on the visitation action, knowing that
8 you haven't spoken to them, you haven't looked at
9 the testimony, other than a small amount, you
10 don't know what they said in court, you don't know
11 how much money they spent in that action relative
12 to the visitation, and you haven't seen the bills,
13 I'm assuming, you've just seen the accounting?

14 A. Correct.

15 Q. So how do you get to the point of
16 giving the opinion that you gave?

17 A. I think if you strip away all of those
18 facts --

19 Q. They're not here.

20 A. -- there are no facts left.

21 Q. That's the point. It's not that I'm
22 stripping them away; they don't exist. You don't
23 have that information, do you? I told you
24 earlier, Mr. Wingate, I'm not the one --

25 A. I can't separate in my memory what

1 I've picked up from the pleadings, what I've
2 picked up from John Freeman's transcript, what
3 I've picked up from these affidavits, from these
4 transcripts of Dan Dorn.

5 Q. But none of those things relate --
6 none of those things that I understand from our
7 examination today provides to you the thought
8 process or the prudence that the Cohens would have
9 undertaken in making this decision. From our
10 conversation so far today and from the documents
11 we reviewed, it doesn't exist in the world that
12 we're talking about.

13 So I'm asking you, even if you
14 reviewed Professor Freeman's, even if you reviewed
15 Julian Walker's, even if you reviewed the Lisa
16 Meyer deposition or affidavit, none of that stuff
17 tells you what was going on at the pivotal point
18 that the Cohens had to initially make the
19 decision, so without that information, how is it
20 possible for you to give the opinion you've given
21 today?

22 A. I really don't know how to answer your
23 question.

24 Q. Is it possible -- are you
25 testifying -- are you still testifying -- based on

1 Q. I haven't ever read his deposition,
2 okay, to be honest with you. I was there, but
3 I've never read it. It wasn't what I needed to
4 do. So I apologize.

5 A. That's okay.

6 Q. But if anyone else can find that,
7 they're welcome to interject.

8 A. Do you want me to comment as I go?

9 Q. Well, if you want to look at it, I'll
10 be happy to give you -- if it helps to move it
11 along -- little sticky notes, if you want to mark
12 those sections, so you can tell us when you're
13 ready, because I'm assuming maybe they build on
14 each other.

15 THE WITNESS: Your Honor, this is
16 going to take a few minutes. I don't mind just
17 sitting here working while you do whatever.

18 THE COURT: Take your time. I'll just
19 rest.

20 MR. KACHMARSKY: I'm going to take
21 bathroom break.

22 THE COURT: That'll be fine. So let's
23 go off the record.

24 (A brief recess was taken from 7:14 PM
25 to 7:26 PM.)

1 what we've just talked about, is it still your
2 opinion that it was reasonable for them to do what
3 they did?

4 A. Sure.

5 Q. And that opinion is based on what?

6 A. Again, I've already testified a moment
7 ago that I can't in my mind distinguish where I've
8 picked up from these various many different
9 sources. One of the bases of my opinion would be
10 that the trustees must have seen benefit to Abbie
11 Dorn from the visitation.

12 Q. So you're making an assumption?

13 A. Yes, I am. I'm assuming about the
14 process.

15 Q. Take away any assumptions, because I
16 don't believe that -- I would certainly disagree
17 with an expert coming in and making an expert
18 opinion based on assumptions. If you take away
19 the assumptions, what's the basis of that opinion,
20 if it still exists?

21 A. Let me take some time and go back
22 through Dan Dorn's transcript. It'd be beneficial
23 to me if you could help, in his transcript, point
24 me at least to the section where he talks about
25 the visitation issue.

1 THE COURT: We're back on the record.
2 BY MR. DAN SLOTCHIVER:

3 Q. Are we talking about reasonableness at
4 this point, or we're talking about, excuse me, the
5 basis for your opinion that what was done was
6 reasonable?

7 A. Right.

8 Q. And you were going to tell me what you
9 gleaned from the documents that you have that
10 assisted you in making that determination?

11 A. Right.

12 Q. I've got a copy of Dan Dorn's
13 deposition in front of me, so if you can refer me
14 to the page.

15 A. On Page 34 -- I'm going to refer to a
16 number of different things, if I may sort of walk
17 you through it. On Page 34, there's discussion
18 about whether or not she is in a vegetative state.

19 Q. You understand that there's two
20 different sides in this?

21 A. Yes, absolutely.

22 Q. And how do you know -- how did you
23 determine which one was right or determine the
24 basis for the Cohens' position without talking to
25 the Cohens?

1 A. I'm not trying to weigh the two and
2 say which one gets the preponderance. I'm saying
3 it's clear from this discussion that there are two
4 sides, and the attorney for the Cohens is, in this
5 questioning, asserting that she is not in a
6 vegetative state.

7 Q. So there's an issue?

8 A. There's an issue.

9 Q. And does this go back to your
10 testimony earlier that in determining
11 reasonableness, you look at success,
12 reasonableness?

13 A. That's one factor.

14 Q. I believe you testified success,
15 reasonableness, lawyers involved, and interest of
16 justice?

17 A. I said those things.

18 Q. So the fact that there is a dispute
19 speaks to the fact that that's a factor to tell
20 you that it was reasonable, that there's a dispute
21 as to whether or not she is in a vegetative state?

22 A. It tells me that there are two sides
23 to that issue.

24 Q. Would you agree that there's two sides
25 to every issue?

1 rights and what you believe they have the power to
2 do, but in the visitation issue, they're not
3 defending, they're bringing the action.

4 A. Fair enough. And so here on Page 48,
5 they're talking about offers of compromise.

6 Q. Does the offer of compromise in some
7 way give credence to the fact that it's reasonable
8 to litigate, it's reasonable just because
9 someone's willing to compromise?

10 A. It's one ray of light into the mindset
11 of the trustees in their exercise -- the
12 reasonable or not reasonable exercise of their
13 powers to litigate.

14 Q. So the mere fact that somebody was
15 willing to compromise gives you a ray of light
16 into what's going on in their mindset?

17 A. Yes.

18 Q. Would you agree that in a medical
19 case, but I'm bringing a case, and someone's
20 arguing over medical conditions, and the first
21 thing that I always hear the defense lawyers say
22 to the doctor is: What's the most important thing
23 to do in evaluating somebody, and they always say:
24 Seeing the patient and evaluating the patient.

25 Would it have been beneficial for you

1 A. No.

2 Q. Do you think that every litigation
3 that's ever been filed is reasonable?

4 A. No.

5 Q. So all you know from looking at this
6 issue, at least on this paragraph or this section,
7 is that there's a dispute. What's next?

8 A. Page 48, there's discussion --
9 questions and answer about an offer of visitation,
10 questions about: Cohens have, on various
11 occasions, offered you more money from their own
12 funds in support of the children than you would
13 have gotten from the child support petition.

14 So it sounds as though, among other
15 things, that at least at this juncture, they're
16 discussing both visitation and, importantly, child
17 support. They're still on the table.

18 Q. But for purposes -- I told you that
19 for purposes -- we're discussing the
20 reasonableness of paying the visitation fees.
21 We're not talking about child support. And the
22 reason I'm distinguishing them is because among
23 other things, the child support they were
24 defending. You've given your opinion. You've
25 talked very well about that and the rules and the

1 to have spoken to the Cohens about this matter?

2 A. Might have been.

3 Q. Might not have been?

4 A. Might not have been.

5 Q. Would it have been beneficial to have
6 reviewed their depositions and reviewed their
7 testimony, even if you didn't speak to them, so
8 you can know firsthand what they were saying they
9 had done and thought?

10 A. Maybe so, but the fact is as we sit
11 here tonight, I didn't, so you've asked me what
12 else am I relying on, and I'm pointing to evidence
13 in Mr. Dorn's deposition.

14 Q. What else?

15 A. On Page 53 and continuing on 54, I'm
16 at the very bottom of 53, there's a question
17 about: Is there an amount of visitation -- was
18 there an amount of visitation that would -- that
19 you would have agreed to, irrespective of any
20 court order, and Mr. Dorn's answer was: Of
21 course, in the past.

22 Q. And that gives you, once again, a
23 basis to believe that what the Cohens did was
24 reasonable?

25 A. In the give and take of the litigation

1 over visitation, that's, again, one more ray of
 2 light.
 3 Q. Anything else?
 4 A. Yes. On Page 57, there's questioning
 5 of Mr. Dorn about a motion that was filed by his
 6 counsel seeking to stay all visitation, and the
 7 question was: Under the relief sought in the
 8 motion under Section 9, what is the relief sought
 9 by your attorney in this document, and his answer
 10 was: To stay all visitation issues.
 11 Q. So a motion filed by Dan Dorn, or on
 12 behalf of Dan Dorn, to stay visitation issues
 13 would indicate to you that it's reasonable to seek
 14 visitation?
 15 A. Over the length of the -- you're
 16 saying that the lion's share of the fees were
 17 incurred on the visitation issue, you've asked me
 18 to assume that.
 19 Q. Not that I say. That's the testimony.
 20 A. Well, I don't know that, other than
 21 you've asked me to assume it.
 22 Q. I know that.
 23 A. Then this would be, again, one more
 24 indicator of the back and forth that was going on
 25 in that litigation and the fact that his attorney

1 seen.
 2 Q. Can you opine, likewise, that it was
 3 unreasonable to do it as the money started to
 4 escalate in fees?
 5 A. No.
 6 Q. Well, looking at the same issues we've
 7 just looked at, we've seen evidence in the
 8 deposition that there's a dispute?
 9 A. Correct.
 10 Q. We know it's going to get expensive?
 11 A. Yes.
 12 Q. We've seen evidence that there's an
 13 allegation of grandparent right visitation as the
 14 intent?
 15 A. Uh-huh.
 16 Q. We've seen evidence that there's an
 17 assertion from Dan that Abbie is in a vegetative
 18 state and would have no benefit. Does that not
 19 assist you in ruling it out?
 20 A. No. There's more.
 21 Q. Have you read Dr. Mamelak's
 22 deposition?
 23 A. No.
 24 Q. Do you know who he is?
 25 A. No.

1 in California sought to stay all visitation.
 2 Q. Let me ask you this as an aside on
 3 this issue: Would it have been reasonable under
 4 that analysis for the Cohens just to have
 5 dismissed the visitation issue?
 6 A. I'm sorry. Say again.
 7 Q. Would it also have been reasonable for
 8 the Cohens, after the first call it \$50,000
 9 related to visitation, to have dismissed the
 10 visitation issue?
 11 A. I don't know.
 12 Q. Can you rule it out?
 13 A. Rule it out?
 14 Q. Yes.
 15 A. No, cannot.
 16 Q. Can you rule out that it was
 17 unreasonable for the Cohens to have sought and
 18 paid for and continued the litigation on the
 19 visitation issue?
 20 A. Can I rule it out?
 21 Q. Yes.
 22 A. No.
 23 Q. But you can opine that you believe it
 24 was reasonable to do it?
 25 A. Yes, based on the things that I've

1 Q. Do you believe it's prudent for a
 2 trustee to cloak themselves with as much knowledge
 3 as they can in order to make appropriate
 4 decisions, whether they like the knowledge or
 5 don't like the knowledge?
 6 A. Knowledge is a good thing.
 7 Q. Would it change your opinion at all if
 8 I was to advise you that there's a Dr. Mamelak
 9 who's given an opinion which is not to the liking
 10 of the Cohens' side of the litigation inasmuch as
 11 it states that even back shortly after this
 12 incident occurred, when he was treating, he was a
 13 treating physician --
 14 MR. DAVIS: Your Honor, I object.
 15 He's made a statement that the Mamelak opinion,
 16 we've got an opinion -- and actually, we've got a
 17 deposition.
 18 MR. DAN SLOTCHIVER: I'm using the
 19 evidence from the file, Your Honor, if I may
 20 finish, please.
 21 MR. DAVIS: He's said that it was
 22 not --
 23 MR. DAN SLOTCHIVER: I have not
 24 finished.
 25 MR. DAVIS: That the Cohens did not

1 like it.
 2 MR. DAN SLOTCHIVER: Okay. Maybe they
 3 liked it.
 4 MR. DAVIS: I don't think he's
 5 established --
 6 MR. DAN SLOTCHIVER: Maybe they like
 7 it, okay. I'll withdraw that.
 8 THE COURT: Thank you.
 9 MR. DAN SLOTCHIVER: I apologize for
 10 making that innuendo.
 11 THE WITNESS: Start again on the
 12 question.
 13 BY MR. DAN SLOTCHIVER:
 14 Q. I'll advise you that in evidence is a
 15 deposition of Dr. Mamelak, and Dr. Mamelak is a
 16 neurosurgeon at Cedars-Sinai. Dr. Mamelak has
 17 testified that he was involved in the treatment of
 18 Abbie shortly after this all occurred, and he said
 19 at that point, he was telling them the realities
 20 that she's not going to get better, that the odds
 21 of getting better are virtually impossible, and
 22 that Susan did not want to hear it, and she made
 23 it clear: I don't want to hear it. I'm not going
 24 to listen. And subsequent to that, he gave a
 25 deposition, and she testified: I'm not even -- I

1 Honor, so I'd like --
 2 THE COURT: Overruled.
 3 BY MR. DAN SLOTCHIVER:
 4 Q. I have never heard of that, so I'd
 5 like to have your response, please.
 6 A. If that's all that she had to rely on,
 7 and she said --
 8 Q. There's other things. There's other
 9 things. I'm not saying it's all. But it's a
 10 statement or an affidavit from a neurologist who
 11 was a treating neurologist who said --
 12 neurosurgeon, somebody said, I'm assuming that's
 13 right, but a neurosurgeon who gave her this
 14 information, and he said: I couldn't talk to her
 15 because she wouldn't talk to me about this. She
 16 would walk away. Is that prudent?
 17 MR. DAVIS: I'm sorry. What did he
 18 say, Your Honor? I'm not familiar with --
 19 MR. DAN SLOTCHIVER: Could I please
 20 have him answer the question, Your Honor? He
 21 certainly can cross-examine.
 22 MR. DAVIS: He said that there was a
 23 discussion between Dr. Mamelak and Susan Cohen
 24 and -- I'm sorry. Is that what he said?
 25 THE COURT: I understood that that's

1 wouldn't read that deposition. I'm not going to
 2 consider it. I'm giving it no weight. Was that
 3 prudent?
 4 A. You're saying that she testified to
 5 that fact?
 6 Q. Yes. Is that a prudent thing for
 7 someone to do based on what we just discussed a
 8 moment ago? I know it's new information you
 9 didn't have before, but is that a prudent thing to
 10 do, to disavow yourself of testimony?
 11 A. I know it's an emotional thing to say,
 12 and whether she continued in that belief and
 13 relied upon that, I do not know.
 14 Q. Make the assumption she did, she
 15 continued to refuse to even consider it or to look
 16 at it.
 17 MR. DAVIS: Your Honor, I would like
 18 some clarification. He said -- he's saying that
 19 the deposition -- he's assuming that that's the
 20 only knowledge that Susan Cohen has of
 21 Dr. Mamelak's position, and she has talked with
 22 Dr. Mamelak, so she already knew his position and
 23 did not have to read his deposition to get that.
 24 MR. DAN SLOTCHIVER: Well, there's no
 25 testimony to support that in the record, Your

1 what Dr. Mamelak testified to in his deposition.
 2 MR. DAN SLOTCHIVER: Yes, it is.
 3 BY MR. DAN SLOTCHIVER:
 4 Q. So once again, could you please answer
 5 the question?
 6 A. Certainly, if one of the co-trustees
 7 says: I'm not going to listen to that, that's not
 8 a favorable statement by that person. Does that,
 9 in the grand scale of things, decide the weight of
 10 reasonableness and say everything's unreasonable,
 11 absolutely not.
 12 Q. Do you understand that Susan and Paul
 13 Cohen work together, as co-trustees, and they
 14 consulted each other and made united decisions
 15 together, both of them having a part of that
 16 decision?
 17 A. They would be required to, two
 18 trustees.
 19 Q. If I advised you that, in fact, the
 20 testimony is that Paul Cohen was very busy, and he
 21 generally, for the majority of time, acquiesced to
 22 his wife making all the decisions, would that
 23 affect your determination as to -- well, first,
 24 would that be prudent? Would that be complying
 25 with the regulations as a trustee, as you know

1 them, if one of the co-trustees virtually did
2 everything, and the other one said: You do it?
3 Is that acceptable?

4 A. It is acceptable on two bases. One is
5 the code specifically says that trustees, as
6 between themselves, can delegate authority, and
7 the other is that it's commonly done, and to the
8 extent that they then periodically consult or
9 check or account to one another, they've met the
10 obligations of the code.

11 Q. Do you know if they did that in this
12 case?

13 A. I don't know if they did. I don't
14 know if they didn't either. I don't know if they
15 did or didn't.

16 Q. Does the trust document set forth a
17 provision that allows one to act as trustee and
18 the other one not?

19 A. I don't recall it addressing that.

20 Q. Does the trust code -- as I understand
21 it generally, one of the first provisions of a
22 trust is read the trust and follow the terms of
23 the trust, unless it's trumped by some other
24 provision?

25 A. Sure.

1 beyond to an unreasonable conclusion. I say to
2 clients: Communicate with one another.

3 Q. Is it unreasonable because if you did
4 that, it would not be proper?

5 A. No, because that's -- simply because
6 that's not the best way to communicate as
7 co-trustees.

8 Q. I haven't gotten you to acknowledge
9 anything that I've suggested to you as being
10 improper, so I'm trying to understand what would
11 be improper, then, in the context of a trustee?

12 A. You asked me earlier a question about
13 waste, or someone did, and I said waste is not
14 proper.

15 Also, continuing in answer to your
16 question about other things in Mr. Dorn's
17 deposition, on Page 71 and 72, at the bottom of
18 71, it begins -- there's a discussion about
19 Mr. Dorn's fees in the California proceedings
20 regarding protection of the children, and the
21 question that was asked was: You have said that
22 your objective in both the California proceedings
23 and, as I understand your testimony, in South
24 Carolina was the protection of the children, and
25 my question to you is how have you advanced the

1 Q. Without the trust giving that
2 authority, for one to act as trustee and one not
3 to, is it your position that it's authorized?

4 A. The South Carolina Trust Code, yes,
5 says trustees can -- let me just finish the
6 sentence, can delegate to one another authority to
7 carry out functions of the trust.

8 Q. I'm not talking functions; I'm talking
9 everything. I'm assuming you're talking about
10 particular functions. We have a lot of things to
11 do. You do these. I do these. Is that generally
12 what you're talking about?

13 A. That's generally what I'm talking
14 about.

15 Q. I'm talking about you do everything,
16 and tell me about it whenever you can.

17 A. I think that the come back and tell me
18 about it when you can fulfill the obligation of
19 keeping the two mutually engaged.

20 Q. So the advice that you give to people
21 if they came to you on a trust would be: Hey, as
22 a co-trustee, you're completely -- you're fine to
23 do nothing, as long as every once in a while, you
24 check in with the co-trustee, and they tell you?

25 A. No. You're carrying my statement

1 interests of the children by your own testimony
2 just now by spending \$750,000 in legal fees and
3 incurring an additional \$500,000 in legal fee
4 liabilities? Wouldn't the children have been
5 better off if that money had been used in another
6 fashion?

7 And then he goes on and talks about,
8 Mr. Dorn does, in his answer on Page 72: In the
9 California proceedings, my children are better off
10 by their father having 100 percent full custody
11 and determining whether visitation is in their
12 best interest or not, so that the father has
13 control of the children.

14 Q. Pretty consistent with what he said
15 here. How does that, the fact that Dan Dorn says:
16 It's my children, I should be able to know what's
17 going on with the children, I should control them,
18 that assists you in determining what the Cohens
19 did was reasonable?

20 A. No. It's the fact that he spent
21 \$1,250,000, if these numbers are accurate, in
22 those proceedings.

23 Q. So the mere fact that both sides spend
24 the same amount of money justifies it or helps to
25 justify it?

1 A. Helps to justify it.
 2 Q. Do you understand --
 3 A. Because you requested me to admit
 4 earlier, anyone can drop an action at any point in
 5 time when they deem that it's gone too far and
 6 that their involvement is no longer beneficial
 7 Q. Do you understand that Dan Dorn is
 8 spending personal funds, not trust funds, in this
 9 litigation?
 10 A. I think he testified in his transcript
 11 that he is using funds that he was awarded in the
 12 settlement of the plaintiff's lawsuit.
 13 Q. I don't believe that's what he
 14 testified to, but regardless of that --
 15 A. He went through the litany of how much
 16 he got for the different claims.
 17 Q. He did, and he spent a lot more than
 18 what he got.
 19 A. Okay.
 20 Q. But do you draw a distinction in what
 21 an individual can do and what a trustee can do?
 22 A. I'm sorry. Ask it again.
 23 Q. Do you believe there's a difference
 24 between what a trustee is authorized to do and
 25 what an individual is authorized to with his own

1 money?
 2 A. Yes and no, and the reason I say that
 3 is under the code, a trustee has all the powers
 4 over the property, meaning the trust assets, that
 5 an individual has, the one difference being that
 6 the trustee then, as the title holder, is
 7 exercising that individual control for the benefit
 8 of a second individual, the beneficiary.
 9 Q. What about the fact that he's got a
 10 fiduciary duty? Is that another difference?
 11 A. That's what I'm talking about. He has
 12 a fiduciary duty to exercise personal power over
 13 the assets for the benefit. The duty that is owed
 14 is to the beneficiary.
 15 Q. I'm not disputing that with you, but
 16 let me ask you this: If I decide that, you know,
 17 every once in a while, I want to fly to Paris, so
 18 I really can't afford it, but I'm going to go
 19 mortgage my house to buy a small place in Paris,
 20 and I'm going to go visit, and it might be a
 21 horrible investment, people tell me it's a
 22 horrible investment, but I'm going to do it
 23 because it's my money. I have the right to do it.
 24 A. You're talking about you as an
 25 individual?

1 Q. Me as an individual Do you agree I
 2 have the right to do it?
 3 A. Yes, sir.
 4 Q. Now, a trustee says: You know what,
 5 I'm going to go -- in this case. Let's use this
 6 situation. I think it would be nice for Abbie to
 7 have some international travel, and I'm going to
 8 buy a place that I can take her internationally
 9 once a year, and she can go spend a week. It's
 10 going to take up 90 percent of the trust funds,
 11 but I still got that annuity coming, so I should
 12 be okay, and it is for her benefit, and that's why
 13 I'm going to do it. Is that appropriate?
 14 A. Yes.
 15 Another factor that I rely on,
 16 Page 100 of Mr. Dorn's deposition. He's asserting
 17 here his ultimate desire to have sole control over
 18 the children. The question asked, Line 11: Dan,
 19 if you could have stopped the litigation in
 20 California at any time, why did you let it
 21 continue? Answer. Because I didn't want my
 22 children being taken away for the whole summer,
 23 and I wanted control over my children.
 24 Q. And that leads you to believe that the
 25 Cohens were reasonable why? He was protecting his

1 children. He didn't want the Cohens to have
 2 control of his children. He didn't want his
 3 children to spend three months with their
 4 grandparents. How is that showing that the Cohens
 5 were reasonable?
 6 A. That, in light of the earlier parts
 7 that we have talked about where the mutuality of
 8 how much money each side was spending, the
 9 question of what other issues were on the table at
 10 the same time, and whether or not she was, in
 11 fact, getting any benefit from the visitation.
 12 Q. Do you think they ever had a duty to
 13 sit back and -- we talked about this, the duty to
 14 revisit. As the money started to go, and in this
 15 case huge amounts, I'll represent to you, huge
 16 amounts of money were flying out going to legal
 17 fees. At what point do you believe, based on your
 18 knowledge, based on what you have right now, at
 19 what point is it that the Cohens had a duty to
 20 revisit the issue of all the expenditures on legal
 21 fees?
 22 A. I can't answer that question.
 23 Other things I look at are on Page 110
 24 and Page 112 of the transcript of Mr. Dorn. There
 25 were, according to Page 110, questions -- still

1 questions of child custody on the table, and on
2 Page 112, there were still issues of child support
3 still on the table. And on 112 --

4 Q. But we're discussing, Mr. Wingate, the
5 reasonableness not of defending, but of bringing
6 the case for visitation.

7 A. And what I'm answering is that this
8 doesn't lead me to believe that what you're asking
9 me to answer is reflective of the facts in the
10 case. This is still talking about child support.
11 This is still talking about visitation.

12 Q. Do you really --

13 MR. DAVIS: He needs an opportunity to
14 answer the question.

15 BY MR. DAN SLOTCHIVER:

16 Q. But do you really know?

17 A. Ultimately, no, I don't. You've asked
18 me -- let me just finish this sentence. You've
19 asked me what factors have I relied on in forming
20 my opinion, and I have just given you a dozen or
21 so different factors that I gleaned from Dan
22 Dorn's deposition.

23 Q. Couldn't you have likewise -- if I
24 asked you as an expert to give me the factors that
25 you've relied on to show that it wasn't

1 based on the documents you have that you would
2 have relied on?

3 A. Yes.

4 Q. I believe you said in your deposition
5 that the authority that was granted and the
6 reasonableness that you agreed to or opined on was
7 for all fees related to the litigation, past,
8 present, future. Do you recall that?

9 A. I don't remember that phrase, but if
10 you tell me that was in there, I'll accept that.

11 Q. Does that sound right to you?

12 A. Yes.

13 Q. Even without knowing what the fees
14 were going to be in the future?

15 A. To this point, my opinion is what has
16 been expended was authorized and reasonable.

17 Q. You mean to this point today as you're
18 sitting here?

19 A. Yes.

20 Q. And once again, let me ask you, how
21 much was expended for the visitation issue?

22 A. I don't have a specific breakdown. We
23 know, as I said earlier, that in excess of
24 \$600,000 of legal fees have been paid from the
25 trust. I don't know what the breakdown is among

1 reasonable, couldn't you likewise come in from
2 that perspective on behalf of Dan Dorn and say it
3 wasn't reasonable -- say you were chosen. Say I
4 knew you, and you were chosen. Instead of Walker
5 or Freeman, you came in. And couldn't you say it
6 wasn't reasonable for you to do what you did
7 because there's no evidence that you ever
8 consulted each other, because there's no evidence
9 you ever considered at what point do we reconsider
10 and reconsider and reconsider. I don't have that
11 evidence. I'm saying it didn't happen for right
12 now, but if you don't have that evidence, there's
13 no evidence of it being there, and there's no
14 evidence that -- there's evidence here that you
15 were going to continue to litigate, so you
16 litigate so there's another side of the coin so we
17 can justify it or not justify it.

18 I mean, those -- we're talking about
19 stuff that you don't have enough information in
20 the stratosphere of what you have been given to
21 consider to really give an opinion. Would you not
22 agree with that?

23 A. Ultimately, this court is going to
24 make that decision.

25 Q. So that's it? Is that everything

1 the different parts of the cause of action, but it
2 looks to me like it was still all on the table.
3 It was issues of child support --

4 Q. What if I told you it was \$2 million?
5 What if it was \$2 million?

6 A. For which side, the two together?

7 Q. No, for the Cohens. What if I told
8 you it was \$2 million of legal fees incurred by
9 the trust in prosecuting the case for visitation?
10 \$2 million, even number.

11 A. How does that weigh against what Dan
12 has spent?

13 Q. Is it reasonable? Same.

14 A. They've each spent that same amount?

15 Q. Yes.

16 A. That certainly adds weight to my
17 continued opinion that, yes, it was reasonable.

18 Q. What if it was \$3 million, unlimited
19 amount of money?

20 MR. DAVIS: Your Honor, that's asked
21 and answered already.

22 THE WITNESS: No, there's not an
23 unlimited amount of money.

24 MR. DAVIS: He asked the witness how
25 much money would be too much, and so he's already

1 answered the question.

2 MR. DAN SLOTCHIVER: I don't believe I
3 have asked him that.

4 MR. DAVIS: Now he's coming back and
5 asking him a different way and going up dollar
6 amounts. I don't know how far he's going. He's
7 already asked the witness is there a dollar amount
8 where it would no longer be reasonable. Now he's
9 just kind of putting numbers to that. So it's
10 already been asked, and it's already been
11 answered.

12 THE COURT: Overruled.

13 THE WITNESS: Like I answered
14 Mr. Kachmarsky earlier, to the extent when the
15 trust has no more funds, then it certainly stops.
16 BY MR. DAN SLOTCHIVER:

17 Q. So it's okay to spend all the money in
18 the trust in the litigation, as long as we still
19 have the annuity coming in. Is that what you're
20 referring to, or did I misunderstand you?

21 A. As long as the pursuit of the
22 litigation on the part of the discretion of the
23 trustees is for Abbie's benefit.

24 Q. The discretion of the trustees or the
25 discretion of the trustees acting following the

1 want it. They want it because they believe that
2 the ward -- really, to her, this is worth all the
3 money in the world. It's so important. They want
4 her to have it. They believe it's significant to
5 her. They'll spend \$2 million. They'll spend all
6 of her money, \$2 million, to get it, because they
7 want it that bad. The other side spends
8 \$2 million also, so the fees are the same, so
9 there's a correlation. The other side's an
10 individual, this is the trust, spend the
11 \$2 million going after it, and at the end, they're
12 successful. Let's assume they're successful, and
13 they get that frame. Is it reasonable?

14 A. That doesn't sound reasonable, but nor
15 does it sound like this case.

16 Q. Is it unreasonable?

17 A. I'm not going to say it's
18 unreasonable.

19 Q. Okay. Thank you.

20 You referred earlier to 62 -- is it
21 7-707? Is that right?

22 A. About what?

23 Q. You said under a particular provision,
24 I thought it was 62-7 --

25 A. I think I referred to 107.

1 prudent person rule?

2 A. Yes, it is subject to the prudent
3 person rule.

4 Q. So is there ever an amount that's too
5 much?

6 A. When there are no more assets, that
7 would be too much.

8 Q. If you spent \$4 million to get back a
9 \$500 antique frame that you really want that you
10 know Abbie loved, and you knew she loved it, you
11 knew she'd benefit, you believed she'd benefit
12 from getting it, and you spent \$2 million, and the
13 other side spent \$2 million fighting it,
14 reasonable?

15 A. It starts to raise the question of
16 unreasonable under that hypothetical, for sure.

17 Q. It starts to raise it, or it is
18 unreasonable?

19 A. You're saying fighting -- each side
20 spends \$2 million fighting over a, what did you
21 say, \$500 asset?

22 Q. Yeah.

23 A. Why would anyone do that?

24 Q. That's not what I'm asking. Because
25 they want it. I'll tell you why, because they

1 Q. -- 107 of the trust code, if I wrote
2 it down right, terms of a trust include extrinsic
3 circumstances bearing upon the circumstances of
4 the trust and that these circumstances of
5 litigation, in this case litigation, would become
6 part of the trust, in your opinion?

7 A. Yes. Look at the code and the comment
8 to the code. I didn't add that phrase, but both
9 of those discuss that question or that issue.

10 Q. Would it be important to understand
11 all the extrinsic circumstances?

12 A. All the extrinsic circumstances?

13 Q. Yes, all of the circumstances. Is it
14 important to consider all of the extrinsic
15 circumstances in determining whether or not this
16 section of the code allows this provision to latch
17 onto the trust?

18 A. I don't think the code talks about
19 all; it talks about relevant external
20 circumstances.

21 Q. Does the code also, in providing this
22 language, does it still require that you follow
23 the prudent person rule?

24 A. That also is one of the -- yes, one of
25 the sections that remains in effect.

1 Q. I asked you in your deposition if you
2 know who Jeffrey Cohen is, and at the time, you
3 said no. Do you remember that?
4 A. I do remember that.
5 Q. I understand from your testimony today
6 that what you know about Jeffrey Cohen really is
7 gleaned from the testimony that you read of
8 Professor Freeman. Is that correct?
9 A. Freeman, yes, and maybe Walker.
10 Q. And then some reference you saw in the
11 accountings?
12 A. Correct.
13 Q. You testified that -- or do you know
14 how much money Jeffrey Cohen was being paid?
15 A. No.
16 Q. Do you know what he did for his money?
17 A. No.
18 Q. Do you believe that hiring him in this
19 case was prudent and reasonable?
20 A. I don't have knowledge about that.
21 Q. Would it be prudent to pay somebody
22 money from a trust, a family member, when the
23 family member said: I don't want anything, I
24 don't want to get paid?
25 A. So you're asking me to assume that

1 fact?
2 Q. Yes, assume that fact. You're a
3 trustee for your family member, or you're a
4 trustee for somebody, and you decide that you want
5 your son to do some work, and you say, you know:
6 I'm a trustee for Aunt Ruth, and I want you to do
7 some work to help me out, and he says: I'm happy
8 to do it, Dad. Don't pay me. I don't want a
9 nickel. Is it reasonable for you to pay him
10 anyhow and demand that he be paid?
11 A. Did he ultimately accept it?
12 Q. Not part of the question yet.
13 A. I don't have enough information to
14 answer a question.
15 Q. Well, is it reasonable to demand that
16 he get paid?
17 A. Depending on what he's getting paid to
18 do and how much he's getting paid.
19 Q. Well, the only thing I'm throwing out
20 to you is he says: I don't want to get paid.
21 You're spending someone else's money. You're the
22 trustee. You have a fiduciary duty to the ward,
23 correct, as a trustee?
24 A. Definitely you have a duty to the
25 ward.

1 Q. Is it fair to give somebody money for
2 services that they can provide when they say: I
3 don't want to get paid. I'll do it for free? Is
4 that proper?
5 A. I'm going to say no, but I don't have
6 enough information, I believe, to answer that
7 legitimately. I don't know what transpired.
8 That's not what I'm testifying about.
9 Q. But you are testifying as an expert on
10 trust administration?
11 A. Yes, I am.
12 Q. So in your expertise as trust
13 administrator, that would not be proper?
14 A. I don't have enough facts to answer
15 the question. I even asked you did he accept the
16 money, and you said: Don't worry about that.
17 Just deal with the facts I gave you.
18 Q. Yes. You say: I demand you take it,
19 and they say: Please, I really don't want to get
20 paid. I really don't. And you say: I want you
21 to get paid. I'm going to pay you.
22 A. Was there service rendered for that,
23 or was it a gift?
24 Q. Well, depends on how you look at it.
25 If the service was offered to be rendered for

1 free, is the service rendered for money? Don't
2 know the answer to that.
3 A. Again, I think that's one that this
4 court's going to decide, apparently.
5 Q. Do you think the issue of visitation
6 is properly quantified as a healthcare issue?
7 A. I do.
8 Q. Because why?
9 A. My understanding, and again, you can
10 go through the whole litany of where did you get
11 the understanding, is that the question of does
12 time spent with the children benefit Abbie Dorn in
13 any way, and I recalled there is discussion in the
14 California litigation in that opinion that you had
15 me go through that the court said that it had a
16 difficult time analyzing this case because the
17 California law required that judge to also assess
18 the benefit that the children might obtain
19 Q. I don't recall that provision
20 anywhere.
21 A. Where is it?
22 Q. Where it said the court had a
23 difficult time?
24 A. Sure. I was just reading it. Bear
25 with me.

1 Q. What document are you looking at?

2 A. It's that court opinion that we looked
3 at a little while ago.

4 Q. The statement.

5 A. I think I found it. I'm reading on
6 Page 4 under the heading: Best Interests/
7 Detriment Analysis, and the court said: This is a
8 difficult case because of the factual setting
9 involved. The court finds that Code 3100(a)
10 applies as the basic standard upon which the court
11 should determine custody and visitation.

12 And then just go to the beginning of
13 the next paragraph: Pursuant to Code Section
14 3011, the court is required to consider which
15 custody order is in best interests of the minor
16 child, as defined in 3011. The best interests
17 standard has been said to be an elusive guideline
18 that belies rigid definition; however, the purpose
19 of the best interest standard is to maximize a
20 child's opportunity to develop into a stable,
21 well-adjusted adult.

22 So going on just now and not quoting
23 she or he, whoever the judge is, is analyzing best
24 interests of Abbie and best interests of the
25 children.

1 visitation issue and also -- Susan Cohen in the
2 grandparent right visitation and also its final
3 conclusion or its conclusion on Page 7, I believe,
4 that there's no compelling evidence that Abbie
5 would benefit, you hold those at the same level?

6 A. Clarify for me what you're asking me
7 to compare as to the same level.

8 Q. Are you comparing the statement you
9 just gave me about the right to look at
10 visitation, and are you saying: I'm comparing
11 that, and I'm saying that stands on the same
12 plateau -- obviously, it's the judge's decision,
13 but in your opinion, it stands on the same plateau
14 as the reference on Page 7 that there's no
15 compelling evidence that the visitation by the
16 children will have any benefit to Abbie?

17 A. I didn't say I put them on the same
18 plateau.

19 Q. Which do you think weighs more?

20 A. Is one a finding?

21 Q. Yeah. One appears to be a finding.
22 Actually, it was a consideration in the court's
23 determination.

24 A. The judge -- again, I think it's a
25 lady, I don't know if it was or wasn't -- said

1 Q. So in this case, you're using the
2 reference from the judge and this decision as part
3 of your basis to believe that the visitation in
4 this matter was proper?

5 A. As one piece of the analysis.

6 Q. And this would not be canceled out, I
7 take it, by the reference in the same document
8 that Susan Cohen was undergoing or appeared to be
9 undergoing grandparent rights and also the
10 reference in the same document in the findings
11 that there was no compelling evidence that Abbie
12 would benefit, that didn't -- that doesn't dissway
13 your opinion?

14 A. Cancels it, I think is the word you
15 used, and my answer is no, it doesn't cancel it.

16 Q. Doesn't affect it either.

17 A. There's a pebble in each of the two
18 buckets, and the court will decide how to weigh
19 them.

20 Q. You think that the fact that the court
21 has set forth what its considerations are when it
22 comes to visitation holds in the same weight, in
23 your expert opinion, as -- and it gives the same
24 basis and value as the court's decision with
25 regard to Susan Cohen and the grandparent right

1 something on Page 7 to the effect like: He has a
2 point.

3 Q. That was a different one. He said
4 that also. I don't know if that was Page 7.

5 A. There are a lot of pebbles.

6 Q. But he said that also. Well, I see a
7 lot of pebbles from the judge aimed on our side
8 supporting it. I haven't seen a lot that you're
9 referring to on the other side.

10 Would you agree with that, that this
11 document, the statement of claim that was accepted
12 and the comments -- this -- would you consider
13 this a success to the trust? Was it a success,
14 the litigation, the spending of all that money?

15 And I know you stated that you can't
16 look back and say was it justified based on what
17 happened, but now giving credence to the fact that
18 the court found there's no compelling evidence
19 that Abbie has any benefit from the expenditures,
20 that the court found that there's some credence to
21 the argument that Susan was acting for grandparent
22 rights, Susan being the trustee, and knowing that
23 all of the money related -- or all of the reserve
24 money from the trust was absorbed by fees, or at
25 one time, at least, the fees associated with it

1 would wipe out the trust, understanding it's a
2 factor, is that a success?

3 A. The court did allow visitation at the
4 end of the day, right?

5 Q. The court, as I understand what it
6 said was there's no evidence that Abbie's going to
7 benefit, but that they do believe that the
8 children will benefit from seeing their mother.
9 They believe that there's no compelling evidence
10 to show that Abbie would benefit, and they talked
11 about the language from Dr. Hays's report, that I
12 don't know that you've seen --

13 A. No, I have not.

14 Q. -- referencing that there is support
15 that she's in a vegetative state. If you take all
16 of that as a given, wouldn't you agree with me
17 that what it's saying, if we want to paraphrase
18 it, is you spent all this money, we'll call it
19 \$800,000 for easy conversation, looks to us like
20 it was grandparent visitation you were seeking,
21 there's no evidence to support, no compelling
22 evidence to support, that Abbie would ever benefit
23 from all the money you spent, looks to us like you
24 spent it for yourself, and we'll give visitation
25 to the kids because we think they benefit from

1 correct?

2 A. I do not know what was in their minds.

3 MR. DAN SLOTCHIVER: I've got nothing
4 further, Your Honor.

5 You've got 86? I'm going to take mine
6 with me.

7 THE COURT: I have a copy that we can
8 make 86.

9 MR. DAN SLOTCHIVER: Sorry I kept you
10 late. Thank you very much.

11 THE WITNESS: Thank you.

12 MR. DAN SLOTCHIVER: He's got some
13 original documents that he needs to give the court
14 reporter.

15 MS. HEDGEPATH: Your Honor, may I have
16 five minutes of his time?

17 THE COURT: Have five minutes?

18 MS. HEDGEPATH: Yes, ma'am.

19 THE COURT: Of him?

20 MS. HEDGEPATH: Yes, ma'am.

21 MR. DAVIS: I've got redirect.

22 MS. HEDGEPATH: You have some, okay.

23 THE COURT: I was going to let Bret --

24 REDIRECT EXAMINATION

25 BY MR. DAVIS:

1 seeing their mother, is that a win for the trust?

2 A. The trustees sought out seeking
3 visitation. The court awards visitation, though
4 on a basis that is different than the basis on
5 which they were seeking it. You tell me if that's
6 a win.

7 Q. I think we have our own opinions.

8 A. I think we do. I think it was a win,
9 and I think more importantly --

10 Q. You think it was a win?

11 A. And I think more importantly, that
12 whether it was a win, as I've testified several
13 times earlier today, is not the relevant measure
14 of prudence.

15 Q. I'm sorry. What was the last part you
16 said?

17 A. That whether or not there was a win is
18 not the relevant measure of prudence.

19 Q. No. The real measure of prudence is
20 what did they think at the time that they started
21 to do all of these things, correct?

22 A. Correct.

23 Q. Which you have no information at all
24 to support at all. You don't know what they were
25 thinking. You don't know what the process was,

1 Q. Mr. Wingate, thank you very much. I
2 know it's been a long day for you. Let's go
3 quickly to Plaintiff's Exhibit 104. This is a
4 document that you testified that you have reviewed
5 in forming your opinion. I would direct your
6 attention to the exhibits and see if this gives
7 you any information as to the processes --

8 MR. DAN SLOTCHIVER: Your Honor, now
9 it looks to me like he's leading him as to: Does
10 this help you making in an opinion.

11 BY MR. DAVIS:

12 Q. -- of the Cohens.

13 MR. DAN SLOTCHIVER: I would object to
14 that type of testimony.

15 MR. DAVIS: I'll do it just like I did
16 earlier, Your Honor. I would ask -- I did the
17 same thing earlier.

18 THE COURT: No leading.

19 MR. DAVIS: You're going to allow me
20 to do it?

21 THE COURT: Pardon me?

22 MR. DAVIS: I'm sorry?

23 THE COURT: No leading.

24 MR. DAVIS: No leading, okay. I'll do
25 it in the same fashion that I did previously,

1 which is to point him to a section and say:
2 What's your opinion about this, which is what I
3 did earlier.

4 MR. DAN SLOTCHIVER: Well, if it's
5 been asked and answered, I will object.

6 BY MR. DAVIS:

7 Q. Mr. Wingate, what is your opinion
8 about the processes, in light of the information
9 that you've testified that you have reviewed?

10 A. Part of what was included, as I said
11 earlier, was portions of a transcript of the
12 deposition of Susan Cohen, and in there is a
13 discussion about the amount of fees paid and the
14 accounting of those to the court.

15 Q. Does that give you some indication as
16 to the mental processes of Dr. and Mrs. Cohen?

17 A. They talk in here about -- she talks
18 in here about evaluating the litigation at various
19 break points when differing sums had been spent,
20 for example, up through 2010, a reference to 350-
21 to \$375,000, and then later, that amount went up
22 further.

23 Q. I'll give you an opportunity now to
24 refresh your memory and change your opinion with
25 regard to did you know, in your opinion, some of

1 court before he asks it, or something like that,
2 because short of that, I don't believe it's fair,
3 and I can't -- it's not my job to have him ask a
4 nonleading question; it's his job to come into the
5 court and follow that instruction, Your Honor.

6 And you have warned him over and over
7 and over and over again, and I would ask that if
8 he asks one more leading question, that his
9 testimony end, alternatively, because it's not
10 fair, and it's not right.

11 And it's his job, without any
12 disrespect, to know how not to ask a leading
13 question, so either he doesn't know or he
14 disregards it, but either way, it's not fair to
15 us.

16 MR. DAVIS: Your Honor, I'm certainly
17 not intending to disregard any rules. I'm trying
18 to move this along. At one time you gave me
19 specific latitude to move it along, and including
20 from your own words, if I'm not mistaken, the
21 latitude to actually ask the leading questions. I
22 know we've had some discussion about that. So I'm
23 certainly not trying to circumvent the rules or
24 make anything unfair for him. That is not my
25 intent at all, Your Honor.

1 the mental processes of --

2 MR. DAN SLOTCHIVER: Your Honor, I
3 object. It's important, Your Honor, that at this
4 stage of where we are -- and I've objected
5 throughout the trial a lot with Mr. Davis, and I'm
6 not trying to object to him personally, but he
7 asks a lot of leading questions, and at this
8 stage, I want the court to assist me, if it will.

9 THE COURT: Yes, sir.

10 MR. DAN SLOTCHIVER: Because I think
11 it's important that he not lead the witness. And
12 I don't know, Your Honor -- not any disrespect. I
13 don't know if we can accomplish that without some
14 guidance from the court, and I absolutely object
15 to his continuing to lead this witness.

16 In my -- it is unfair to me -- in my
17 job to my client, it is unfair to my client for me
18 to have to wait for him to finish the question,
19 which plants the seed that he is attempting to
20 elicit from the witness, before I can object.
21 This has happened throughout this deposition -- or
22 throughout this testimony in other cases, and
23 other than asking -- at this point I am -- I would
24 like the court to consider taking the very unusual
25 position of having him tell the question to the

1 THE COURT: I think, Mr. Davis, I gave
2 you instructions initially, in an effort to move
3 this along. At this point it doesn't matter to me
4 if you don't move it along. We want to finish
5 tonight. But there is an objection.

6 MR. DAVIS: And I will --

7 THE COURT: Let me finish. I said
8 initially you could ask leading questions, but I
9 would entertain objections. Mr. Slotchiver has
10 objected consistently to your leading questions,
11 so I am going to instruct you not to ask leading
12 questions. You are in direct examination of your
13 witness, and you need to ask appropriate questions
14 in direct examination and not lead the witness.

15 MR. DAVIS: Yes, Your Honor.

16 BY MR. DAVIS:

17 Q. Let me phrase it this way:
18 Mr. Wingate, what is your opinion about the mental
19 processes based on that information you reviewed?

20 MR. DAN SLOTCHIVER: It's leading. A
21 leading question, as I understand it, Your Honor,
22 is when you direct them. What is your opinion
23 about the process is fine, but --

24 MR. DAVIS: Can I not --

25 MR. DAN SLOTCHIVER: I don't know what

1 else to do, Your Honor.

2 MR. DAVIS: Your Honor, it's not
3 leading. I understand he doesn't know what else
4 to do, because it's not leading. I asked the
5 court earlier can I ask the witness about his
6 opinion about a specific portion or language, and
7 the court specifically said yes, so what I've
8 asked him is what is your opinion of that
9 language, which is identical to what I said
10 earlier and you allowed me to do.

11 MR. DAN SLOTCHIVER: It is not what he
12 asked. I believe what the record will show is he
13 asked what is your opinion about the process as it
14 relates to this language. There is a distinction,
15 because he clearly wants to address the process,
16 so he says the process as it relates to this
17 language.

18 Your Honor, I would ask you to
19 instruct him that -- I would ask you to end his
20 testimony at this point. I can't continue to
21 object, and it's not fair for him to be able to
22 lead the witness. That's why the rules are there.

23 THE COURT: Mr. Davis, again, you're
24 going to have to conform your questions to
25 nonleading questions. I understand before you

1 is, that I have into Susan Cohen's or the two
2 trustees' thought process.

3 THE COURT: Anything else, Mr. Davis?

4 MR. DAVIS: I have a lot of things,
5 but I'm trying my best to filter them through some
6 questions that are not leading, Your Honor. At
7 this late state, it's hard to refashion my
8 questions, anticipating all the objections, but I
9 understand.

10 BY MR. DAVIS:

11 Q. Mr. Wingate, can you give us some
12 expert explanation of acrimony between a trustee
13 and beneficiary and how that works as a factor?

14 MR. DAN SLOTCHIVER: Your Honor, this
15 is redirect. Redirect is limited to addressing
16 those issues addressed in cross-examination.

17 MR. DAVIS: I believe that was. I'm
18 trying to recall where Dan --

19 MR. DAN SLOTCHIVER: It was not
20 addressed, Your Honor.

21 MR. DAVIS: -- mentioned the acrimony.
22 He did. He mentioned the acrimony between Dan
23 Dorn and Susan Cohen as an item. He did, Your
24 Honor.

25 MR. DAN SLOTCHIVER: I don't believe

1 were given some latitude. Once there were some
2 objections by Mr. Slotchiver, I've tried to rein
3 you in a little bit, so let me caution you one
4 last time.

5 BY MR. DAN SLOTCHIVER:

6 Q. Mr. Wingate, is there any additional
7 information you'd like to provide the court about
8 your opinion?

9 A. I have already testified, I believe,
10 as to the process that apparently was gone through
11 with respect to evaluating the amount of fees
12 incurred year by year. I've reviewed the
13 accountings. I've reviewed the portion of the
14 transcript related to different amounts spent at
15 different times, so it appears, in my opinion,
16 that there was some kind of process going on.

17 I've also testified earlier that there
18 were consultations with counsel. That's clear
19 from what I was asked to review in the way of the
20 email communication that went to the Horry County
21 Probate Court. That also would be a piece of
22 evidence, in my opinion, that would show that a
23 process of gleaning information, consulting
24 counsel, evaluating fees, has been undergone.

25 That's the insight, limited that it

1 it was ever addressed, Your Honor.

2 MR. DAVIS: And I'm just fleshing out
3 the acrimony as a factor in someone serving as a
4 trustee. I do believe that he did discuss that
5 specifically, acrimony between Dan Dorn --
6 discord. He said discord between Dan Dorn and
7 Susan Cohen.

8 THE COURT: I believe he may have said
9 discord.

10 MR. DAN SLOTCHIVER: I used the word
11 discord. I don't know if I used it with him.
12 I've used it at some point in the proceeding, but
13 I don't believe it was with him.

14 THE COURT: I'll allow it.

15 MR. DAN SLOTCHIVER: Can't confirm
16 that.

17 THE WITNESS: The trust code talks in
18 terms of what's in the best interests of the
19 beneficiary of a trust, and on the relevance of
20 discord, disagreement, conflict, whatever you want
21 to call it, acrimony, it, as I recall, states that
22 there is not -- the mere existence of acrimony or
23 discord does not, in and of itself, mitigate in
24 favor of removal of a trustee, and it's recognized
25 that in the trust actions, there is usually

1 discord. That's the reason there's a lawsuit. So
2 the discord doesn't mean, in and of itself, that
3 the fiduciary's acting inappropriately or that it
4 would be in the best interest to remove that
5 person.

6 BY MR. DAVIS:

7 Q. In your expert opinion, who are they
8 talking about? Between which parties would the
9 discord be?

10 A. Between the trustee, who has legal
11 title, and the beneficiary, who is the beneficial
12 owner of the property. It's not talking about
13 third-party claims, because those would be
14 classically ones in which -- of course they're
15 adverse interests, so it's not talking about
16 claims against -- I'm sorry, within the trust,
17 between trustee and beneficiary. That's where you
18 would need to analyze whether or not discord is a
19 problem. You would expect, in third-party
20 litigation, that there's going to be discord, and
21 that's a nonissue.

22 Q. In your expert opinion, based on your
23 review of the documents, do you find discord
24 between the trustee and beneficiary in this case?

25 A. No.

1 Q. In your expert opinion, is it required
2 that co-trustees have to do everything together?

3 A. They are mutually responsible for all
4 decisions and actions, they are to consult with
5 one another, but they are allowed to cooperate
6 between themselves to delegate specific functions,
7 so that there must be communication, and there
8 must be accountability and reporting, so they are
9 both involved in the decision-making, as they are
10 required to be.

11 Q. In your expert opinion, if you were
12 aware -- if it were the case --

13 MR. DAVIS: And I'll be happy to ask
14 the court this question first, and you can tell me
15 if you have a problem with it.

16 THE COURT: I'll let you ask
17 Mr. -- and I'll be happy --

18 MR. DAVIS: His chair is
19 spring-loaded. Let me see how I can phrase this
20 the best way.

21 BY MR. DAVIS:

22 Q. What is your expert opinion, and would
23 it bear on your expert opinion, and if it will,
24 what extent will it bear on it if you knew that
25 Jeffrey Cohen quit his job to help Abbie?

1 MR. DAN SLOTCHIVER: Objection, Your
2 Honor. This is information that has not been
3 addressed on direct examination.

4 MR. DAVIS: I believe that he clearly
5 talked about --

6 MR. DAN SLOTCHIVER: There has been
7 examination about Jeffrey Cohen, but it does not
8 allow you to go into everything about Jeffrey
9 Cohen that has not been addressed.

10 MR. DAVIS: That's my only question
11 about Jeffrey Cohen.

12 THE COURT: Sustained.

13 BY MR. DAVIS:

14 Q. One last thing. There was evidence --
15 or discussion at cross-examination about medical
16 reports and whether the trustees took those into
17 consideration.

18 MR. DAVIS: You know what, I don't
19 think it was discussed, Your Honor, so I am going
20 to move on, as tired as I am. Thank you.

21 THE COURT: Thank you.

22 MR. DAVIS: Thank you, Mr. Wingate.

23 THE COURT: Ms. Hedgepath?

24 RE-CROSS-EXAMINATION

25 BY MS. HEDGEPATH:

1 Q. Mr. Wingate, I'm Lynette Hedgepath.
2 We met at your deposition. I represent Abbie
3 Dorn.

4 Would it further support your opinion
5 of reasonableness and prudence on behalf of the
6 trustees if there were or will be testimony that
7 Abbie is not in a vegetative state, as set forth
8 somewhat in the order that you read, but, in fact,
9 can see, hear, and react to outside stimuli, in
10 other words, that she can recognize her children?

11 A. Yes.

12 Q. Would that further support your
13 opinion?

14 A. Yes, it would

15 Q. Would you have been told or read in
16 Dan's deposition his opinion of Abbie's condition?

17 A. Yes. I have seen that reference to
18 pure vegetative state.

19 Q. But I don't know that you have read
20 Abbie's parents' opinion of her physical and
21 mental condition, have you?

22 A. That is correct, I have not.

23 Q. Would it further support your opinion
24 of their reasonableness and prudence if you
25 knew that -- that if, in fact --

1 MR. DAN SLOTCHIVER: Calls for
2 speculation, Your Honor. He hasn't read it. He
3 can't testify to it if he hasn't read it. He
4 hasn't prepared to opine on it. I don't believe
5 he can testify as to his opinion changing or being
6 supported by something that he hasn't had a chance
7 to look at or consider.

8 MS. HEDGEPATH: I think Mr. Slotchiver
9 has asked him hypotheticals more than once
10 tonight.

11 MR. DAN SLOTCHIVER: But this is
12 recross. This is a different area. We're now
13 bringing in a hypothetical that's never been
14 talked about before.

15 MS. HEDGEPATH: Mr. Slotchiver asked
16 him about Dan Dorn's --

17 MR. DAN SLOTCHIVER: I was doing -- I
18 participated in the cross-examination that came
19 around the circle. Now Ms. Hedgepath is on
20 recross, and on recross, my understanding of the
21 rules is you cannot bring in new issues that
22 weren't talked about on the cross-examination.
23 She can certainly ask about my hypotheticals if
24 she wishes, as I understand it, but she can't
25 bring up new hypotheticals and go into different

1 time?

2 MR. DAN SLOTCHIVER: There's 7,000
3 pages of California litigation. I don't believe
4 that just because I talk about a part of it allows
5 you to go over any other part of it.

6 MS. HEDGEPATH: And I'm just going
7 over a part of it, the pure petition and the
8 causes of action that were requested, which is
9 what he talked about. He talked about couldn't --

10 MR. DAVIS: Your Honor, I believe that
11 Mr. Wingate has received all of the respondent's
12 exhibits previously, for what it's worth.

13 MR. DAN SLOTCHIVER: The rights, Your
14 Honor, on cross-examination are different than the
15 rights on recross. That's why recross is -- of
16 course, it's extremely limited to those issues
17 directly addressed in, I guess with all the
18 parties, the cross-examination. She can't go into
19 issues that I have not addressed in it.

20 THE COURT: I'm going to sustain that.
21 I believe that's a little far.

22 MS. HEDGEPATH: Did he go into the
23 issue of the cost of visitation?

24 THE COURT: Yes, a lot.

25 MS. HEDGEPATH: I hit a home run.

1 areas. That's my understanding of the rules, and
2 this is a very limited examination.

3 THE COURT: And I'm sorry. What was
4 your area again?

5 MS. HEDGEPATH: Mr. Slotchiver talked
6 about Dan's opinion of Abbie's physical and mental
7 condition as being purely vegetative, and my
8 question was would it further support his opinion
9 of reasonableness and prudence on behalf of the
10 trustees if he had read and/or heard the parents'
11 opinion that she, in fact --

12 THE COURT: I believe that's
13 appropriate.

14 THE WITNESS: Yes, it would.

15 BY MS. HEDGEPATH:

16 Q. Would it further support your opinion
17 of reasonableness and prudence to know that at the
18 commencement of the California litigation that Dan
19 Dorn himself requested that Abbie have visitation?

20 MR. DAN SLOTCHIVER: And now, Your
21 Honor, we're going into information that was not
22 before Mr. Wingate in any capacity.

23 MS. HEDGEPATH: Did he not go over,
24 Your Honor, the California litigation and what was
25 requested, and couldn't this be dismissed at any

1 BY MS. HEDGEPATH:

2 Q. Mr. Wingate, how would it affect your
3 opinion or your belief, your opinion as to the
4 reasonableness and prudence of the trustees as to
5 the cost -- Mr. Slotchiver talked about the cost
6 of the visitation, and he gave a number, but have
7 you seen anything and would it change your opinion
8 or further support your opinion if I tell you
9 there has been no breakdown of the cost of
10 visitation, of the bifurcation, of the
11 dissolution, of the equitable distribution, or
12 custody?

13 A. Yes. That would further support my
14 opinions that I expressed earlier.

15 MS. HEDGEPATH: Thank you.

16 MS. MOORE: I just have a few
17 questions, Your Honor.

18 RE-CROSS-EXAMINATION

19 BY MS. MOORE:

20 Q. In Mr. Slotchiver's examination of
21 you, he attempted to show you what he considered
22 to be a clear example of a trustee acting
23 unreasonable, and specifically, he asked you to
24 use the example of spending \$2 million to recover
25 \$1 million. Do you recall that?

1 A. Yes, I do.
 2 Q. Can you place a monetary value on the
 3 right to secure visitation with your children?
 4 A. No.
 5 Q. He also went through a litany of
 6 wouldn't it have been so simple and cost efficient
 7 to pursue a declaratory judgment action. Do you
 8 recall that?
 9 A. I recall that, yes.
 10 Q. Is a declaratory action always so
 11 simple?
 12 A. No.
 13 Q. Does such an action often result in
 14 counterclaims?
 15 A. Yes.
 16 Q. Does such an action often result in
 17 retention of numerous experts?
 18 A. Yes, it does.
 19 Q. Does such an action often go on for
 20 months, if not years?
 21 A. Yes, it does.
 22 Q. And does such an action cost far in
 23 excess of \$5,000?
 24 A. Yes, it does.
 25 Q. Even if the trustees weren't happy

1 with the exact language that's in that final order
 2 as to the visitation, wouldn't the fact of
 3 reaching an agreement which would stop the
 4 continued expenditure of fees be a possible
 5 example of prudent action on the part of the
 6 trustees?
 7 A. Yes, it would.
 8 MS. MOORE: That's all the questions I
 9 have.
 10 THE COURT: Mr. Kachmarsky?
 11 MR. KACHMARSKY: Nothing for me,
 12 Judge.
 13 MR. DAN SLOTCHIVER: Just one, I
 14 believe.
 15 RE-CROSS-EXAMINATION
 16 BY MR. DAN SLOTCHIVER:
 17 Q. Mr. Wingate, I believe you testified a
 18 few minutes ago that discord -- that extreme
 19 discord between parties is not a factor in
 20 determining the removal of a fiduciary. Is that
 21 correct?
 22 A. What I said is that you look at the
 23 relationship. It's the question of whether a
 24 trustee should be removed because of discord with
 25 the beneficiaries that is the relevant standard,

1 is this within the best interest of the trust.
 2 Q. Isn't that actually one of the issues
 3 that came up in the James Brown case?
 4 A. Yes, it was. It was between -- let me
 5 just finish. In the James Brown case, it is
 6 between Adele Pope as a trustee and the
 7 beneficiaries of the James Brown Legacy Trust that
 8 is the basis upon which the supreme court ruled
 9 that she should not continue as the trustee.
 10 Q. In fact, that law -- that law, in the
 11 ruling, actually created authority, would you
 12 agree, that removal on the grounds of extreme
 13 discord is, in fact, proper?
 14 A. If the discord is between the trustee
 15 of the trust and the beneficiary of the trust, and
 16 I think what we're talking about here today is
 17 discord between the trustees of the trust and
 18 Mr. Dom, who is making a claim against the trust,
 19 an entirely different universe.
 20 Q. Well, James Brown actually talked
 21 about the discord between parties, didn't it?
 22 A. Put the opinion in my hand. It's
 23 discord.
 24 Q. I've got the opinion.
 25 A. I am attorney of record --

1 Q. I've got a section of it here.
 2 A. I'll finish my statement, if I may. I
 3 am attorney of record in the case. I'm familiar
 4 with what the issues are.
 5 Q. I know, I know.
 6 A. And that is a determination by the
 7 South Carolina Supreme Court that Adele Pope is
 8 not properly exercising -- has not properly
 9 exercised her powers as a trustee with respect to
 10 her relationship to the beneficiaries of the
 11 trust.
 12 Q. And I apologize. I have brought a
 13 little section of it, and it got ripped, and I
 14 made a copy of it, and now I've brought a whole
 15 copy of it, and I was trying to find this portion
 16 in this one just now, and I didn't, so I brought
 17 the little section I was looking at. But this is
 18 the -- the very bottom is the section that I was
 19 referring to. I can't -- I thought it was
 20 Footnote 29, but apparently, I was wrong.
 21 A. No, this is not Footnote 29.
 22 Q. I know it's not, but this was in -- do
 23 you remember seeing this in the opinion?
 24 A. Yes, and I think this is also in a
 25 footnote.

1 Q. I thought it was too.
 2 A. But this doesn't show what footnote it
 3 is.
 4 Q. I know it doesn't, and I apologize.
 5 A. This is part of the court's dicta
 6 where they say we are also aware that appellants
 7 have sought \$5 million in trustees' fees.
 8 Q. Correct. And at the end, it says:
 9 These actions and the extreme discord between the
 10 parties convince us that the appellants' continued
 11 service as fiduciaries is not in the best interest
 12 of the estate. Correct?
 13 A. It says that, and the parties it's
 14 referring to are the beneficiaries of the James
 15 Brown Legacy Trust.
 16 Q. I understand that, but until this
 17 decision came out, I'm not familiar with a case in
 18 South Carolina that the supreme court ruled upon
 19 that said that extreme discord between the parties
 20 was, in and of itself, a sufficient grounds, are
 21 you?
 22 A. There's a probate case dealing with
 23 those same issues, but trust case --
 24 Q. Are you familiar with a trust case
 25 that states that?

1 A. No.
 2 Q. So under your position, this is
 3 limited to certain types of trusts, but it doesn't
 4 prove a negative, as we talked before. It doesn't
 5 say that here. In fact, I would imagine this will
 6 probably be a bone of contention in litigation
 7 into the future is how applicable and how broad,
 8 using another term we talked about today, how
 9 broad does this actually go. Would you agree with
 10 that?
 11 A. Lawyers will find ways to argue about
 12 findings and opinions. The point of the James
 13 Brown opinion from last week or two weeks ago is
 14 that if the trustee has severe discord with the
 15 beneficiaries of the trust in litigation that is
 16 over what the code calls internal affairs of a
 17 trust between the trustee and the beneficiary
 18 exclusively, then that would be a factor
 19 warranting removal of the fiduciary.
 20 Q. And that was the facts they used in
 21 that particular case, but as we know, case law is
 22 then used in other cases. That's how the laws are
 23 created in South Carolina and other states,
 24 correct?
 25 A. You cannot remotely get me to agree

1 with your proposition that the James Brown --
 2 Q. I haven't gotten you to agree with
 3 anything that --
 4 A. Let me just finish my sentence, that
 5 the James Brown opinion warrants some finding that
 6 the Cohens should be removed as trustees because
 7 there's discord with their former son-in-law who
 8 is bringing an action against the trust. Two
 9 utterly different universes.
 10 Q. And lastly, last question, and I meant
 11 to clear it up earlier, but the same issue, and it
 12 was brought up a moment ago by Ms. Moore. You
 13 looked at -- or by -- excuse me, by Bret Davis.
 14 He brought you a document to look at, which I
 15 believe -- or to talk to you about, which I
 16 believe was the exchange of testimony from
 17 Mrs. Cohen that you said you looked at.
 18 A. Yes, the excerpts that I said I had
 19 looked at, yeah. It's the same stuff.
 20 Q. Could you show that to me real
 21 quickly?
 22 A. It was attached to this emergency
 23 petition. It's this stuff right here.
 24 Q. And this is the excerpts you looked
 25 at?

1 A. Correct.
 2 Q. Can I see it really briefly?
 3 A. Yeah, sure can. Begins right there,
 4 and I think goes through there.
 5 Q. Mr. Wingate, I've reviewed that
 6 language. Can you point me to any part of that
 7 language wherein Mrs. Cohen talks about the
 8 process or revisiting the issue of the
 9 expenditures in the litigation? Because what I
 10 see from it is we're asking her: How much did you
 11 spend, she says: I had the authority, but I see
 12 nowhere where she talks about what she considered,
 13 what her process was.
 14 MR. DAVIS: And I apologize. I'm not
 15 objecting. I just want to know Is he talking
 16 about the deposition transcripts on the back of
 17 his petition? Dan, is that where you are?
 18 MR. DAN SLOTCHIVER: The same language
 19 you had showed to him earlier, yes.
 20 THE WITNESS: I'm looking at a page
 21 that's marked 138.
 22 BY MR. DAN SLOTCHIVER:
 23 Q. Could you read that applicable
 24 language that you believe shows the process?
 25 A. And the question says: How much in

1 total has been removed from the special needs
2 trust for attorneys' fees thus far, and her answer
3 is: Approximately \$375,000.

4 Q. And that statement leads you to
5 believe that she reconsidered and thought about it
6 and had a process to determine if she should go
7 forward?

8 A. Not just that one naked sentence by
9 itself, the next page.

10 Q. The next page, please.

11 A. The next page says, question: Now,
12 the \$375,000 in attorneys' fees thus far has been
13 for custody and visitation issues, though, hasn't
14 it? Her answer: Well, it's part of it.

15 Q. How does that show or demonstrate that
16 she was considering whether or not to continue?

17 A. She's weighing how much, it appears to
18 me, how much money has been spent on different
19 parts of the action --

20 Q. She's telling us how much money was
21 spent.

22 A. -- custody and visitation.

23 Q. But what is she weighing it against,
24 or is she just telling us: I believe this is how
25 much money has been spent?

1 she also talks about getting counsel on that
2 issue. Let me find that page.

3 Q. But the fact that she's getting
4 counsel, that supports your position that she is
5 evaluating whether or not to continue?

6 A. Sure.

7 Q. Last question, Mr. Wingate: Isn't it
8 true that had you --

9 Well, I'll leave it at that.

10 MR. DAN SLOTCHIVER: Nothing further,
11 Your Honor.

12 Can his deposition be marked into
13 evidence?

14 THE COURT: As Petitioner's?

15 MR. DAN SLOTCHIVER: Yes.

16 THE COURT: Yes. Do we know what
17 number?

18 THE REPORTER: 111.

19 (PLF. EXH. 111, Deposition of Kenneth
20 Wingate, was marked for identification.)

21 THE COURT: Petitioner's 111, I assume
22 without objection?

23 MR. BOYD: I don't think there was any
24 inconsistency that was established.

25 MR. DAVIS: Your Honor, I am so sorry.

1 A. Hold on. I'm sorry. Ask me that
2 question again now that I --

3 Q. Yes, sir. Where in that deposition
4 testimony does it support your assertion that she
5 is exercising prudence and evaluating should she
6 continue with the litigation related to -- in the
7 California case?

8 A. On the transcript that's marked
9 Page 96, the question is asked: Do you know how
10 much is in the trust now? Answer: I think about
11 \$475,000. And the next question: So is this the
12 account where the approximate \$900,000 went into
13 that Abbie received? And her answer was. Yes.
14 Question: And that account has been depleted by
15 the amount paid for by the attorneys' fees? Yes.

16 So she's evaluating how much has been
17 spent and how much is remaining.

18 Q. Is she evaluating, or is she really
19 just answering questions? I'm asking: How much
20 did you spend? Where's the money? What's the
21 balance? By asking those questions, does that
22 represent that she's evaluating and reconsidering
23 continuing with litigation? Is that your
24 testimony?

25 A. It is, because in this same excerpt,

1 I have kind of gotten in -- I'm in ready-to-leave
2 mode, so I missed that last document to be put in.

3 MR. DAN SLOTCHIVER: It's just his
4 deposition.

5 MR. DAVIS: I don't have a problem
6 with that.

7 THE COURT: Admitted, 111, without
8 objection.

9 (PLF. EXH. 111 was admitted into
10 evidence.)

11 THE COURT: Thank you, sir.

12 No other questions for Mr. Wingate?

13 You are excused, sir.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Thank you.

16 We're just going to briefly reiterate
17 what we talked about when we were outside during
18 the fire drill, which is Ms. Moore and
19 Ms. Hedgepath are going to get me their witnesses.
20 I'm going to get --

21 MS. MOORE: At this moment, or can I
22 do that tomorrow?

23 THE COURT: Yeah, not right now. And
24 that we're going to get a couple of briefs on a
25 couple of motions that are pending.

1 Mr. Kachmarsky?
 2 MR. KACHMARSKY: I also wanted to
 3 reserve the right to bring a neurologist, and I
 4 don't have a name, but -- well, you know what,
 5 they have the right, and I have the right, and I
 6 haven't exactly had all week to sit here and make
 7 phone calls to neurologists, so --
 8 THE COURT: I will allow you to call a
 9 neurologist.
 10 MR. KACHMARSKY: Well, I don't have to
 11 name one, do I?
 12 THE COURT: No, sir. I'm not
 13 requiring you to do that.
 14 MR. KACHMARSKY: I mean, I'm trying to
 15 stay in the same spirit with Mr. Slotchiver. I'm
 16 trying to narrow this thing down, not expand it.
 17 THE COURT: Yes, sir.
 18 MR. DAVIS: A medical doctor, a
 19 neurologist?
 20 THE COURT: Yes, sir.
 21 MR. KACHMARSKY: And that's it for me.
 22 THE COURT: We were going to get
 23 briefs on a couple of motions that are pending.
 24 I'm happy --
 25 MR. BOYD: Can we have a deadline,

1 disseminate emails early next week.
 2 THE COURT: Two weeks from the emails.
 3 MR. DAN SLOTCHIVER: Great. Thank
 4 you, Judge.
 5 MR. BOYD: Thank you, Judge.
 6 THE COURT: Thank y'all very much.
 7 Everybody have a safe trip.
 8 (The proceedings were adjourned at
 9 8:49 PM.)
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1 Your Honor, or a time frame?
 2 THE COURT: There was a motion that
 3 you made also, Reese -- I don't know if anybody
 4 wants to brief on that -- which was to reconsider
 5 my ruling that he could not call the witnesses --
 6 MR. BOYD: Yes
 7 THE COURT: -- and the gag and
 8 something else. There were like three issues on
 9 that.
 10 MR. BOYD: It was the reconsideration
 11 on the witness ruling, Your Honor.
 12 THE COURT: So I don't know if y'all
 13 wanted to -- he gave me three cases to look at.
 14 MR. DAN SLOTCHIVER: Would it be
 15 possible between all of us to disseminate a list
 16 of what all the motions are that are pending?
 17 THE COURT: Sure.
 18 MR. DAN SLOTCHIVER: And could we
 19 perhaps have two weeks to respond to everything?
 20 THE COURT: That'll be fine. You tell
 21 him what your motions are --
 22 MR. DAN SLOTCHIVER: I will.
 23 THE COURT: -- Reese can say what his
 24 motions are, and give you two weeks to respond.
 25 MR. DAN SLOTCHIVER: And we can all

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

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ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

- A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.
- B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE.

DWC
DEIRDRE W. EDMONDS
PROBATE JUDGE, HURRY COUNTY, SC

PROBATE COURT
HURRY COUNTY, SC
2008 FEB -6 AM 11:47
DEIRDRE W. EDMONDS
PROBATE JUDGE

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. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbie Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.
2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime, such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.
3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, the estate of the Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III

TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV

POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.
5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.
6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.
7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.
8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors 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.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. 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 involving or in any way related to Beneficiary or 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 injuries 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.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.
2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.
3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.
4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.
5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at Bakersfield, California, this 2nd day of November 2007
pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a
Disability dated _____ in Case No. BC356985, Superior Court of the State of
California, for the County of Los Angeles.

Paul Cohen M.D.
Paul Cohen, M.D., Trustee

Susan Cohen
Susan Cohen, Trustee

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

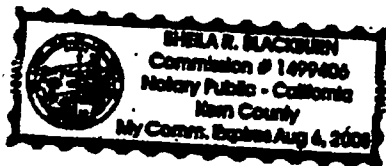
County of Kern

ss.

On November 2, 2007 before me, Sheila R. Blackburn Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Paul Cohen and Susan Cohen
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Sheila R. Blackburn
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

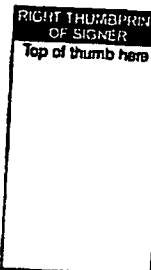
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



MOORE, JOHNSON & SARANITI

Law Firm, P.A.

P.O. Box 14737
Surfside Beach, SC 29587-4737
Phone: 843-650-9757
Fax: 843-650-9747

*Virginia Lee Moore**
*Sarah A. Johnson***
*Elizabeth J. Saraniti**
Angela D. Harrison
**Certified Family Court Mediator*
***Also member of NC and NY Bar*
**Also member of Ohio Bar*

March 14, 2013

VIA: Hand-Delivery

Deirdre Edmonds
Horry County Probate Court
P.O. Box 288
Conway, SC 29528-0288

Re: In the Matter of Abbie Dorn
Case Nos.: 2010-GC-26-25 & 50
File No.: E196LM

Dear Judge Edmonds:

Enclosed please find the Witness List (in a sealed envelope marked "For Judge's Eyes Only") submitted on behalf of myself and Lynette Hedgepath, with regard to trial continuation for the above-referenced matter.

With kindest personal regards, I remain

Sincerely,



V. Lee Moore

VLM/bv

Enclosures: as stated.

Cc: Reese Boyd (via email - letter only)
Bret Davis (via email - letter only)
Daniel Slotchiver (via email - letter only)
Stephen Slotchiver (via email - letter only)
John Kachmarsky (via email - letter only)



Moore, Johnson & Saraniti

Law Firm, P.A.

P.O. Box 14737

Surfside Beach, SC 29587-4737

VIA: Hand-Delivery

**Deirdre Edmonds
Horry County Probate Court**

"For Judge's Eyes ONLY"

HORRY COUNTY PROBATE COURT
HORRY COUNTY GOVERNMENT AND JUSTICE CENTER
1301 SECOND AVENUE, P. O. BOX 288
CONWAY, SOUTH CAROLINA 29528
PHONE (843) 915-5370 FAX (843) 915-6371
probatecourt.horrycounty.org

Deirdre W. Edmonds, Judge of Probate
Deirdre W. Barton, Associate Judge

SATELLITE OFFICE
9630 SCIPIO LANE, SUITE F
MYRTLE BEACH, SC 29588
PHONE: (843) 915-5371
FAX: (843) 205-6373



SATELLITE OFFICE
107 HWY 57 NORTH, BOX 8
LITTLE RIVER, SC 29566
PHONE (843) 915-5372
FAX: (843) 399-4374

September 3, 2014
Via Email and Regular Mail

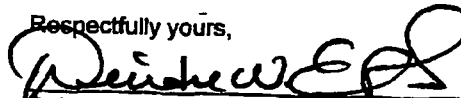
Attn: Y. Elizabeth Wellman
Probate Court Representative
South Carolina Court Administration
1015 Sumter Street, Ste. 200
Columbia, SC 29201-3747

Re: **Order of Disqualification - Request for Recusal Form**
Litigation Involving: Matter of Abbie Dorn – 2008-GC-26-25 and 2008-GC-26-50

Dear Ms. Wellman:

Enclosed herewith please find a clocked copy of an Order of Disqualification that I have entered with respect to the above-referenced matters along with the necessary Request for Recusal form. I would appreciate your requesting the Chief Justice appoint a Special Probate Judge for Horry County to preside over the litigation pending in these matters. If you have any questions or comments regarding this matter, please do not hesitate to contact me. Thank you for assistance in this matter and we look forward to receiving the Court's order appointing a Special Probate Judge at your earliest convenience. With warmest regards, I remain

Respectfully yours,


Deirdre W. Edmonds
Horry County Judge of Probate

Enclosures as stated.

cc: With enclosures via email only:
Daniel S. Slotchiever, Esq.
Stephen M. Slotchiever, Esq.
Bret H. Davis, Esq.
Reese R. Boyd, III, Esq.
Lynette Rogers Hedgepath, Esq.
V. Lee Moore, Esq.
John Kachmarsky, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE PROBATE COURT
HORRY COUNTY

Daniel B. Dorn, in his capacity as
the Parent and Natural guardian of
[REDACTED], and [REDACTED]
[REDACTED]

Case No.: 2008-GC-26-25 and
2008-GC-26-50

Petitioner,

vs.

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.

ORDER OF DISQUALIFICATION

PROBATE COURT
HORRY COUNTY, SC
2014 SEP -2 PM 4:56
DEIRDRE W. EDWARDS
PROBATE JUDGE

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

Petitioners,

vs.

[REDACTED] and [REDACTED]
[REDACTED] the Living Issue of Abbie Ilene
Dorn, and the South Carolina
Department of Health and Human
Services,

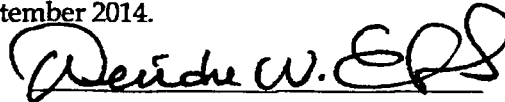
Respondents.

In RE:
The Abbie Dorn Special Needs Trust

In order to promote and preserve the public confidence in the integrity and impartiality of the judiciary, I find and conclude that it would be in the best interest of all of the parties, their counsel and the judiciary for the undersigned to disqualify herself from all further proceedings involving the above actions. Therefore,

I HEREBY DISQUALIFY myself from serving as Probate Judge in the above cases under Canon 3.E. of the Code of Judicial Conduct and I hereby request that the Chief Justice of the Supreme Court appoint a special probate judge to serve as probate judge for the above actions.

IT IS SO ORDERED the 2nd day of September 2014.



Hon. Deirdre W. Edmonds
Horry County Probate Judge

Conway, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE PROBATE COURT
HORRY COUNTY

Daniel B. Dorn, in his capacity as
the Parent and Natural guardian of
[REDACTED] and [REDACTED]

Case No.: 2008-GC-26-25 and
2008-GC-26-50

Petitioner,

vs.

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.

REQUEST FOR RECUSAL

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

Petitioners,

vs.

[REDACTED] and [REDACTED]
[REDACTED] the Living Issue of Abbie Ilene
Dorn, and the South Carolina
Department of Health and Human
Services,

Respondents.

In RE:
The Abbie Dorn Special Needs Trust

PROBATE COURT
HORRY COUNTY, SC.
2014 SEP -2 PM 4:36
DEIRDRE W. EDMONDS
PROBATE JUDGE

I request to be recused from all portions of the above listed cases:

(1)_____ Administration

(2)xxxx Litigation

(3)_____ Other:

Explanation: (Optional)

SEE ORDER OF DISQUALIFICATION DATED SEPTEMBER 2, 2014.

Attorneys Involved:

Daniel S. Slotchiver, Esq.
Slotchiver & Slotchiver, L.L.P.
44 State Street
Charleston, SC 29401

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State Street
Charleston, SC 29401

Bret H. Davis, Esq.
Davis Boyd Law Firm, P.A.
1110 London Street, Suite 201
Myrtle Beach, SC 29577

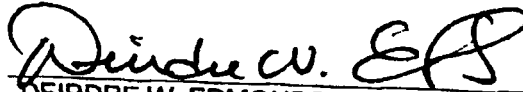
Reese R. Boyd, III, Esq.
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1110 London Street, Suite 201
Myrtle Beach, SC 29577

Lynette Rogers Hedgepath, Esq.
The Hedgepath Law Firm, P.A.
207 Beatty Street
Conway, SC 29526

V. Lee Moore, Esq.
Moore Johnson & Saraniti, P.A.
Post Office Box 14737
Surfside Beach, S.C. 29575

John Kachmarsky, Esq.
Law Offices of John Kachmarsky
171 Church Street, Suite 330
Charleston, SC 29401

DATE: September 2, 2014


DEIRDRE W. EDMONDS,
Horry County Probate Judge

From: Edmonds, Deirdre
To: "Dan Slotchiver"
Cc: reese@davisboyd.com; bret@davisboyd.com; johnk@iktaxlaw.com; moore@grandstrandlawyers.com; lynette@scoast.net; constance.holloway@sodhhs.gov; "Steve Slotchiver"; "Andrew J. McCumber"; Kristen
Subject: RE: Abbie Ilene Dorn, a protected person and ward, et al.; Case #2008-GC-26-25 and 2008-GC-26-50
Date: Monday, September 22, 2014 12:53:30 PM
Importance: High

Dan, this is to respond to your letter to me dated September 5, 2014 in the above-referenced matters regarding my Order of Disqualification. Thank you for your letter.

As all counsel are aware, I will be leaving office in January 2015. In anticipation of returning to private practice, I have begun exploring employment opportunities. Prior to my Order of Disqualification, I had two (2) very brief (5 minutes at most) oral communications with V. Lee Moore in August as to whether or not I might be interested in discussing with her the possibility of joining her law firm. In order to pursue the matter, I disqualified myself from these cases. My disqualification was prior to my beginning the process of negotiating for employment with her firm. Please let me know if you have any questions or comments about this matter. Best regards,

Deirdre W. Edmonds

Horry County Probate Judge
Horry County Probate Court
1301 2nd Avenue
Conway, SC 29526
(843) 915-5370
edmondsd@horrycounty.org

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South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1816

October 30, 2014

The Honorable Deirdre W. Edmonds
PO Box 288
Conway, SC 29528-0288

RE: Matter of Abbie Dom
Case No: 2008-GC-26-25 and 2008-GC-26-50

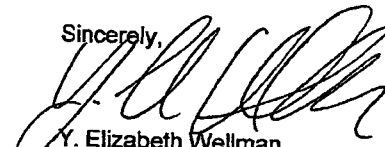
Dear Judge Edmonds:

This letter is in response to your Request for Recusal received on September 3, 2014. It is my understanding that the Request for Recusal and Order of Disqualification was issued in response to a Motion for Mistrial based upon the results from the primary election.

After contacting several counties which have the resources to take on such a large case, it appears because of scheduling issues the case would not proceed until after January 2015 even if a special probate judge was appointed immediately. As a subsequent probate judge will be in office in Horry County beginning January 2015 the issue giving rise to the recusal request will become moot at that time. In the interest of judicial efficiency and because no additional delay will occur as a result, the Request for Recusal will be held in abeyance until the subsequent probate judge is sworn in. Since the Order of Disqualification and Request for Recusal will be inapplicable, the subsequent probate judge would have jurisdiction in this matter.

Should you have any questions regarding this matter, please contact our office.

Sincerely,


Y. Elizabeth Wellman
Probate Court Representative

cc: Daniel S. Slotchiever, Esq.
Stephen M. Slotchiever, Esq.
Bret H. Davis, Esq.
Reese R. Boyd, III, Esq.
Lynette Rogers Hedgepath, Esq.
V. Lee Moore, Esq.
John Kachmarsky, Esq.

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.

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, 2014CP2601744

CERTIFICATE OF COUNSEL

RECEIVED
NOV 30 2015
SC Court of Appeals

I certify that The Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

November 25, 2015



John A. Massalon
Christy Ford Allen
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
callen@wmalawfirm.net
ATTORNEYS FOR ALL APPELLANTS

and

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44 State Street
Charleston, SC 29401
(843) 577-6531
dan@slotchiverlaw.com
ATTORNEYS FOR APPELLANT DAN
DANIEL B. DORN, IN HIS CAPACITY AS
THE PARENT AND NATURAL
GUARDIAN OF E.D., R.D., AND Y.D.