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Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA, Plaintiff, vs. STEVEN CARROLL DEMOCKER, Defendant.	)	No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
JANUARY 13, 2009
11:02 A.M.

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING

TESTIMONY OF ANNA CHRISTINE YOUNG

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

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APPEARANCES:
FOR THE STATE, MR. MARK AINLEY.
FOR THE DEFENDANT, MR. JOHN SEARS.

(THE FOLLOWING IS A PARTIAL TRANSCRIPT OF THE PROCEEDINGS HELD ON JANUARY 13, 2009:)

THE COURT: Mr. Sears.

MR. SEARS: I would call Anna Young, please, your Honor.

THE CLERK: You do solemnly swear or affirm under the penalty of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: Mr. Sears.

MR. SEARS: Thank you.

ANNA YOUNG,

called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SEARS:

Q. Good morning.

A. Good morning.

Q. Would you tell us your name and what you do for a living?

A. My name is Anna Christine Young, and I am an attorney here in Prescott.

1 Q. How long have you practiced law in Yavapai County,
2 Arizona?
3 A. Almost twelve years.
4 Q. Can you describe for us briefly what your practice
5 is like today?
6 A. Currently I have got a civil litigation practice
7 and probably 70 percent of my practice is family law.
8 Q. In connection with your family law practice, did
9 you come to know Steve Democker sitting here with me today?
10 A. Actually, I knew Steve before the family law case,
11 but I did handle a family law case for him.
12 Q. Can you tell us how you first came to know Steve?
13 A. I actually had known his name for quite sometime
14 because he was friendly with some of my partners at Boyle,
15 Pecharich, Cline and Whittington. But the first time I ever
16 met him was at a UBS function that UBS threw at the
17 Hassayampah Golf Club.
18 Q. So, it was a social occasion when you met him?
19 A. Right. I think it was probably about 2005.
20 Q. And did there come a time after 2005 when you
21 began to represent Steve in a non-family law matter?
22 A. Yes. He was involved in an automobile accident in
23 November of 2006, and so I represent him in that personal
24 injury claim.
25 Q. And was there another person involved in that

1 accident with him that was also your client?
2 A. Yes. Barbara Onnon (phonetic spelling.) She was
3 a passenger in the vehicle.
4 Q. What is your understanding of the, just generally,
5 the circumstances of that car accident? Where were they
6 going? What were they doing?
7 A. They were on I-17 and they were headed to Santa Fe
8 for a business meeting, and a huge semi basically ran them
9 off the road into a guardrail, totaling the vehicle that they
10 were in.
11 Q. Is it your understanding that Miss Onnon was a
12 business associate of Steve's at the time at UBS financial
13 services?
14 A. Yes. And I had actually met her at the same time
15 at the event in, I think, 2005.
16 Q. That case is still pending?
17 A. Yes, the P.I. case is.
18 MR. AINLEY: May we approach for a second.
19 THE COURT: Yes.
20 (Whereupon, a discussion was held off the record.)
21 THE COURT: Mr. Sears.
22 MR. SEARS: Your Honor, Mr. Ainley correctly
23 reminds me that it would be appropriate to have my client
24 waive any attorney-client privilege, so that Miss Young can
25 testify about the personal injury matter and the family law

1 matter. May I put that on the record?
2 THE COURT: You may.
3 MR. SEARS: Steve, you understand that there
4 is an attorney-client privilege that exists between you and
5 Anna regarding her representation of you in the personal jury
6 case and also the work she did for you in the divorce case?
7 THE DEFENDANT: Yes.
8 MR. SEARS: Are you willing to waive that
9 privilege and allow her to testify here today about these two
10 matters?
11 THE DEFENDANT: Yes, I am.
12 MR. SEARS: Thank you.
13 THE COURT: You may proceed.
14 MR. SEARS: Thank you.
15 Q. Back to the -- when you were representing Steve in
16 the personal injury case at the end of 2006, were you aware
17 that he was married to Carol Kennedy?
18 A. I think at that point I knew that he was still
19 married. I knew that they had been separated, but that they
20 weren't divorced.
21 Q. And did there come a time in early 2007 when you
22 were approached by Steve to represent him in a possible
23 dissolution of his marriage at that time?
24 A. Yes. He called me probably mid-February, late
25 February of '07 and asked me if I would be willing to

1 represent him in that, and I said sure. And he told me that
2 his wife was being represented by Robert Fruge, and so I
3 accepted the representation on those grounds.
4 Q. And what information were you given, basically,
5 about their circumstances, where they lived, how long they
6 had been married, children, those sorts of things at that
7 time?
8 A. I had him come in for an initial meeting and kind
9 of asked him what the status quo was. He advised me that
10 they had been separated for some years. I think they
11 separated in 2002. So I knew it had been a long time. They
12 actually owned two separate homes and they were living
13 separately. And the girls were kind of splitting time
14 between the two of them. He gave me a run down briefly of
15 their assets and liabilities, that kind of thing.
16 Q. Let's talk a little bit about the children. Steve
17 and Carol had two daughters; correct?
18 A. Right.
19 Q. Their names are?
20 A. Katherine and Charlotte.
21 Q. And they are in the back of the courtroom today?
22 A. Yes.
23 Q. At the time you began this representation, my
24 understanding is that Kattie was already over the age of 18,
25 but Charlotte was under 18, living at home. Is that right?

1 A. That's correct.
2 Q. Did Steve describe for you generally how this
3 separation had been arranged in terms of responsibility for
4 finances, dealing with the children, those sorts of things?
5 A. Basically, Steve was earning the income in the
6 relationship, so he was paying for everything, for both
7 households and for both girls. And Kattie was at a private
8 college, so he was financing that, as well.
9 Q. Steve had a residence, a townhome at the
10 Hassayampah Golf Club community in Prescott; is that right?
11 A. Correct.
12 Q. And Carol was living in the former marital
13 residence on Bridal Path out in Williamson Valley; is that
14 correct?
15 A. That's right.
16 Q. When you say Steve was earning the majority of the
17 income, was it your understanding in that period of time,
18 that five years or so they were separated, that Carol was
19 working on a regular basis?
20 A. No. She had a series of part-time jobs. She
21 wasn't working full time since she quit teaching at Prescott
22 College, which I think was in 2000. So that was prior to the
23 separation. She had stopped working full time and then she
24 had a series of smaller jobs, but nothing that was a high
25 income earner.

1 Q. Did Steve tell you at some point, actually, that
2 he and Carol had some agreement at the beginning of the
3 separation about some sort of holiday or vacation she could
4 take?
5 A. Right. I think it was in connection with her 50th
6 birthday. He basically offered to give her a year off, where
7 she would take a year off and work on her art, and try to get
8 some of her work put in galleries and that sort of thing.
9 She was interested in pursuing a career as an artist, and
10 that was Steve's gift to her.
11 Q. Can you describe for the Court the kind of work
12 that you understood Steve did. And just a general idea of
13 what his income was at the time you began to represent him in
14 early 2007.
15 A. Well, he was a financial adviser with UBS here in
16 Prescott. And he had started there after the separation.
17 And he basically manages wealth for people, helps them with
18 their investments, that kind of thing. His income, when he
19 started at UBS was essentially zero, because he was just
20 getting started with them, and it was increasing
21 incrementally. And I think that he had gotten to the point
22 where he was earning over $400,000 a year by the time he came
23 to see me.
24 Q. Was it your understanding that he had been a
25 financial adviser with another company, A.G. Edwards in

1 Prescott for a period of time and then moved over to UBS?
2 A. Right. That's exactly how it happened.
3 Q. Were you aware -- did you become aware of any
4 special arrangements that Steve had made with you UBS to
5 cover the fact that as a new employee, it was going to take
6 him a while to build up a client base?
7 A. Part of the arrangement with UBS was that they
8 were going to give him what is known as an employee
9 forgivable loan. Basically, what they do is they cut someone
10 a large check. And then they forgive that loan over a series
11 of years. I think it was a six-year repayment term for
12 Steve. What would happen is each year that he was with UBS,
13 they would forgive right around $90,000 worth of the loan,
14 and he would be taxed on that $90,000 in that given year.
15 Q. As additional income?
16 A. Right.
17 Q. Is it your understanding that that E.F.L., that
18 employee forgivable loan is still out there today?
19 A. Right. I think that there are maybe three years
20 left.
21 Q. Do you remember, roughly, what the amount of the
22 lump sum given to Steve pursuant to that loan might have
23 been?
24 A. Right around $550,000.
25 Q. And that would have come to him all at once at the

1 beginning of his work with them?
2 A. Right. There were actually two employee
3 forgivable loans. There was the larger one, and then a
4 smaller one.
5 Q. Over, roughly, what period of time?
6 A. That he actually received that money?
7 Q. Yes.
8 A. I believe he received the money all at once.
9 Q. It was just broken into two loans?
10 A. Right.
11 Q. If I understand what you are saying is the purpose
12 of that was to give him a cash flow with some understanding
13 that he would start to produce income from his own work over
14 a period of time?
15 A. Right. The idea is that he would attract clients
16 over time, and that as those clients invested with UBS, it
17 would build a, quote-unquote, book of business.
18 Q. Let's go back to the nuts and bolts of this
19 divorce. Steve said that Robert Fruge was going to be
20 representing Carol in this case. Had you had any cases with
21 Mr. Fruge in the past?
22 A. I have had a few.
23 Q. And at some point was there a discussion about who
24 was actually going to file the petition to get this case
25 started?

1 A. Well, actually when Steve met with me, he was
2 under the impression that Carol was going to have Fruge do
3 all the documents, file the documents. And then we waited,
4 and then Steve said, why don't you go ahead and draft the
5 documents with him as the petitioner, and we would go ahead
6 and file. But then Carol, I guess, came back into town. She
7 had been on a trip with the girls in Hawaii. She came back
8 into town. She actually filed and so we responded.
9 Q. So Steve paid for a set of documents that stayed
10 in your file?
11 A. Exactly.
12 Q. And the petition for dissolution of marriage that
13 was filed, looks like from the court files, was in early
14 March of 2007. Is that your recollection?
15 A. That's right.
16 Q. And did it contain a request for what is known as
17 a temporary order or temporary orders?
18 A. The temporary orders were actually in a separate
19 document. Mr. Fruge filed a petition for dissolution and
20 the petition for temporary orders at the same time. It was
21 really generic, didn't ask for anything in particular as far
22 as amounts went.
23 Q. Can I take a wild guess that it included a request
24 from Mr. Fruge for temporary attorney's fees?
25 A. That's correct.

1 Q. Did that become quickly a point of discussion
2 between the two sides in this divorce?
3 A. Yes.
4 Q. And was there a resolution reached at some point
5 in the Spring of 2007 to this request for temporary orders?
6 A. Yeah. What happened is, we had had some
7 communication between myself and Mr. Fruge prior to what is
8 known as the resolution management conference, which is your
9 first hearing in a family law case, about what we were going
10 to do as far as the temporary orders, what Steve was going to
11 be agreeing to pay for, that kind of thing.
12 We didn't have an agreement on the
13 attorneys fees. Steve, understandably, didn't want to pay
14 for Carol's attorney's fees. No one wants to pay for the
15 other side's attorney's fees.
16 So we had this resolution management
17 conference. And actually at the resolution management
18 conference, we came to an agreement on temporary orders. So
19 we lodged a form of temporary orders that didn't include
20 attorney's fees. So that attorney's fees issue was still
21 outstanding, so the judge set us for another evidentiary
22 hearing -- or for an actual evidentiary hearing on the issue
23 of attorney's fees.
24 So we went back and forth between
25 Mr. Fruge and I. And I think Steve had some communication

1 directly with Carol about how the final temporary order
2 should read, as far as being a little more nailed down about
3 what Steve should be paying for.
4 Q. What is your recollection of the final temporary
5 order with respect to the question of Steve paying Carol's
6 attorney's fees?
7 A. We did not agree to him paying any attorney's
8 fees.
9 Q. But the temporary orders were lodged and signed by
10 the judge?
11 A. Right.
12 Q. It likes look the temporary orders were signed on
13 May 16 of 2007. Does that sound about right?
14 A. Right. I think that might have even been the day
15 that the evidentiary hearing was set for. It was basically
16 the court hearings would set the deadline and get the frenzy
17 of motion done.
18 Q. We will talk about how that interacts later with
19 some of the developments in this case.
20 It looks like then by two months into
21 this case from the time it is filed, there is in place an
22 agreement that is now a court order about what the status quo
23 is going to be from that point forward; is that right?
24 A. That's right.
25 Q. Can you describe for Judge Lindberg what the terms

1 of that second -- I guess the first and second together,
2 temporary orders were with respect to debts and Charlotte?
3 A. Basically, Steve was to pay the first and second
4 mortgage on Bridal Path house, which was the house that Carol
5 was occupying, as well as a large part of the utilities,
6 except for the Quest phone bill. And then he was also
7 paying --
8 Q. The utilities at Bridal Path?
9 A. At Bridal Path, yeah.
10 Q. So, the phone bill --
11 A. He was still paying for his own things, but the
12 temporary orders only dealt with her needs, basically.
13 Q. So all the utilities but her phone bill?
14 A. Right. And then, he was also paying her half of
15 all of the community obligations. For instance, there was a
16 college loan for Kattie's Occidental tuition. Steve was
17 paying that full payment. He was paying credit card
18 payments, that sort of thing.
19 Q. All the community debt?
20 A. Right.
21 Q. Considering all of that, the first and second
22 mortgages on Bridal Path, the utilities, and a hundred
23 percent of the debt on all of these community debts, do you
24 have some sense or some recollection of what the total
25 monthly obligation, based on these temporary orders, would

1 have been that Steve agreed to?
2 A. I would say it was probably just over $20,000, if
3 you added everything together. Because there was also a
4 component about Carol's health insurance, that kind of thing.
5 Q. Let's separate out from the $20,000 Steve's own
6 expenses. Let's just talk about the expenses that are
7 attributable to Carol and Carol's living.
8 A. He was paying the first and second on Bridal Path,
9 her half of credit card payments, loan payments. I would say
10 the support that he was giving to her was probably $13,000 a
11 month.
12 Q. So the balance over that, up to the $20,000, would
13 have been his living expenses, his half of the other debt?
14 A. His half of the other debt. That wouldn't include
15 his first and second on the townhouse, though.
16 Q. So it is more than $20,000?
17 A. Yeah.
18 Q. Now, going back to Steve's income. We are talking
19 about, now, the Spring and early Summer of 2007. Was it your
20 understanding from working with Steve that he had the kind of
21 arrangement with UBS where he would get a specific paycheck
22 on a specific day every week or two weeks?
23 A. He had set pay periods, but the amount of the
24 paycheck was dependent on the assets under management, what
25 kind of products were involved. So a little bit like a

1 realtor being paid on commission, sometimes you have
2 humongous pay checks and sometimes they are just about zero.
3 Q. So, I guess another way to look at this would be
4 cash flow to cover the debts that you are talking about,
5 which do have fixed payment schedules, they are due like
6 clockwork on a monthly basis. Cash flow could have been an
7 issue for Steve at that period of time?
8 A. That's right. And it was. We talked about that.
9 Q. Yet he had -- at the end of the year, if you took
10 all of his income, it sounds like he had sufficient income to
11 service all of his debt indefinitely?
12 A. Right.
13 Q. Now, what was Steve doing, to your understanding,
14 in terms of how to pay these bills and how to even out his
15 cash flow, so that it made it okay for him to agree to these
16 obligations?
17 A. I know that during the pendency of the family law
18 matter, he borrowed money from his father. I know that there
19 was the accumulation of some debt on credit cards, just to
20 kind of even the cash flow out.
21 Q. It sounds like from what you are describing, that
22 there was significant credit card and loan debt from the four
23 and a half or five years where Steve and Carol are separated
24 and living under this sort of same arrangement that was
25 memorialized in this order in the divorce case. Is that fair

1 to say?
2 A. Right. When we actually started the divorce
3 proceedings, there was large balances on three credit cards.
4 Q. By large, what kind of balance? Do you remember?
5 A. I think two of them were around $40,000 each.
6 Q. And what was your understanding from Steve of what
7 those cards had been used for over time?
8 A. Well, I know that there were two credit cards that
9 they took out at the same time that had those low
10 introductory balances, APRs. So what they did was they took
11 basically a cash advance and they repaid some early
12 withdrawals from their IRAs that they had made, and so those
13 credit cards were maxed out immediately upon opening those
14 up.
15 Q. From looking at the divorce documents and looking
16 at this case, it appears that even though they had two
17 households and automobiles and these other things, in reality
18 in terms of assets that were unencumbered, there wasn't much
19 to divide in this divorce. Is that a fair assessment?
20 A. That is fair. Really the only assets that were
21 completely unencumbered were two vehicles.
22 Q. And then some retirement accounts, and we talked a
23 little bit about a differed compensation package that Steve
24 had and things like that. But in terms of the traditional
25 assets, houses and cars and bank accounts, they didn't have,

1 from what I am hearing you say, significant assets that
2 required a division in the divorce.
3 A. Right. Both houses had firsts and seconds on
4 them.
5 Q. Again, perhaps as part of this situation over four
6 and a half or five years they were trying to run two
7 expensive households?
8 A. Right. They weren't living frugally, either one
9 of them, so the expenses were high.
10 Q. Maybe some of us have different ideas about what
11 frugal is. Remembering that we all live in Prescott,
12 Arizona, can you give me an idea of what you mean by the fact
13 that neither of them were living frugally?
14 A. Well, they both drove nice cars. They both lived
15 in nice houses. They both traveled. And they both had
16 hobbies. They weren't eating macaroni and cheese and just
17 watching T.V. for entertainment.
18 Q. Not that there is anything wrong with that.
19 A. Nothing wrong with that.
20 Q. And Kattie, the oldest daughter, had gone to a
21 private high school; is that right?
22 A. Right. She actually went to boarding school at
23 Orme out by Cordes Junction.
24 Q. That is an expensive proposition.
25 A. It is.

1 Q. And then Occidental College, which also is an
2 extremely expensive proposition.
3 A. Right.
4 Q. And there was loans to pay back, and the debts
5 incurred from that is a significant obligation that Steve was
6 taking?
7 A. Exactly. There was a tuition loan that was paid
8 every month.
9 Q. Did you have conversations with Steve about the
10 realistic financial picture for him? Could he safely agree
11 to these things and continue to fund his income, spend his
12 way through these obligations?
13 A. Every time we made a settlement offer, that was
14 part of the equation. We had to make sure that it was
15 something that he could bear. That is the last thing I want
16 to do is have a client who agrees to some kind of settlement
17 agreement that they can't live with.
18 Q. It sounds like, from what you are describing, that
19 Steve actually agreed in the Spring of 2007 to formalize in
20 writing in the divorce approximately what he had been doing
21 for the previous four and a half or fives years in terms of
22 paying all the debt?
23 A. Right. Basically what they were doing is
24 maintaining the status quo that existed for four or five
25 years before the filing of the divorce. They were just

1 memorializing it. And in a way, I thought it was unnecessary
2 for Mr. Fruge to even have asked for temporary orders.
3 Generally you do to that in cases where someone threatens to
4 cut the other side off. That was not the situation in this
5 case.
6 Q. Was there any resistance or push back from Steve,
7 in your conversations with him, about agreeing to these
8 temporary orders so quickly after the case was filed?
9 A. No.
10 Q. Whose idea was it to commit to this?
11 A. It was his idea to actually go ahead and stipulate
12 to it. I said, no, we could go to an evidentiary hearing,
13 have Judge Mackey hear all the evidence about what the debts
14 and obligations are, and he would actually render a decision.
15 But Steve figured what was the point in fighting about that,
16 since he had been paying everything anyway, let's just put it
17 in writing.
18 Q. So that resolves the first hurdle issues in the
19 divorce. The status quo is now fixed pursuant to court
20 order. What then happens in the divorce over the next period
21 of time?
22 A. Well, we had a -- I think a continued resolution
23 management conference where basically the judge asked us
24 where we were going with this case, whether there was
25 anything he could offer us to help us move along. And by

1 that point, we had already talked about hiring a private
2 mediator in order to reach some kind of a final resolution of
3 the case. So we had actually contacted Jim Hancock and Jodie
4 Brown, because they do the family law mediations in tandem.
5 So we contacted them, and we had actually set up a date.
6 Q. When you say "we," was that you and Bob Fruge?
7 A. Right. I think I was the one who actually made
8 the contact and set up the date, but I would contact his
9 office, make sure the dates worked and that kind of thing.
10 Q. Who was going to be responsible for Hancock's
11 fees?
12 A. The first one, we were going to split evenly.
13 Q. Carol had some modest income and perhaps some
14 other source of funds to pay her half?
15 A. Yeah. Well, Steve was giving her money, as well
16 as paying the bills. I think there was $700 that he was
17 depositing into what had formerly been their joint bank
18 account that they were using. So he was supplementing her
19 cash income. And she had a job. I think at that point she
20 was working at Van Gogh's Ear here in town.
21 Q. An art gallery in Whiskey Row?
22 A. An art gallery in Whiskey Row.
23 Q. Part-time?
24 A. Yeah.
25 Q. So, the $700 is what my mother used to call

1 walking around money, is that the idea?
2 A. Pin money, exactly.
3 Q. So, the mediation was set up, and it looks like it
4 took place on September 13 of '07. Does that sound right?
5 A. Right. We scheduled it for a full day at Bob
6 Fruge's office.
7 Q. Prior to that had there been and formal discovery
8 in the case, any interrogatories, request for production,
9 depositions, anything like that?
10 A. Steve's deposition had been taken before we did
11 the first mediation. I want to say that was towards the end,
12 maybe August 23rd of '07.
13 Q. Let's talk for a second about Steve's deposition.
14 It was taken by Mr. Fruge at his office?
15 A. Right.
16 Q. I have looked at the transcript in that matter,
17 and among the things that Steve was asked by Mr. Fruge were
18 questions about expenditures made by him that Carol objected
19 to for entertaining girlfriends?
20 A. Right. And one of the exhibits to Steve's
21 deposition was actually a spread sheet that Carol had
22 prepared. She had gone through and pulled all the credit
23 card statements and bank statements. And she had gone
24 through and itemized different things that she objected to,
25 basically, and totaled them up. And so that was one of the

1 things that Mr. Fruge asked Steve about during the depo.
2 Q. Did Steve or you object to a discussion of that
3 topic?
4 A. No.
5 Q. Did Steve answer all of the questions about his
6 relationships with other women?
7 A. He did.
8 Q. Did that surprise you?
9 A. Actually, it was a little refreshing. The
10 majority of the cases I have where those issues come into
11 play, no one wants to admit to having extra marital
12 relationships.
13 Q. Were these relationships ones that had taken place
14 after they had separated, while they were still married, or
15 prior to the separation, as you recall?
16 A. Both.
17 Q. And just sort of parenthetically, at some point
18 later you take Carol's deposition; is that right?
19 A. Right. That was in January '08.
20 Q. Were there similar question put to her by you
21 about her relationships?
22 A. Yes.
23 Q. Was there any suggestion by Carol that she was
24 spending community funds on her relationships, or was it just
25 the opposite?

1 A. No. The people that she was having the
2 relationship with really were bearing the expense of travel,
3 that kind of thing.
4 Q. Okay. She answered those questions?
5 A. Right.
6 Q. Now, and so your recollection of the purpose of
7 those questions was simply to at least lay the groundwork for
8 a suggestion that he had spent community funds on things he
9 shouldn't have been spending community funds on?
10 A. Right. Arizona is a no fault divorce state.
11 Things like extra marital affairs, they don't enter into the
12 equation as far as alleging that someone was at fault for the
13 break up of the marriage. The only time they really come
14 into play is if there is a situation where somebody has spent
15 money outside of the community, then you basically have a
16 waste argument.
17 Q. Do you remember roughly, and I won't hold you to
18 it because it is in the deposition, the amount of money that
19 Carol was claiming during Steve's deposition that she thought
20 was improper?
21 A. No, I don't remember off the top of my head.
22 Q. Was it a huge amount? Was it seven figures? Was
23 it six figures?
24 A. No. It wasn't a huge amount.
25 Q. Let's talk about the mediation with Jim Hancock

1 and Jodie Brown. How did that go?
2 A. The first mediation?
3 Q. Yes.
4 A. Okay. Well --
5 Q. Let me ask a couple of introductory questions.
6 What was your understanding of the issues on the table as you
7 went into the mediation with Steve on September 13?
8 A. Well, the issues that there had been up to that
9 point were the debt, the community debt, the division of the
10 various assets. There was an issue about Bridal Path, about
11 whether Carol would keep that as her sole and separate
12 property. Spousal maintenance was an issue. And they had
13 already raised the waste issue. So we knew that at some
14 point there was going to be some kind of a conversation about
15 whether Steve should make some kind of payment back to Carol
16 for her share of the community assets.
17 Q. What about Charlotte, her custody and support?
18 Had that been resolved?
19 A. That had been resolved. Actually, we had a formal
20 parenting plan that I drafted, that Steve and Carol actually
21 negotiated directly between the two of them in June of '07.
22 And what they were going to do, Charlotte was going to shift
23 back and forth, one week on and one week off between the two
24 houses. So that was late June by the time we memorialized
25 that. We submitted it to the judge, so the judge would know

1 that custody was not an issue anymore.
2 And then in August prior to mediation,
3 Steve and Carol had sat down with Charlotte and the family
4 counselor, Carol Cook, and basically changed the plan. And
5 what they had agreed, because Charlotte didn't want to go
6 back and forth, so Charlotte expressed an interest that she
7 would just live with Steve and have parenting time with her
8 mother.
9 Q. And that was done directly by Steve and Carol with
10 the assistance of counsel?
11 A. Right. No lawyers were involved in that
12 negotiation. We knew coming into the mediation in September,
13 that we weren't going to talk about parenting time or
14 custody.
15 Q. Was it your impression by the time that you got to
16 the mediation in September, that whatever issues they had
17 about custody, those were smoothed over and there were no
18 hard feelings and that was going to be okay between Carol and
19 Steve about where Charlotte was living under the
20 circumstances?
21 A. Exactly. That kind of -- you know, Jodie Brown
22 generally does the parenting plan aspect of the mediations
23 that she does with Jim Hancock. That took that part out.
24 That was one the first things we told them when we went into
25 the medication is that we were only talking about property.

1 Q. Did Judge Hancock ask the parties to submit
2 settlement memoranda?
3 A. We did give confidential mediation memos.
4 Q. In that mediation session, was there a point where
5 you or Steve or both of you thought you either had a deal or
6 you were very close to having a deal that would resolve all
7 of the property and financial issues?
8 A. Towards the end of the day, I thought we had it
9 done, and so did Hancock and Jodie. They thought we were
10 done.
11 Q. Can you remember, in general terms, first talking
12 about the alimony, the spousal support proposal, what was it
13 that Steve had proposed that you thought Carol was about to
14 accept?
15 A. We had gone back and forth probably six or seven
16 times over the course of the day about what the spousal
17 maintenance would look like. And I think that their first
18 request was something like $5800 a month. And I actually
19 asked Judge Hancock, I said if you were the judge, what would
20 you do. That is actually why I like to use him on cases
21 involving spousal maintenance, because he will give me an
22 evaluative opinion about what he thinks a judge would do with
23 your case, and he said five for five.
24 Q. 5,000 for five years?
25 A. 5,000 a month for five years. And so I thought we

1 had a deal at that point. And then Fruge raised this issue
2 that Steve's book of business at UBS had some value that
3 Carol was to be compensated for.
4 Q. That came in late in the day?
5 A. It was like the last round, basically.
6 Q. Before that, had you also had what you thought was
7 the framework and agreement about paying the debts and
8 dividing other assets?
9 A. Right. And what we had discussed was basically
10 each of them taking the house that they lived in. Steve
11 would pay the first and second on his house. Carol was going
12 to pay the first on her house. We were going to use a
13 qualified domestic relations order to shift Steve's UBS 401K
14 to Carol, that way we could avoid the ten-percent penalty for
15 early withdrawal, and it would be taxed at Carol's taxable
16 rate, which was a lot lower than Steve's.
17 So we were going to use that money to pay
18 off one of the big credit cards, the second on Bridal Path,
19 and I don't think we really had an agreement about what we
20 were going to do with the last nugget of money that would be
21 left over. Some of it would have had to be reserved by Carol
22 for her tax -- her taxes that she would owe on the
23 distribution.
24 Q. And $5,000 a month alimony for five years?
25 A. Right.

1 Q. Let's talk a little bit about everybody's behavior
2 during this. I am not going to ask you to comment on Fruge's
3 behavior, but let's talk about Steve and Carol. Were there
4 times during that day when they were in the same room
5 together?
6 A. Yeah. We actually started out in the same room,
7 and we were in the same room for a while, while Jim and Jodie
8 went through what the rules of the mediation were going to
9 be. And then they broke us out and then they shuttled
10 between the two rooms.
11 Q. How was Steve behaving during that time?
12 A. He was civil. They both were. They were fine
13 with each other. Nobody was angry. Nobody was yelling.
14 Q. No name calling?
15 A. No.
16 Q. No red faced table pounding?
17 A. No.
18 Q. Tears, anybody?
19 A. Apparently Carol was in tears at one point.
20 Q. Do you know what about?
21 A. The extra marital affairs and the waste argument.
22 And so I know that -- I don't think Jim Hancock was in the
23 room, but Jodie Brown came back in the room and talked to
24 Steve and I about that.
25 Q. Did Steve have a reaction when Jodie told him

1 that?
2 A. He was apologetic, basically. It seemed pretty
3 obvious that they had gotten past the majority of the
4 emotions connected with the divorce, and so this was really
5 just tying up loose ends. But he seemed to not want to hurt
6 Carol, and so he was being generous.
7 Q. Conversely, was Carol angry? Did Carol during
8 this mediation session lose her temper and get agitated or
9 angry at all about anything?
10 A. No. No, there were just some tears.
11 Q. As you are coming down to the end of this all-day
12 affair, you say that Mr. Fruge raises this issue about
13 Steve's book of business at UBS, his client base having some
14 value that needed to be accounted for?
15 A. Right.
16 Q. Had that ever been raised before?
17 A. I think that there had been some discussion about
18 the way Steve's business was structured, as far as how he was
19 being paid and who the clients belonged to during his
20 deposition, but they never said "we are going to be making a
21 claim for one half of his business value." This was a new
22 one. This came out of the blue and Jim Hancock was pretty
23 activated about it.
24 Q. You said that you all had filed confidential
25 settlement memorandum, meaning that you had not exchanged

1 your memo with Fruge or vice versa?
2 A. Right.
3 Q. Did you get the impression from what you just said
4 about Judge Hancock being angry that perhaps this issue was
5 not in Fruge's memo?
6 A. I definitely had that impression because Judge
7 Hancock thought we had a deal. I think he might have pounded
8 the table. He was aggravated when he came back in and told
9 us that there was this, quote-unquote, book of business
10 issue. And he had Steve explain to him how the structure of
11 the business worked to where Steve -- those weren't his
12 clients. He couldn't leave and start his own practice with
13 those clients.
14 Q. They belonged to UBS.
15 A. Exactly.
16 Q. He got paid for the work he did while he was
17 employed by UBS?
18 A. Exactly.
19 Q. Did Judge Hancock seem to understand that and
20 accept that?
21 A. Yes.
22 Q. Did he tell you he would try to pitch that to
23 Fruge to get him to back off?
24 A. He did. He went back, had the discussion. Then
25 he came back to us and said we have a deal on everything

1 else. But what they want to do is leave this, quote-unquote,
2 book of business value open, because they've talked to
3 someone that Steve used to work with at A.G. Edwards, and
4 this guy has said that there is a value that Steve would get
5 paid for, basically, that he could sell his book of business.
6 Then they said that they wanted time to
7 hire an expert to get an opinion about the value of the book
8 of business, and then they wanted the right to bring that
9 into court and to actually have a trial on that issue. And I
10 told Steve that that was just ridiculous, because basically
11 what it was doing is opening up this whole can of worms to
12 where there was no point is us settling at that point on
13 anything, because I knew that they could hire an expert to
14 say whatever they wanted the expert to say, basically.
15 Q. One way to look at it would be if Carol were
16 entitled to a large amount of money from his business, that
17 would have an impact on what she should be asking for and
18 entitled to be getting in alimony?
19 A. Exactly. Because that is one of the aspects of
20 what you get for spousal maintenance is how much in property
21 settlement you walk away from the marriage with. If she was
22 going to be getting this huge chunk of money, then that would
23 definitely reduce her claim for maintenance.
24 Q. So the mediation ends unsuccessfully. What do you
25 do next?

1 A. Went back to my office, and I was very sad,
2 because I thought we were done. And then Steve and I started
3 talking about putting a proposal in writing as soon as we
4 could to where maybe we could still resolve it. So I fired
5 off a letter maybe five days later or four days later after
6 the mediation saying, here is what we are willing to settle
7 for, and I didn't get any response.
8 Q. Was it about what you had offered at the
9 mediation? Was it improved?
10 A. It was pretty close. I think we backed off a
11 little bit on the maintenance from what we offered at the end
12 of the mediation.
13 Q. It didn't get any response?
14 A. No response. So Steve went ahead and communicated
15 directly with Carol. And I actually wrote a note to myself
16 that Steve called me, and without asking me he went ahead and
17 he threw another $100,000 on the table to Carol to see if he
18 could get it resolved.
19 Q. Dealing directly with her?
20 A. Exactly.
21 Q. There are two exhibits marked for identification.
22 One of them is Exhibit 54, which begins with a letter from
23 you. Can you tell me what that document is?
24 A. Right.
25 Q. What type of document?

1 A. Sure. What I did is at the end of July, I went
2 through my file and I pulled out some representative
3 documents that showed kind of the tenor of the divorce
4 proceeding, and how the settlement negotiations had gone back
5 and fourth, just to kind of give you a picture about how
6 things were handled during the divorce. And that this wasn't
7 a high conflict case.
8 Q. Included in that exhibit for identification are a
9 number of e-mails that look like they are directly between
10 Steve and Carol, or some with Jodie Brown. Is that part of
11 what you were trying to accomplish?
12 A. Right. So what I did was I copied the e-mails
13 that Steve had blind copied me on between he and Carol
14 directly, where he would prepare Excel spread sheets showing
15 the different settlement proposals and e-mail them to her
16 directly, and blind copy me just so I knew what he was doing.
17 Q. Ending with an exchange between Steve and Carol on
18 the day before she died?
19 A. Right.
20 MR. SEARS: Talking about a matter we will
21 take up in a minute.
22 I'd move 54.
23 THE COURT: Mr. Ainley?
24 MR. AINLEY: No objection.
25 THE COURT: 54 is admitted.

1 BY MR. SEARS:

2 Q. For reference, you have 55 for identification in
3 front of you. My understanding is that is a copy of the
4 final divorce decree with a number of handwritten changes in
5 those that we will talk about in a minute. Is that right?

6 A. Yes. This is the consent decree that was actually
7 signed by Judge Mackey. And we made some handwritten changes
8 to it in the afternoon. And there is something else attached
9 to the back. Bear with me. I am going to figure out what
10 this is.

11 Custody agreement is attached to it, and
12 that was the custody agreement that they signed in June of
13 '07. And then also in this packet are things like the child
14 support order, the work sheet that we did to determine the
15 amount of child support, the order of assignment, and the
16 qualified domestics relation order that was transferring
17 Steve's UBS 401K over to Carol.

18 And then these other documents are
19 dealing with the other qualified domestic relations orders
20 that were contemplated in the consent decree.

21 Q. We will talk about that in a minute.

22 But what I am hearing you say is that
23 those were the documents that were prepared on May 28 of this
24 year, or presented to Judge Mackey to memorialize the
25 complete settlement, all the terms of the divorce.

1 A. Judge Mackey had everything up until this June
2 25th, 2008 letter from Toxby and Associates that was received
3 stamped by my office on June 30th, 2008. The judge has not
4 seen this.
5 Q. Those are documents related to a qualified
6 domestic relation order that was itself called out in the
7 divorce decree?
8 A. Actually, I think there were two of them that were
9 both dealt with in this consent decree. So these are all the
10 settlement documents.
11 MR. SEARS: Thank you. I move 55.
12 MR. AINLEY: No objection.
13 THE COURT: 55 is admitted.
14 BY MR. SEARS:
15 Q. Now, let's go back to the aftermath of this
16 mediation and your next settlement letter that goes
17 unanswered, then what happens?
18 A. Then Steve and Carol continued to go between the
19 two of them, trying to resolve the issues. We had, I think,
20 an October 1st, 2007 pretrial conference. And we told the
21 judge that we had been to the mediation. It was
22 unsuccessful. And go ahead and set us for trial date. We
23 might as well get a trial date and try to get the case
24 moving.
25 Q. On everything but custody?

1 A. Right. Exactly. So we were set for trial for
2 February 7 of '08.
3 Q. Then what happened?
4 A. Then Steve and Carol continued to go between the
5 two of them. We had noticed -- well, I had noticed Carol's
6 deposition. And Steve called me and said, hey, I think we
7 are making some progress. I know at one point Carol had
8 agreed that they weren't going to be pursuing the book of
9 business value. So he felt like they were going to be able
10 to resolve it, just going back and fourth between the two of
11 them. So I moved Carol's deposition. I think I ended up
12 moving it twice before I finally took it in January.
13 And then in December of '07, Mr. Fruge
14 wrote a letter, requested a bunch of documents, and wanted a
15 continuance on the trial date.
16 Q. And based upon your prior experiences with
17 Mr. Fruge, was that a surprising last minute move from him?
18 A. No. This was actually before he actually filed
19 the motion to continue. He had raised the issue of the
20 continuance before, and we said there is no reason to
21 continue the trial. Let's just get a second mediation date.
22 At this point we had talked about we wanted to go back to
23 mediation with Judge Hancock and Jodie Brown. And Steve was
24 willing to pay for all of the mediator's fees this time.
25 Because he was encouraged that this was going to be resolved.

1 And so we were trying to do that.
2 And Mr. Fruge said, no, we won't agree to
3 mediation unless you give us a continuance and unless Steve
4 agrees to file his income tax returns within 45 days, which
5 was an impossibility based on time lines for getting all his
6 1099s and everything like that. There was some requests that
7 just couldn't be agreed to in his request for continuance.
8 So, took the deposition of Carol. And
9 then he filed a motion -- then Mr. Fruge filed a motion to
10 continue a couple days before the February 7th trial date.
11 Q. Was that granted by Judge Mackey?
12 A. It was. Two days before the trial.
13 Q. Was that moved then to May 28 of 2008?
14 A. It was.
15 Q. And what happened? Let's go back a little bit and
16 talk about your working relationship with Steve over this
17 period of time.
18 From documents and exhibits in evidence
19 now, one could get the impression that Steve had a very
20 thorough and detailed working knowledge of his own finances
21 and the finances as the couple. Would that be fair to say?
22 A. That is absolutely fair to say. He was great
23 about getting me the documents I needed in order to prepare
24 for trial. That's generally the biggest problem is clients
25 don't get you what you need. So I would give him these big

1 lists of stuff I needed, and he would go through and compile
2 all of these account statements. The notebooks we had for
3 trial were huge.
4 Q. Generated largely by Steve?
5 A. All generated by Steve. I didn't have to subpoena
6 a single document.
7 Q. My understanding is that at some point in this
8 case there is a requirement that Steve, or you and he were to
9 file an affidavit with the court of his financial
10 circumstances under oath.
11 A. Right. It is actually called an affidavit of
12 financial information. You have to file it in any case that
13 there is spousal maintenance or child support involved. It
14 gives the judge a complete picture of what your monthly
15 income is, as well as your occupations.
16 Q. Did Carol ever file one?
17 A. No.
18 Q. Was that going to be, if the case hadn't settled,
19 a point of contention?
20 A. Oh, definitely. Since she was asking for spousal
21 maintenance, they should have filed an affidavit of financial
22 information.
23 Q. If the case had actually gone to trial on the 28th
24 rather than settling, would you have expected the judge to
25 take some action with respect to the failure to file?

1 A. I would try to get their request for spousal
2 maintenance excluded because they hadn't complied with the
3 rules of family law procedure.
4 Q. Now, on this affidavit -- on affidavits of
5 financial information generally, in your practice and in your
6 experience, is that a point of concern for you about your
7 clients where they are exposing themselves to sworn
8 statements about their finances?
9 A. Yes. Because the affidavit of financial
10 information is notarized. So it is under penalty of perjury
11 and you file it with the court, and it is always an exhibit
12 that you use at trial. And I have had situations where
13 people have, you know, over estimated numbers like on their
14 utilities or something like that, and so on cross-examination
15 you pick that apart. And if somebody picks apart your
16 affidavit of financial information, then it calls everything
17 into question, including what your monthly income is. So it
18 is really, really important to make sure that they are
19 accurate.
20 Q. Now, what about your confidence level with respect
21 to the degree of documentation accuracy of Steve's figures on
22 his affidavit compared to other clients?
23 A. He was really good, because he would provide me
24 supporting documentation, so I could actually verify the
25 information that we actually put into the affidavit of

1 financial information. Because the last thing I want to do
2 is go into trial unprepared. And he was very respectful of
3 that, of meeting my needs with that regard. So I was
4 confident that we had an accurate affidavit of financial
5 information.
6 Q. Based upon your assessment of his level of
7 involvement compared to other clients, would you rate him as
8 among the most thorough and detailed of the people you have
9 represented?
10 A. Oh, he is definitely probably in the top five over
11 the last twelve years, yeah.
12 Q. What about responding to requests, other than in
13 connection with preparing this affidavit, when either Fruge
14 would request or you would ask him to provide information or
15 explanations about expenses or documents? How would Steve
16 typically respond to those?
17 A. Well, what I would do is -- I am thinking of one
18 instance in particular where Mr. Fruge sent us a list of
19 questions he had about some different financial transactions.
20 So what I did was I sent it directly to Steve. I knew that
21 it would have been an enormous task for me to wade through
22 all of the bank records in order to try to compile all of the
23 data. So I had him do it.
24 I had him actually go through and
25 paragraph by paragraph address the different concerns, and he

1 gave me all the supporting documentation, including the
2 account statements, that kind of thing. So, I think my cover
3 letter to Mr. Fruge even said, rather than try to paraphrase
4 what my client has done, I am just attaching it. And I asked
5 Steve if that was okay, and he said, sure, go ahead.
6 So I would just send Steve's work over to
7 Mr. Fruge, because that was the easiest way to explain the
8 different transactions.
9 Q. Did that happen on more than one occasion?
10 A. I can only remember one where I sent a big packet
11 like that. But I know that there were several occasions
12 where I paraphrased what Steve had sent me. Basically, I
13 would let him do the analysis of the financial transactions,
14 and then I would format it and then send it over to
15 Mr. Fruge.
16 THE COURT: I think it is time to conclude for
17 lunch.
18 MR. SEARS: Sure. Thank you, your Honor.
19 THE COURT: Right now would be okay?
20 MR. SEARS: This would be a good time.
21 THE COURT: Stand in recess. Let's resume at
22 1:15, given the current time.
23 MR. SEARS: Thank you, your Honor.
24 (Whereupon, a recess was taken at 11:51 a.m.
25 to resume at 1:15 p.m. of the same day.)

JANUARY 13, 2009
1:12 P.M.

EVIDENTIARY HEARING CONTINUED

THE COURT: Record reflects the presence of both counsel and defendant.

Miss Young is still on the stand.

You may proceed.

DIRECT EXAMINATION CONTINUED

BY MR. SEARS:

Q. Anna, when we broke for lunch, we were sort of talking about the period of time after the case was continued leading up to a second shot at mediation. Can you describe for us, just generally, what happened at the April 30th, 2008 mediation?

A. Once again, we met at Mr. Fruge's office. We were scheduled for a full day. And we went back and forth, and initially during the day, Mr. Fruge told us that he had received a preliminary number from their expert about the value of the book of business, but that he didn't have anything in writing. He was supposed to have a report. And at this point we were past the 30-day deadline prior to trial for disclosure.

And he said that Mr. Casalena (phonetic spelling), who was the expert, was going to be faxing him

1 something sometime during the day. So we went back and
2 fourth and tried to reach an agreement, but we didn't really
3 have any information as to what they were asking for as far
4 as some purported value on the book of business. So we
5 didn't really get anywhere, and then we got a fax at the very
6 end of the mediation about the value of the book of business,
7 and then things kind of broke down as far as the negotiation
8 went.
9 And Jim Hancock came into the office
10 where Steve and I were sitting. Once again, we were broken
11 up into the two separate offices. And he said, "we are done
12 here. You guys just leave." So Steve and I left. And then
13 I got a phone call maybe 30 minutes later from Jodie Brown.
14 She said, "can I come over to your office and see you?" I
15 said, sure, come on over.
16 Do you want me to continue?
17 Q. Yeah.
18 A. So, she went ahead and she came over, and she told
19 me that after -- actually, it was before Steve and I had
20 actually left. Carol had asked to speak to her privately,
21 because she was uncomfortable speaking to Jim Hancock. And
22 so she asked that she be permitted to just to speak directly
23 to Jodie Brown even without Mr. Fruge being the office. And
24 so Jodie and Carol had hammered out a settlement proposal
25 basically.

1 And what it was is she wanted maintenance
2 to be for eight years. Actually, she wanted ten years, but
3 Jodie told me that really she would take eight years. And I
4 think at that point the amount was $6,000 that she was
5 looking for. And Jodie said that she had talked to Robert
6 Fruge, and that Robert Fruge said it was fine with him if
7 Jodie just went back and forth with Carol to try to see if
8 Jodie could help us reach a settlement.
9 So Jodie wanted to know if whether it was
10 okay for her to speak to Steve directly. And I said, well,
11 at this point why don't you keep me in the loop, because I
12 would like to know. But I said I will go ahead and convey
13 this to Steve, so that is what I did.
14 Q. Then what happened?
15 A. Then we proceeded to kind of go back and forth.
16 And I had a series of phone conversations with Jodie and with
17 Steve trying to broker an agreement. And then Jodie just
18 asked if she could meet with Steve, and I said sure. I set
19 that up for them so Jodie could come to Steve's office and
20 they could try to come up with some kind of a settlement
21 proposal.
22 They left me out of the loop a little
23 bit, because there were some initial settlement talks right
24 after the April 30th mediation, and then things kind of
25 ground to a halt, and they picked up again the week before

1 our trial date. It was set for May 28. It was about
2 May 21st. So I think there was some discussions, a break,
3 and then some more discussions.
4 And then they started e-mailing between
5 them. So Carol are e-mail --
6 Q. Who is they?
7 A. Carol would e-mail Jodie with what her position
8 was. Jodie would e-mail Steve and copy me on it, saying this
9 is what Carol was looking for. Then Steve would sometimes
10 e-mail me and say, this is what I am thinking about offering,
11 what do you think? And I would give him my input, and then
12 we would convey that to Jodie. There were, I'd say, probably
13 eight or ten go rounds where it was this e-mail exchange
14 between the four of us, meaning Jodie, myself, Steve and
15 Carol.
16 And the week before trial we thought we
17 again had a deal. And that was the Wednesday before trial.
18 And so I called Jodie and I said, do you really think this
19 case is going to settle, because, of course, at this point I
20 am in full-blown trial preparation. And I said, I don't want
21 to spend any more of Steve's money if we are actually going
22 to resolve this.
23 So, I called Mr. Fruge and I said, here's
24 what the deal appears to be. Does that sounds okay to you?
25 And he said, sounds good to me. Go ahead and write up a

1 consent decree. So I did. And I want to say this was May
2 21st or May 22nd. I actually did a form of consent decree,
3 and I e-mailed it and faxed it to Mr. Fruge, so he could see
4 it.
5 Q. Did this consent decree now within the week prior
6 to trial include any resolution or even mention of a dollar
7 amount on Steve's book of business that would be awarded to
8 Carol?
9 A. No.
10 Q. And was it your understanding that that issue and
11 her claim for that money had dropped out of these
12 negotiations when you sat down and prepared that consent
13 decree?
14 A. Yeah. At that point I was under the impression
15 that they weren't asking for the book of business anymore,
16 because it wasn't part of our negotiations at all. Likewise,
17 there was no discussion in the decree or in our settlement
18 negotiations about any kind of payment for the waste
19 allegations. It was strictly spousal maintenance, property
20 division, debt division.
21 Q. You have had in front of you Exhibit 73 for
22 identification. Do you recognize that as a May 27, 2008
23 report from Mr. Casalena sent to Mr. Fruge?
24 A. Yes. And what happened is the day before trial,
25 Mr. Fruge faxed me this report from their expert, and

1 basically was taking the position that he was going to use it
2 the following day at trial, even though it had never been
3 disclosed before.
4 MR. SEARS: I would move 73.
5 MR. AINLEY: No objection.
6 THE COURT: 73 is admitted.
7 BY MR. SEARS:
8 Q. Now, 73 in evidence, Anna, is a multi-page
9 document that covers a lot of territory and has allegations
10 of waste and allegations of incomplete or inaccurate or false
11 information on this financial affidavit and discussions about
12 the book of business. Is that right?
13 A. Right.
14 Q. Now, on the day this case goes to trial on May 28,
15 was Mr. Casalena here in the courthouse?
16 A. No, he wasn't. Actually, I had been operating
17 under the assumption that we would get to the courthouse on
18 the day of trial and we would settle this case.
19 Q. What did do you in anticipation of that?
20 A. I brought two different forms of consent decree
21 with me, because I kept telling Steve, trust me, Fruge is
22 going to settle the day of trial. That's what he does.
23 Q. Now, the form of consent decree that you had
24 e-mailed and faxed a few days before, had that been
25 officially rejected by Carol?

1 A. No, not officially rejected, because unfortunately
2 Mr. Fruge didn't send it to her. So, this was -- I want to
3 say it was a Thursday when I got Mr. Fruge the form of
4 decree. And so the following weekend, the weekend between
5 when I prepared the consent decree and the weekend before
6 trial, was the three day memorial day weekend. And so
7 everybody, meaning Steve, Carol, myself and Jodie were
8 communicating by e-mail. And I was down in Phoenix, took my
9 laptop down there with me, so I could be checking my e-mail.
10 And there was this flurry of e-mails. I think some of them
11 were attached to the earlier exhibit. I don't remember if it
12 was 54 or 55.
13 But there was this flurry of e-mails
14 where Jodie was still trying to broker a settlement between
15 Steve and Carol. And then Carol commented that she hadn't
16 seen the consent decree. And eventually when she did see it,
17 she was upset that her attorney had agreed that that was the
18 deal.
19 Q. Now, looking at this Casalena report, it makes
20 countless allegations involving hundreds of thousands of
21 dollars of money; right?
22 A. Yes.
23 Q. Had any or all of those allegations been made
24 known to you and Steve before May 27, before that report gets
25 faxed up?

1 A. The only part of this that I had ever seen before
2 was his analysis of the evaluation of the book of business.
3 The rest of it was new. I knew that at some points during
4 the case they had been claiming waste. They had been
5 claiming that there were strange financial transactions that
6 they couldn't track. But they hadn't given me any detailed
7 information about what their waste claim was or exactly which
8 transactions they were questioning. I had received a piece
9 of correspondence from Mr. Fruge asking about these
10 transactions, and that was the response that I talked about
11 earlier that Steve had prepared that I sent to Mr. Fruge.
12 Well, Mr. Fruge apparently never sent that on to
13 Mr. Casalena.
14 Q. So, Mr. Casalena, to your knowledge, writes this
15 report, Exhibit 73, never having had the benefit of Steve's
16 explanation of some of his allegations?
17 A. Right.
18 Q. On the day you come here to the courthouse, it
19 sounds like, from what you described, this is the typical out
20 in the hallway, back and fourth, marking up in handwriting
21 the decree that is in evidence now. Is that right?
22 A. That's exactly right. We were downstairs
23 right outside of Judge Mackey's courtroom on the table.
24 Steve and I would step out in the hallway, and we would
25 change spots. And I knew that we were going to settle when

1 we walked up and they told me that Casalena hadn't even left
2 Phoenix yet.
3 Q. And your belief was that even if he showed up and
4 they tried to use the report, because of the untimeliness of
5 it to begin with, the judge was not likely to let it in?
6 A. I thought that there was no way that Judge Mackey
7 was letting this report in.
8 Q. In addition, if you look at Exhibit No. 73, at the
9 end of it it appears that Mr. Casalena is suggesting to
10 Mr. Fruge that Mr. Casalena still needs to do additional work
11 with additional documents, interview people, and do a bunch
12 of other things in connection with this report?
13 A. Right. Mr. Casalena and Mr. Fruge and I had
14 actually had a conference call back in March where
15 Mr. Casalena set out some of the items that he still needed
16 in order to do his report on the valuation of the book of
17 business. And one of items that he needed was the trailing
18 twelve months income for Steve. And I had already provided
19 that to Mr. Fruge back in February, and he had never sent
20 that on to Mr. Casalena. So I went ahead and I faxed it to
21 Mr. Casalena with Mr. Fruge's permission that same day, so he
22 could have that, at least.
23 And then Mr. Casalena also wanted to
24 speak to one of Steve's higher ups at UBS. And we checked
25 into that and basically UBS's policy was that we had to do a

1 deposition. So, I gave Mr. Fruge deposition dates that Steve
2 and I were both available that we could have deposed this
3 gentleman. I think his last name was Von Steinhouse or
4 something like that.
5 And Mr. Fruge never took the deposition.
6 Mr. Fruge instead sent a subpoena for a records request, but
7 they put the wrong date for the return date on the subpoena.
8 So they weren't even going to get the records back until the
9 day of trial. And when I advised Mr. Fruge of that, they
10 didn't correct that.
11 Q. Now, let's talk about what was or was not
12 discussed and put in the consent decree that was eventually
13 signed by Judge Mackey. Is there any mention in the consent
14 decree or is there any discussion that Carol believed that
15 she was entitled to reimbursement by Steve for any of this
16 alleged waste during the marriage?
17 A. No. There was nothing in there about that. And
18 it was not part of the conversation when we were settling.
19 They had abandoned that claim.
20 Q. Mr. Fruge obviously had Casalena's report?
21 A. Right. I think that -- I am assuming he would
22 have had the same thought that I was, that there was no way
23 that Judge Mackey was letting that report in.
24 Q. Is there any discussion in the decree or during
25 your negotiations in the courthouse on May 28 about

1 compensation due Carol for her purported interest in Steve's
2 book of business at UBS?
3 A. No. There was no discussion about her getting any
4 compensation. What I did, though, just to dot my I's and
5 cross my T's, is I went ahead and put in the decree that was
6 signed, and the decree the prior week that I had given
7 Mr. Fruge that Steve -- any interest that he possibly had,
8 basically, in the value of his employment was his.
9 Q. Which you believed was zero?
10 A. Right.
11 Q. Just a cover?
12 A. Exactly.
13 Q. Was there any discussion or mention during the
14 negotiations or anyplace else on any of the documents on
15 May 28 about false or misleading or incomplete or fraudulent
16 statements that Steve might have made in the course of the
17 case up to that point, including on his financial affidavit?
18 A. No.
19 Q. You see that Mr. Casalena is full of allegations
20 about that in Exhibit 73?
21 A. Right. Yeah. And what we did, just to be on the
22 safe side, Steve and I went through Casalena's report the day
23 before trial, because I would rather be prepared then be
24 caught unprepared. And we went ahead and went through some
25 of these items. And some of the items Mr. Fruge had the

1 information about, but he never relayed it to Casalena.
2 And some of the items were just -- I
3 mean, they were ridiculous. Some of these waste items, they
4 were things like Christmas gifts for Kattie and Charlotte
5 that she was claiming as waste. And these were gifts that
6 she had agreed that Steve and she would buy for the girls.
7 Q. Was it Mr. Casalena the one that started talking
8 about the payments by Steve to dating services to be to
9 escort services?
10 A. I think he was the one that started calling it an
11 escort services. Because when it was brought up at the
12 deposition, it was clear it was a dating service. And that
13 is Steve's deposition I'm talking about.
14 Q. Your recollection is Casalena is the one that
15 characterized these payments as for something improper?
16 A. Yeah, and I don't know where he got that from.
17 Q. Now, let's talk about the deal itself. The deal
18 itself is how much alimony for how many years?
19 A. $6,000 a month for 8 years.
20 Q. What Carol had asked for?
21 A. Yeah.
22 Q. Had Steve ever discussed with you prior to that
23 actually offering Carol more than 6,000 for 8 years?
24 A. Yeah. He wanted to offer her $7,000 a month for
25 8 years several weeks before we signed the decree, and I

1 said, I can't let you offer that. That was way too much
2 money. I thought that there was no way on earth that she was
3 going to get the seven for eight, so I talked him out of
4 that.
5 Q. Steve was okay with six for eight.
6 A. Yeah, he was fine with it. We did the calculation
7 and figured out that because spousal maintenance is tax
8 deductible to the payor, it costs him a lot less than a
9 dollar to give her a dollar. So we figured that actually in
10 order to give her $6,000 a month, it would only cost him
11 about 3,600 after he got the tax deduction.
12 Q. What about the rest of the decree? Was it a back
13 and forth about paying off debts and using retirement
14 accounts, 401K and the like, to be paid down on some of these
15 obligations?
16 A. Yeah. One of the things that I put in the decree
17 was that we were going to use the UBS 401K that was in
18 Steve's name. We were going to use the qualified domestic
19 relations order to give the money to Carol. And Carol was
20 going to turn around -- and initially I had in the paperwork
21 that she was going to pay off all three credit card; the UBS
22 credit card, the Chase credit card, and the Bank of America
23 credit card.
24 Well, we went back and forth out in the
25 hallway and finally negotiated to where she would put down

1 $20,000 on the USB card, and she would pay the Bank of
2 America and the Chase in full.
3 Q. Out of the 401K that she was going get through a
4 QDRO from Steve?
5 A. Correct.
6 Q. And we are back to the idea that it is better to
7 go to her, because she avoids a ten-percent penalty. It
8 comes out at her income tax rate, not Steve's; correct?
9 A. Yeah.
10 Q. More cash to Carol?
11 A. Exactly.
12 Q. And she agreed to that?
13 A. Yeah.
14 Q. With Fruge there?
15 A. Yeah.
16 Q. And then Steve was going to get in response some
17 of her small retirement accounts by QDRO for him. Is that
18 right?
19 A. Right. And prior, during all of the negotiations,
20 we always had Carol getting her -- she had a TIAA-CREF when
21 she taught at Prescott College. She had an account with
22 them. And then she had a UBS IRA. And so, previously when
23 we were negotiating, we always let her keep her retirement
24 accounts. But because we are making some concessions, we
25 asked for those accounts to be QDRO'd to Steve.

1 Q. And she agreed?
2 A. She agreed and that is in the decree.
3 Q. So that's favorable to Steve?
4 A. Right.
5 Q. The payment of the credit card debts, obviously,
6 the ones that are paid in full or paid down substantially,
7 would have the effect of reducing significantly Steve's
8 monthly debt service on the remaining balances; correct?
9 A. Right. And we had actually been trying to do the
10 QDRO. I think we starting trying to do the QDRO back in
11 January or so, because it did alleviate a lot of the cash
12 flow issues. Everyone knows that you are making these
13 payments on these credit cards and the interest rates are so
14 high that you are never going to pay them off. We could get
15 rid of a lot of monthly debt service by using the 401K.
16 Q. In the divorce Carol takes now the first and the
17 second mortgage on Bridal Path; correct?
18 A. Right.
19 Q. It was improvement for Steve over original
20 proposals that something would be done about the second. She
21 was just going to pay both of them?
22 A. She was supposed to pay both of them. She did say
23 in the courtroom, you know, that she might not pay them. And
24 I told Steve just to pay them himself and hold back the money
25 from the spousal maintenance if she failed to live up to her

1 obligation on the first and second.
2 Q. It sounds like, Anna, that the net effect of this
3 settlement was a significant financial improvement for Steve
4 over what he had been doing through the course of the divorce
5 and the four and a half years before that in terms of what it
6 cost him per month. This was a dramatic reduction in that
7 amount; correct?
8 A. It was a drastic improvement on his monthly cash
9 flow.
10 Q. And in addition, he gets a tax advantage for the
11 alimony; correct?
12 A. Right. So, that would lower his taxable rate on
13 the rest of his income, hopefully.
14 Q. And some guys think that having a fixed amount to
15 pay to his spouse, rather than this sort of open-ended what
16 she says she needs is a better deal for him. Do you share
17 that?
18 A. Absolutely. It is a lot easier, emotionally, to
19 write one check a month, as opposed to paying ten bills for
20 somebody.
21 Q. Now, you were there and around Carol that day.
22 Was Carol distraught and beside herself over how this case
23 was being settled?
24 A. No, not at all.
25 Q. Was she participating actively in the settlement

1 discussions or letting Fruge do it?
2 A. She was speaking directly to me. She and I always
3 got along really well. She was always very nice to me.
4 Q. Was there any acrimony, arguing, finger pointing,
5 name calling between Steve and Carol here in this building on
6 the day of the divorce?
7 A. No. All four of us were around that table
8 downstairs working on the handwritten changes.
9 Q. And it got done?
10 A. Yep.
11 Q. Now, there were a couple of loose ends that had to
12 be cleaned up. A couple of QDRO's had to be executed after
13 the divorce; correct?
14 A. Right. Because the only QDRO that I had prepared,
15 the day that we tried to go to trial, was the QDRO for
16 Steve's 401K for UBS. The other two, because we only added
17 that Steve was going to get those at the last minute, I
18 hadn't asked -- the man that prepares my QDRO's for me, I
19 hadn't asked him to prepare those QDRO's. So they were still
20 outstanding.
21 Q. But Carol agreed in writing in the decree that she
22 would execute the QDRO's down the road to get her retirement
23 accounts over to Steve's side?
24 A. Right. I didn't think that was going to be an
25 issue.

1 Q. There was one last minute discussion about the
2 value of the Steve's 401K; right?
3 A. Yes. We had been operating for the last,
4 probably, two months under the belief that there was about a
5 $180,000 in Steve's 401K. And the --
6 Q. Let's stop right there. The original plan was
7 that a hundred percent of that at the end would go to
8 Carol --
9 A. Under the QDRO.
10 Q. -- under the QDRO, to be used first to pay these
11 debts down, and then to pay a lot of her own expenses. For
12 example, her attorney fees and the fees to Casalena?
13 A. Exactly. And her tax liability.
14 Q. Who charged her 20 grand for his work?
15 A. Right.
16 Q. She was going to use that 401K money from Steve
17 under the QDRO for those purposes; is that right?
18 A. That's right.
19 Q. The taxes were -- we will talk about what those
20 were -- but this was extra money that went to her out of the
21 401K to pay what she thought would be the tax liability for
22 2007; right?
23 A. Right. As well as the taxes that she was going to
24 owe for actual distribution of the 401K.
25 Q. She had to have cash for that?

1 A. Right.
2 Q. And so the operating assumption was it was a
3 $180,000 up to when?
4 A. Up until we were out in the hallway. And because
5 we had been operating under the belief that it was a 180,000,
6 and the deal -- if it wasn't a 180,000, if it turned out that
7 it was a 150,000, it probably would have screwed up our deal,
8 because it wouldn't have left Carol with enough cash left
9 over.
10 So Steve decided to call one of the other
11 men who works at UBS and have him log into Steve's account,
12 just so we could verify the balance, that it was, in fact,
13 180,000. We didn't want to make representation and be wrong
14 about that. When the man logged in he said, it's a 195,000
15 not 180,000.
16 So, Steve and I had this conversation
17 about why on earth is there an extra $15,000 in there. And
18 we came to the conclusion that there had been a contribution
19 from Steve after the filing of the petition for dissolution.
20 And anything that he put in after the filing of the
21 dissolution technically was his separate property. So Carol
22 shouldn't have gotten any of that money.
23 So I proposed to Carol and Mr. Fruge that
24 we go ahead and put it in the consent decree that Steve's
25 representing that the balance is at least a 180,000, so Carol

1 is going to get the first $180,000 out of that 401K, and
2 Steve will get everything extra. Well, they said no because
3 they started thinking there must be extra if Anna is now
4 raising this issue. So they said, we will split it 50/50.
5 So Steve and I talked about, and basically what it would do
6 is it would give Carol $7,500 that legally she had no claim
7 to.
8 Q. It would actually have been $8,500?
9 A. I'm sorry. 8,500 because it was 195. So they
10 were splitting the 15, so 7,500 actually.
11 Sorry. I misspoke. I was not a math
12 major. It was a 197,000 not a 195.
13 Q. Right. So it was $8,500 in play for each one?
14 A. Exactly. Yes. Each one was to get an $8,500
15 extra amount.
16 Q. In fact, Carol delayed, for some reason,
17 liquidating that account. By the time she did, after the
18 divorce, it had dropped again?
19 A. Right. Because the 401K, obviously, goes up and
20 down with the stock market.
21 Q. Were you aware through this e-mail correspondence
22 that you were being blind copied on that there was some kind
23 of dispute between Steve and Carol even after the divorce
24 about whether it was fair for her to have to pay $8,500 out
25 of the excess, since that was now more than half of the 180?

1 A. Right. Because what had happened is we got the
2 QDRO signed by the judge even that same day, so they could
3 get the certified copy of it and submit it to UBS, so UBS
4 could do the transfer. And the transfer happened pretty
5 quickly, but what happened is Carol let it sit in her account
6 and didn't liquidate it. So when the market went down, the
7 value went down.
8 Q. Carol wanted to pay something less than $8,500?
9 A. Right.
10 Q. In fact, in exhibit, I think it is 54, the packet
11 of information including e-mails, the very last communication
12 in there, on the day before Carol dies, from Steve is talking
13 about exchanging checks.
14 A. Right.
15 Q. You owe me more than I owe you. I will pay you
16 your 6,000 for spousal maintenance. You write me a check for
17 the $8,500?
18 A. Right. I had to talked to Steve about that. And
19 Steve asked me whether since Carol owed him $8,500 -- because
20 the document is really clear. She was supposed to pay him
21 $8,500. He wanted to know whether he could withhold some of
22 her maintenance over the next couple months to make up that
23 8,500, and I said, I don't think that's a good idea. Because
24 I think you are going to have to maybe play that card and
25 withhold money, if she doesn't pay the first and the second

1 on Bridal Path. So, I wouldn't do it now. Because I knew
2 for certain the judge wouldn't have a problem if Steve was
3 withholding money to pay the first and second mortgage on
4 Bridal Path. But the 8,500 I figured he might have an issue
5 with. So, I thought it was cleaner for them to exchange
6 checks.
7 Q. So, in your view and Steve's view, on the day that
8 Carol died with respect to this 8,500 and the spousal
9 maintenance which wasn't yet paid, one interpretation would
10 be that she owed Steve more money than he owed her at that
11 moment?
12 A. Right. Plus she hadn't executed the QDRO's for
13 TIAA-CREF or the UBS IRA in her name.
14 Q. Or pay the $20,000 on the UBS card?
15 A. Exactly.
16 Q. So Carol was dragging her feet finishing up the
17 work on the divorce.
18 A. Right. She actually said she was going to call
19 Robert Fruge about this issue. So I went ahead and called
20 Robert Fruge, and I just said, have you heard anything from
21 your client? How are things going? And he said, I've heard
22 from her but just so she could ask me where to send the child
23 support check. So, I knew that she wasn't really pressing
24 this issue. I figured she was trying to negotiate with Steve
25 about it.

1 Q. Did you also have contact with Steve towards the
2 end of June in the last few days before Carol died about his
3 contacts with her? Whether he was having any kind of luck in
4 a civil relationship with Carol after the divorce?
5 A. Yes. I actually talked to him a couple of times
6 about that. And actually the weekend before she died, Steve
7 and Carol and Charlotte had all gone to the airport to see
8 Kattie off, because she was going to South Africa, I think,
9 for a semester or a year abroad. And they went down there,
10 and Steve said it was really nice, that they took a bunch of
11 photos, and it was this warm send off for Kattie. And he had
12 coffee with Carol. And he told me that he thought they would
13 end up being friends.
14 Q. That would have been the weekend before Carol
15 died. If she died on Wednesday, the weekend before that?
16 A. Yeah, because I think I talked to him on the
17 Monday before she died.
18 Q. Did Steve have a conversation with you or any
19 conversations in which he said that he really wasn't going
20 to -- if push came to shove, he was not going to back to
21 court to force the $8,500, that if Carol was really
22 insistent, he would relent?
23 A. He told me that he wanted to make the demand that
24 she pay him the 8,500 because that is what the decree called
25 for, and that is what was right, but he wasn't going to force

1 it. He wasn't going to have me file anything to go back to
2 court about it. He was just going to let it go.
3 Q. Now, did you get any communication from Carol or
4 Jodie Brown or Fruge or anybody else in the little over a
5 month after the divorce before Carol died, that Carol was,
6 again, angry or upset or distraught or bitter about how the
7 divorce came out?
8 A. Not any of those things. I had seen
9 communications about the 8,500 and about some of the last
10 items that Carol said that Steve owed for underneath the
11 temporary orders. I think there was a Patriot disposal bill
12 and a Cable One bill. And she said why haven't you paid
13 these? And he said, get me the bills and I will pay them.
14 And my understanding is that he did.
15 Q. Did you see among the e-mails that you were sent,
16 a personal e-mail from Carol right after the divorce talking
17 about the emotional impact the divorce had on her?
18 A. Yeah, about the -- I think it was the sense of
19 loss that she had and that she didn't want to have been
20 divorced. I don't remember exactly how she put it. And
21 Steve echoed that sentiment. It was kind of like, neither of
22 us wanted this. Let's try to move forward.
23 Q. Is that the one he where said he said he didn't
24 like her, at that moment, very much, but he loved her?
25 A. Right, yeah.

1 Q. And is that the sentiment that you were getting
2 from Steve?
3 A. Absolutely.
4 Q. Looking back on all of this, at the detail that
5 you provided for us here today, is there any way that a
6 person could reasonably look at the outcome of the divorce to
7 Steve Democker and say that it was a bad deal for him, an
8 unaffordable deal for him, a blow to him financially?
9 A. No. I thought it was a good deal. You know, I
10 thought it was -- it tracked what we would have gotten if we
11 would have gone to trial. I think there was some issues that
12 maybe Carol would have lost on, maybe we would have gotten a
13 more favorable ruling on some issues. But all and all I
14 thought it was a good settlement and that it was setting them
15 up for a successful divorce.
16 Q. At the end of this divorce, after all these
17 months, more than a year in court, Steve winds up paying none
18 of her attorney fees, none of the expert witness fees, and he
19 is out the door with a settlement that saves him thousands of
20 dollars a month. Is that fair to say?
21 A. I would say easily six to eight thousand dollars a
22 month less than what he had been paying.
23 Q. On the day that it goes into effect?
24 A. Yes.
25 Q. Did you get any communication from Steve in the

1 period of time after the divorce before Carol dies that
2 something was going to happen, he couldn't pay her, or this
3 was just too much for him, or that he can't -- that he can't
4 survive under this settlement?
5 A. No, nothing of the sort.
6 Q. In fact, was Steve proud that his income was
7 continuing to climb over this period of time?
8 A. He was having a really good year, yeah. And as
9 time went by, it would have been easier and easier, because
10 his income was going up so quickly.
11 Q. Have you ever been contacted by the police in this
12 case to give them any information about your work?
13 A. No. I have never been subpoenaed, and no one from
14 the sheriff's office or police department ever called me.
15 Q. If you had been, would you have approached me and
16 Steve to see whether Steve would have consented to you
17 providing the information you have today?
18 A. Yes.
19 Q. If Steve had consented, would you have provided it
20 to the police six months ago?
21 A. Yes.
22 MR. SEARS: Thank you.
23 Nothing further.
24 THE COURT: Cross.
25 MR. AINLEY: Yes, thank you.

1 CROSS-EXAMINATION
2 BY MR. AINLEY:
3 Q. Let's start with that last issue.
4 If police officers had approached you,
5 you would have said, I'm sorry, I can't speak to you. That
6 is privileged information; correct?
7 A. What I would have said is let me contact the
8 defense counsel and see whether I can speak to you. And I
9 would have done that and gotten back to whoever called me.
10 Q. Let's go back to the beginning here. Well, let's
11 stay where we just were. It is the freshest.
12 So this settlement was a good deal for
13 Steve; correct?
14 A. Yes.
15 Q. How much better is his position with her dead?
16 A. Actually, its worse. I haven't crunched the
17 numbers. But Mr. Sears didn't ask me about the differed
18 compensation. But Steve got a lot of stock options as part
19 of his employment with UBS. And one of the conditions on
20 those stock options is that he has to be employed by UBS in
21 order for those to vest. And the first lump doesn't even
22 vest until, I think, March of 2010, and I think there was a
23 five or six year vesting period for those. And so, given his
24 current circumstance --
25 Q. You are confusing how much better is he off with

1 her dead versus how much better off is he since he got
2 caught.
3 MR. SEARS: Objection. He hasn't been caught
4 doing anything, your Honor.
5 THE COURT: Rephrase the question.
6 BY MR. AINLEY:
7 Q. If she got run over by a bus, how much better off
8 was Mr. Democker?
9 A. Well, he wouldn't have owed spousal maintenance.
10 Q. And?
11 A. And he wouldn't have gotten the amounts that she
12 owed him. And I'm trying to think what else the other issues
13 would be.
14 Q. Life insurance?
15 A. The life insurance, I don't know how that would
16 have worked, because I didn't do the estate plan.
17 Q. You weren't aware of what the life insurance was?
18 A. I knew what the life -- I knew what it was, but I
19 didn't have a copy of the policy or anything like that, as a
20 for instance.
21 Q. $6,000 a month for eight years, did you say?
22 A. Right.
23 Q. How much money is that?
24 A. 72 -- 6 times 12 would be 72, times 8, 576
25 roughly.

1 Q. $576,000 plus life insurance on top of that?
2 A. Right.
3 Q. Let's go back now to the -- there is a discussion
4 about the book of value. And this is -- Mr. Democker had a
5 no competition clause in his A.G. Williams {sic} employment
6 contract that says he couldn't take his clients with him?
7 A. I don't think there was actually a non-compete
8 agreement. I think it is part of -- I am trying to think
9 what the hell you would call it. It is part of the
10 employment, and then there has been a bunch of litigation,
11 basically, that says that companies such as A.G. Edwards,
12 UBS, that they can basically enjoin the person who leaves the
13 firm from taking the clients. So similar to a non-compete,
14 but it is not actually like a non-compete that you would have
15 in a written contract.
16 Q. Saying, hey, I am going to another firm. I want
17 you to come with me. Let's all go over to this company
18 because we are going to do better over there?
19 A. Right.
20 Q. But there is nothing in any of that that says that
21 the individuals can't make up their mind on their own, and
22 say he is going over there, so I am going to go over there
23 with him?
24 A. Just like a law practice, the right goes with the
25 client. The client can choose who they go with.

1 Q. That is called a book of value?
2 A. No.
3 Q. I'm sorry. Book of business?
4 A. I wouldn't call it a book of business. A book of
5 business is really like sometimes when you have -- like an
6 independent financial advisor can actually sell their
7 business. And they sell their business with their book of
8 business, which is actually their accounts. So they can
9 actually sell their accounts. Whereas, a registered rep for
10 a major wire house, UBS or A.G. Edwards, they can't do that
11 same thing.
12 Q. But there was a discussion in this divorce about
13 Mr. Democker's book of business?
14 A. Right.
15 Q. And isn't it true that, in fact, within three
16 months of Mr. Democker going to UBS, that most of his
17 customers from A.G. Williams had come over to UBS?
18 A. I don't think it was most of his clients. I think
19 it was A.G. Edwards that he was with.
20 Q. From A.G. Williams to UBS?
21 A. A.G. Edwards, you mean.
22 Q. Yes.
23 A. I know some of the clients ended up going to UBS.
24 But if you look at Steve's income stream, when he went to UBS
25 his income tanked. So, it took a while to build back up.

1 Q. How long was it before he was making comparable
2 amounts to what he was making previously?
3 A. Three or four years. I think three years probably
4 before he was fully up. I want to say there was a year when
5 he made like $200,000. That was much lower than he made at
6 A.G. Edwards. That is why they gave him the employee
7 forgivable loan, was to make up for huge drop in income.
8 Q. Wasn't the second loan that they gave him because
9 he was doing so well in bringing in business?
10 A. I think the second one was performance based, but
11 I am not entirely certain.
12 Q. So, he was making -- doing very well. He was
13 bringing in business, he was making money, and on top of that
14 he was getting the income from this employee forgivable loan?
15 A. No. Because the money from the employee
16 forgivable loan -- I think it's in Casalena's report. It was
17 an initial deposit of, I want to say, $552,000. That was all
18 at once. And then the good income didn't start until years
19 later. That is what I mean when I said the employee
20 forgivable loan was to make up for that drop in income.
21 Q. Right. It was a bulk amount and then it was
22 forgiven in increments as the years progressed.
23 A. Exactly.
24 Q. Were you aware that Mr. Democker had filed for
25 divorce previously in late 2003, early 2004?

1 A. Yeah. Steve and Carol had employed, I think it
2 was, Jeff Sparks here in town. He used to have kind of like
3 a mediation practice. And they were going to sit down with
4 him and have him do all the paperwork and finalize it. And
5 it didn't. They didn't pursue that. And it actually got
6 dismissed because it was on the inactive calendar for enough
7 months to where the court dismissed the case.
8 Q. And then finally Carol filed for divorce in 2007?
9 A. Right, in March.
10 Q. What was your understanding of how long they had
11 been separated?
12 A. Gosh, I think that it was early -- 2002 is
13 sticking in my head, because I want to say it was January
14 when they had separated. And I think they had been separated
15 for about five years when he came to see me.
16 Q. And as part of any mediation from that first
17 petition, Mr. Democker would have had to detail assets owned
18 by the community; correct?
19 A. We did that before the mediation?
20 Q. No. I am talking about the very first petition
21 for divorce filed in 2003, 2004?
22 A. Sorry. I wasn't following you.
23 I don't know if they even got that far.
24 I don't have that file from Jeff Sparks, so I don't know if
25 they just filed the petition and then dropped it. I don't

1 even know if there was a responsive pleading filed in that.
2 Q. You said earlier that the temporary orders that
3 were entered were a continuation of what had been happening
4 financially previously; is that correct?
5 A. Right. It was basically to maintain the status
6 quo.
7 Q. Yet, you also said that Mr. Democker had to borrow
8 money from his father?
9 A. Right.
10 Q. And take out -- max out credit cards. And two of
11 them were balances of about $80,000?
12 A. Right. The two were maxed out before filing.
13 Q. So, the status quo seems to be that the community
14 was running into debt?
15 A. They were accumulating debt, right.
16 Q. It was rapidly going -- was it rapidly going
17 downhill?
18 A. No.
19 Q. How do you --
20 A. If I can finish.
21 They were maintaining, and all of the
22 payments were being served. Because one of Steve's
23 conditions, basically, of his employment is that he has to be
24 in good standing. He can't, for instance, go bankrupt.
25 Because if he filed for bankruptcy, he would lose his license

1 and no longer be able to work for UBS.
2 Q. How much money did he have to borrow from his
3 father?
4 A. I know that there was a really old loan, I think,
5 from college. That is one of the ones that is detailed on
6 the spread sheet. I want to say like $15,000. There was
7 that one. And then there was some loans in, I want to say,
8 early 2008. Maybe $20,000 or something.
9 Q. If they were just maintaining what would have been
10 happening before, why was it necessary to borrow another
11 $20,000?
12 A. When I said maintaining the status quo, I mean as
13 far as who is paying what obligation. That is what the
14 temporary order is for, to make sure everything gets paid
15 that was supposed to be paid. They were continuing to pay
16 all their bills, even though the cash flow wasn't there.
17 Q. They needed an infusion of more money?
18 A. Right.
19 Q. They weren't making enough money to service all
20 the bills?
21 A. Right. You have to remember that there were
22 lawyer's fees involved too, because it was during the
23 pendency of the action.
24 Q. Mr. Sears asked you about the assets that
25 Mr. Democker had. And I think you listed two vehicles and

1 three retirement accounts?
2 A. I think there were three vehicles. And then Steve
3 had the UBS 401K. There had been an IRA, but that was
4 extinguished. And then Carol had her UBS IRA that was a
5 roll-over. And then she had her TIAA-CREF from Prescott
6 College. So I think that at one point there were four. But
7 by the end of it when we reached the decree, we were down to
8 three accounts.
9 Q. Did it seem strange to you at all that that man,
10 who made half a million dollars advising people how who
11 accumulate wealth, giving advice to people about how to
12 maximize their wealth, had basically assets of two cars,
13 three retirement accounts, and was in debt up to $80,000 on
14 two credit cards and borrowed $20,000 from his father and
15 couldn't service the debt that he had?
16 A. He was servicing the debt that he had.
17 Q. With an infusion of cash from his father?
18 A. Right. It was not surprising to me, because I
19 would go through things like their bank statements and credit
20 cards. They were spending a lot of money.
21 Q. I believe you said they were not frugal?
22 A. Exactly.
23 Q. Enlisting Mr. Democker's assets, did he ever
24 discuss with you him writing a novel?
25 A. You know, I don't think we ever talked about that.

1 Q. Did he ever talk to you about starting a business,
2 a research and development company?
3 A. I don't think so, no.
4 Q. Is that something that he would have had to
5 discuss with you as far as assets go?
6 A. No, not unless it existed. If he had already done
7 something like an LLC or something like that, I would have
8 wanted to list it as an asset. But just what you are going
9 to do in the future doesn't count as an asset.
10 Q. How about paperwork concerning a sole
11 proprietorship that was found on his computer?
12 A. No, that wouldn't be part of it.
13 Q. Let's go back again to this book of business. Who
14 was it that -- you said Mr. Democker told you the value was
15 zero --
16 A. Right.
17 Q. -- for his book of business?
18 A. Right.
19 Q. And yet somebody from A.G. Williams is telling
20 Carol Democker and her attorney that this book of value has
21 value -- the book of business has value?
22 A. I don't know that. I don't even know what the
23 guy's name is that apparently told them that. So I was never
24 able to speak to that person and say, did you really say
25 that? So I have no idea.

1 Q. At some point in time, Mr. Fruge or Carol Kennedy
2 are coming and saying, listen, I am being told that this book
3 of business has value?
4 A. At the mediation. And I went back and I looked at
5 their mediation brief, because they gave me a copy during
6 mediation, and he doesn't even list it in the mediation brief
7 that they submitted to Jim Hancock, which does explain why
8 Judge Hancock was annoyed.
9 Q. So, you have two separate opinions here?
10 A. Right.
11 Q. Who told you that the book of business had no
12 value?
13 A. I did some legal research on the issue. And there
14 is not a single Arizona case that says that what Steve had
15 has an actual value.
16 Q. How is it, then, that UBS is going to front
17 somebody money, based on their prior performance, to come
18 over to their company? And how are they going to set the
19 value of what that money -- or that forgivable loan is going
20 to be?
21 A. They determine what somebody's potential is to
22 attract clients.
23 Q. That is based on what they were doing before;
24 right?
25 A. That is why Mr. Casalena wanted the trailing 12

1 months, right.
2 Q. And so UBS set a value on his performance in
3 establishing what the loan was?
4 A. No. I wouldn't say that they set a value on his
5 performance, per se. I think what they were doing is they
6 were -- they are basically banking on the fact that if they
7 give this big loan to somebody, they are going to stick
8 around for six years. And someone who has got a proven track
9 record of being a good income producer for a prior company,
10 they are going to be able to bring in clients and produce for
11 you. I don't think that is the same as saying that Steve's
12 book of business at A.G. Edwards had some kind of value that
13 they would pay him for.
14 Q. If Mr. Democker came over to UBS, and I also went
15 over to UBS as a new stock broker, would they give me exactly
16 the same amount in a loan?
17 A. I have no clue.
18 Q. That wouldn't be based on experience and track
19 record?
20 A. I don't know what they do with newbies. I am not
21 sure.
22 Q. Do you have Exhibit 73 up there still?
23 A. Yes, I do.
24 Q. Okay. You said that one of the things that was,
25 at least originally, a point of contention in the first

1 mediation was waste?
2 A. Right.
3 Q. And I believe you said earlier that the waste was
4 initially minimal, or the claim for waste?
5 A. It wasn't a huge amount. I don't have the spread
6 sheets that Carol did. She had some on some kind of graph
7 ledger paper that are attached to Steve's deposition. I
8 don't remember what the totals were, but it included things
9 like that dating service, that kind of thing that she had
10 gone through.
11 Q. I think you gave a value earlier today. Do you
12 remember what it was?
13 A. I said it wasn't huge, I think. Because I think
14 John was asking what the value was. And I said, I don't
15 remember. I didn't look at that over lunch.
16 Q. Yet, in the report of Mr. Casalena, Exhibit 73
17 previously moved into evidence, Mr. Casalena makes
18 accusations of waste in the area of $322,000?
19 A. I knew it was a number. What page?
20 Q. Page 2. See Schedule "A"?
21 A. Yes. That is what he is alleging. And Mr. Fruge
22 and I actually had a conversation about waste, and he told me
23 they were not going to be pursuing waste at the trial. So I
24 was really annoyed when I got this faxed to me the day before
25 trial.

1 Q. You wouldn't call $322,000 insignificant, would
2 you?
3 A. No. That is why I had Steve go through with me,
4 and we kind of drilled down some of these entries. And a lot
5 of them you can't tell what it is. For instance on Page 5,
6 there's an MBNA 15,000. He's got that on there. And I know
7 that Steve paid off an MBNA credit card that he and Carol
8 racked up. I don't know why that would be waste. Casalena
9 even says in the report that he just didn't have the
10 information he needed to really come up with an opinion.
11 Q. Isn't that pretty much the summary of
12 Mr. Casalena's report saying I can't get the information I
13 need --
14 A. Yeah.
15 Q. -- to decide where this money is going. What I am
16 seeing here is contradictory, misleading, wrong.
17 A. Right. I think Mr. Fruge should have provided him
18 with all those documents. He had stacks and stacks of credit
19 card statements and bank statements. And we had Steve's
20 explanation that he had prepared about the withdrawals about
21 the different IRA's and everything. And Casalena didn't have
22 the benefits of that when he did his report.
23 Q. Let's go to Page 23 of this report.
24 You said that in this particular case,
25 Mr. Democker was the one who gathered the documentation that

1 was supplied to Mr. Fruge; correct?
2 A. Right. I would say, I need all of your credit
3 card statements going back five years. He would collect
4 them, would bring them to my office, go through them, send
5 them on.
6 Q. If you had subpoenaed them from the various
7 companies, you would have received them and you would have
8 been duty bound as an officer of the court to forward those
9 things to Mr. Fruge; correct?
10 A. I was duty bound anyway.
11 Q. Humor me for a second.
12 A. Right. If I had received documents that I
13 subpoenaed, I would have turned them over to Mr. Fruge.
14 Q. But in this case Mr. Democker gathered the
15 documents?
16 A. He and Carol both gathered the documents. Some of
17 them were in her attic, so she went through and pulled down
18 big boxes so she could get some of the items for us, as well.
19 Q. Page 23, Mr. Casalena says that he received
20 documents but there are pages missing. Down toward the
21 bottom, bank statements, National Bank of Arizona?
22 A. Right.
23 Q. When you send disclosure to opposing counsel, do
24 you Bates stamp it to make sure that all of it is disclosed?
25 A. No. We don't Bates stamp.

1 Q. Did you ever go through to find out if Pages 1
2 through 21, 31 to 38, 45, 47, all of these different pages
3 that were listed here by Mr. Casalena were ever, in fact,
4 supplied to Mr. Fruge or Mr. Casalena?
5 A. No. I got this the day before trial, and we
6 settled on the day of trial, so I had no need to go back
7 later and look at that.
8 Q. Do you know whether these documents were documents
9 that were provided by Mr. Democker, or were supposed to be
10 provided by Mr. Democker?
11 A. No. All I know is that this was a joint account,
12 so I don't know which one of them had the statements for this
13 particular account.
14 Q. Would you characterize Ms. Kennedy as being
15 financially astute?
16 A. She seemed to be. I was impressed by her ledger
17 that she had done, because she did an exhaustive analysis of
18 their credit cards and bank statements and came up with the
19 ledger sheets.
20 Q. When you met with Mr. Democker and started going
21 through his assets and his financials, how far back did you
22 go?
23 A. I think we got records going back five years. I
24 think five years -- I don't think I would have gone back any
25 further than five years.

1 Q. Five years from 2007? So it would be 2002.
2 A. We had things going back 2002, 2003. And various
3 accounts we had information going back further than others.
4 Q. Do you have any explanation for why these pages
5 were not provided to Mr. Casalena?
6 A. I don't know. But if I were him, I would have
7 asked for them before the day before trial.
8 Q. Did you receive continuing requests for
9 financials?
10 A. No. No. I received, I think the last request I
11 had for information from Mr. Fruge would have been in
12 December of '07. That is what I was talking about when Steve
13 prepared that big packet. I think that was the last request
14 I had. I know I had asked Steve for some more information,
15 and I think Mr. Fruge gave me a big stack of stuff at Carol's
16 deposition, and I think the next day I gave him another
17 comparable size stack of statements.
18 Q. Okay. Bottom of Page 23, Mr. Casalena remarks,
19 deposits to National Bank account totaling $821,796 included.
20 Was that money -- was an explanation of that money ever given
21 to Mr. Casalena or Mr. Fruge?
22 A. He never asked for it before this report. That
23 was my issue. If he would have asked me for this, I would
24 have said, Steve, go get me the information and I would have
25 sent it onto Fruge.

1 I can tell you that the one on September
2 16, 2004, was the employee forgivable loan, the $552,000. I
3 know what that is, just because I am familiar with the facts.
4 Q. Did you ever inquire of Mr. Democker whether he
5 had money that he controlled that was under other
6 individual's names?
7 A. Yes.
8 Q. And his response was?
9 A. He did not have any of those accounts. Sometimes
10 people have accounts, for instance, the number escapes me,
11 but the educational IRA's that they have for their's kids.
12 Because those I try to make sure I have included who is going
13 to have control over those assets.
14 Q. You talked about the affidavit of financial
15 information that has to be filed in connection with each one
16 of these cases?
17 A. Right.
18 Q. How many different times did Mr. Democker have to
19 adjust his affidavit of financial information because of
20 errors or discrepancies in what he had provided?
21 A. I don't remember it ever being amended because of
22 discrepancies. I know the numbers changed over time. What I
23 try to do is I try to do an amended affidavit of financial
24 information shortly before trial. And I have the client go
25 through and make sure, are your utilities still this, and is

1 your income still this? And we had to do a new calculation,
2 because obviously he received more pay checks before the
3 prior AFI, so we had to adjust the numbers for that.
4 Q. You also stated that one of the standard attacks
5 in a divorce is on the affidavit of financial information;
6 correct?
7 A. I wouldn't say it is a standard attack. It is
8 definitely something -- I mean, I go through them with a fine
9 tooth comb, because if somebody is claiming they are paying
10 $700 a month for electricity, I am going to point that out on
11 the stand, because it is ridiculous amount.
12 Q. You have individuals who try to inflate certain
13 figures to decrease their liability; correct?
14 A. Or to increase the payment, right.
15 Q. You also have individuals who attempt to hide
16 assets; correct?
17 A. I have not had a case like that, actually. I know
18 that -- I am assuming that happens, but I haven't had a case
19 where anyone has actually hidden an asset.
20 Q. When you get information from a client concerning
21 what they list as their assets, how closely do you research
22 that?
23 A. Most of the time you do something like a credit
24 report and you can tell what the debts are. I know we did a
25 search on the county recorder to make sure how the deeds were

1 held, because I know that was one of the questions that we
2 had in this situation. But I don't hire a private
3 investigator to do an asset check, for instance.
4 Q. Running a credit check or checking with the county
5 recorder is only going to show assets that are in the name of
6 that individual?
7 A. Right. Or whatever individual's name you put in.
8 Q. Or a trust in the individuals name is on there;
9 right?
10 A. Right.
11 Q. If you put it into an account that is some
12 somebody else's name, or using somebody else's social
13 security number or employer I.D. number or something else,
14 you are not going to find it?
15 A. I don't know if I would or not.
16 Q. Why not?
17 A. Well, I have done subpoenas before, for instance,
18 where I have thought that somebody had money, like in their
19 parent's name. I have subpoenaed the bank to see if those
20 accounts existed.
21 Q. So, in this particular case, how many subpoenas
22 did you issue for Mr. Democker's financials?
23 A. None.
24 Q. So you would have had no way of knowing whether
25 Mr. Democker was telling you the truth or not about his

1 financials?
2 A. Well, I could verify what I had paperwork for.
3 Q. That is the paperwork that Mr. Democker is
4 providing to you.
5 A. And that Miss Kennedy is providing. Exactly. So
6 I could cross reference.
7 Q. If Mr. Casalena says that, based on his research,
8 there is $600,000 missing, did you do anything to research
9 that?
10 A. No. To me, this is garbage in, garbage out. He
11 didn't have full information. Some of this stuff I read
12 through, and I was like, oh, well, I know we answered that
13 question. And it is the day before trial. I am not going to
14 issue a subpoena the day before trial, and I certainly didn't
15 want a continuance.
16 Q. You keep talking about the day before trial. What
17 you are dealing with there is simply the admissibility of
18 documents that can be used at trial, not the accuracy of
19 information that may be out there in the real world.
20 A. Right. I think it would be impossible for me to
21 try to drill down this report less than 24 hours before I
22 went to trial. And once we went to trial and settled, I had
23 no need to.
24 Q. Right. Settling it --
25 A. I hadn't looked at this since the day before

1 trial.
2 Q. This comes in on the 27th?
3 A. Right.
4 Q. You are set for trial on the 28th?
5 A. Uh-huh.
6 Q. Case settles on the 28th. And what is a very good
7 settlement for Mr. Democker; correct?
8 A. Very good for both of them.
9 Q. And it ends in an inquiry into the accusations
10 made by Mr. Casalena; correct?
11 A. No, that is not correct. If Carol or Mr. Fruge
12 thought that there was anything of substance in that, they
13 definitely could have drilled it down, because they could
14 have set aside the decree. It doesn't end the inquiry. I
15 just took it that they knew they hadn't given him all of the
16 information that we had given them. You can tell by looking
17 at it that he doesn't have the benefit of all of the
18 statements.
19 Q. Did you ever have any information that Ms. Kennedy
20 had gone to Wallace and Associates with this document and was
21 told to take Mr. Democker back to court?
22 A. No.
23 Q. Because based on what Mr. Casalena was saying, she
24 was of the opinion that Mr. Democker was hiding assets?
25 A. No. That has never been raised to me.

1 Q. And so settling this case on the 28th was at least
2 one way for Mr. Democker to try to put this to rest and keep
3 anybody from going any further with it; correct?
4 A. No. Because if we didn't settle, we would have
5 just gone to trial on the 28th. It would have had the same
6 result. The case is over.
7 Q. This document may not have been admissible, but it
8 doesn't change the basic accusation that Mr. Casalena is
9 making that Mr. Democker is hiding assets; does it?
10 A. My point is that settling or going to trial,
11 neither one has an affect on that.
12 Q. Isn't the settlement based on the affidavit of
13 financial information that is filed?
14 A. No.
15 Q. Isn't that a basis for setting aside if somebody
16 files an affidavit of financial information that is
17 fraudulent?
18 A. I don't necessarily think that you can set aside a
19 settlement because of the affidavit of financial information.
20 Q. Could they pursue an action of fraud then?
21 A. A civil action?
22 Q. Yes.
23 A. I would assume.
24 Q. Did you have any information that after
25 Mr. Democker filed his income tax return that Miss Kennedy

1 was -- did not want her income tax preparer to use his
2 figures because she felt that they were fraudulent in nature?
3 A. Not that they were fraudulent in nature. She
4 wanted him to file jointly with her, because she didn't want
5 a tax liability. She was upset with him for filing
6 separately and for claiming the support under temporary
7 orders as maintenance. That is what she was upset about.
8 Q. Were you ever made aware that Ms. Kennedy had
9 approached Wallace and Associates and talked about reporting
10 her ex-husband to Internal Revenue Services?
11 A. No. I don't even know who Wallace and Associates
12 are.
13 Q. Exhibit 73, again, Mr. Casalena's report. You
14 said you saw this for the first time on the 27th; correct?
15 A. Right.
16 Q. 27th of May, 2008?
17 A. Yeah. I think it was faxed to me by Mr. Fruge.
18 There were a couple pages that I think were duplicated and
19 faxed on April 30th at the end of the mediation. Because I
20 said towards the end of the day of the April 30th mediation,
21 he faxed something. For some reason, I am thinking that some
22 of those pages were contained in here.
23 Q. That was Mr. Casalena's evaluation of the book of
24 business value?
25 A. Right. Let me flip through here real quick and

1 see if I recognize which pages might have been. It looks
2 like maybe Page 16. Because I know that April 30th
3 preliminary report cited some of the same case law, but I
4 don't remember if the wording is a duplicate of what we
5 received on April 30th.
6 Q. After April 30th is when you did your research to
7 figure out whether there was any value to the book of
8 business?
9 A. No. I did that prior to April 30th.
10 Q. Based on the information that you received from
11 Mr. Casalena on the 30th, did you do any more research to see
12 whether he was correct or not?
13 A. No, because I had already read all of these cases.
14 Q. And you reached a different conclusion than he
15 did?
16 A. Yes.
17 Q. You are an attorney?
18 A. Yes.
19 Q. And do you have a background in finance?
20 A. No, I don't.
21 Q. Does Mr. Casalena?
22 A. I think he has a CV attached. He is a CPA.
23 Q. Would you say he has a better understanding of
24 finances than you do?
25 A. I have no idea. I would assume so. I would hope

1 so.
2 Q. Do you know when Carol Democker saw this document
3 for this first time -- Carol Kennedy saw this document for
4 the first time?
5 A. I have no idea.
6 Q. Do you know whether she saw it on the 27th?
7 A. I don't know whether she ever saw it. I have no
8 idea. I got it from her attorney, though. So I am assuming
9 he probably gave it to her the same day.
10 Q. When did you show this document to Mr. Democker?
11 A. The 27th. I called him after I received it.
12 Q. Did you sit down and go through it with him page
13 by page?
14 A. Not page by page because I didn't have that kind
15 of time. Day before trial and, you know, still preparing.
16 But we went through -- because what I told him is that, worse
17 case scenario, if the judge does let in the report, I need to
18 know what some of this stuff is. So what we did is -- and
19 the waste especially, because Mr. Fruge told me that they
20 weren't pursuing the waste argument. So that is really where
21 I had the fuzziest knowledge at that point.
22 We went through and we drilled down like
23 some of the entries. You know, I don't remember which ones
24 they were off of the top of my head. I know one was a gift
25 for Carol. There were some that were gifts for the girls.

1 We were able to look through and see the pay off of the MBNA
2 credit card. Things like that.
3 So there were certain entries that, just
4 off the top of my head, I knew they couldn't parley that into
5 a waste argument. So I focused on those, because I figured
6 on cross-examination, everything goes bad and Judge Mackey
7 let's them testify and let's the report in, at least I could
8 have some stuff on cross-examination.
9 Q. Needless to say, there is other stuff here. You
10 have no idea what it is worth?
11 A. Right. Yeah. Like I couldn't tell you what they
12 bought at Robinson's May. I couldn't tell you who made that
13 purchase or what it was for.
14 Q. Did Exhibit 73 enter into the settlement
15 agreements -- the consent decrees that were executed on the
16 28th in any way?
17 A. No. I just told Mr. Fruge if we went to trial, I
18 didn't think the judge was going to let it in. And at that
19 point they weren't asking anything for waste or for the book
20 of business.
21 Q. Prior to representing Mr. Democker, how many
22 clients had you had recently who had books of business
23 involved in the valuation of their assets?
24 A. I am trying to think if I had done one for
25 anybody, like an insurance salesman or -- I did one really

1 complicated one where we had to have an expert value the
2 business, and the business was kind of personal in nature.
3 So I have seen that a few times, but not one with a financial
4 advisor who worked for a major wire house.
5 Q. And in the case that you did have, you used an
6 expert. You didn't attempt to value it yourself or let your
7 client value it?
8 A. No. My client was not an expert. Basically in
9 this case, I could use Steve as my expert because of his
10 background.
11 Q. You don't think he had a vested interest in
12 finding that the book of business had no value?
13 A. Well, yes. But if he could explain it to the
14 judge -- because the judge hadn't seen a case like this
15 either. That was one of the reasons why the judge gave us a
16 continuance in February. The judge said, let's let your
17 expert have time to do this research. So we expected
18 Casalena's report a lot before we actually received it. And
19 Casalena had never done one like this before either.
20 Q. And what did Mr. Casalena value the book of
21 business at?
22 A. Bear with me and I will find it. After tax,
23 $599,344.
24 Q. That certainly would have impacted the property
25 settlement; wouldn't it?

1 A. Assuming that that was correct.
2 Q. Yes.
3 A. Right. If we had bought their argument there was
4 a value, yeah, it would have impacted. But we never conceded
5 that.
6 Q. Not if you bought it, but if the judge bought it,
7 then it certainly would have affected the value, wouldn't it,
8 of the property settlement?
9 A. If the judge had ruled against us on that issue
10 and actually gone with this value, yeah.
11 Q. How much?
12 A. You could assume half. So 300,000.
13 Q. Did you receive during 2007 or 2008, documentation
14 from Mr. Democker that was indicating that he was having
15 financial problems?
16 A. I think you are going to need to be more a little
17 more specific than that. What do you mean?
18 Q. Not able to pay his bills, or not having enough
19 income to meet his lifestyle.
20 A. I knew that he had to borrow money from his
21 father.
22 Q. Anything else?
23 A. I took the position that cash flow was one of the
24 reasons that we shouldn't have a continuance of the February
25 trial.

1 Q. Why?
2 A. Because they were just dragging it out. To me, if
3 they raised this book of business value issue in September,
4 to not have the opinion by February, that just didn't jive
5 with me. And so I just viewed it as the longer that things
6 stretched out, Steve is paying for everything. There is a
7 complete disincentive for Carol to settle. So I figured if
8 we held that trial date, then maybe we would actually get a
9 settlement.
10 Q. You said there was a disincentive to Carol. If
11 Mr. Democker is paying her bills, then that impacts her
12 ability to pay bills; correct?
13 A. Her bills were being paid. As long as your bills
14 were being paid, I don't think you would care that the other
15 side was going into debt to pay them.
16 Q. Let me see if I have got this right. I think,
17 wrapping this up, you did no research into what
18 Mr. Democker's assets were; correct, other than what he
19 reported to you?
20 A. No, that is not correct.
21 Q. What research did you do into his assets?
22 A. We looked on the county recorder web page,
23 verified how title was held. I looked through the documents
24 that Ms. Kennedy provided to her attorney and that he
25 provided to me, as well as looking at the information that

1 Steve had provided to me.
2 Q. You issued no subpoenas?
3 A. I don't think I issued any subpoenas. And I think
4 Mr. Fruge issued the one that he had the date of return
5 wrong.
6 Q. If money was being transferred into another name,
7 or account with another name, issuances of the subpoenas
8 would be the only way you would find it; correct?
9 A. No. Because actually what you can do is you look
10 at the pay stubs. You can tell how much Steve made. You can
11 look at the bank accounts. You can see where they were
12 deposited. You can look at the bank account statements, and
13 you can see where the money went. We had all that
14 information, Mr. Fruge and I both.
15 Q. Why did Mr. Casalena say you didn't have it?
16 A. I don't think Mr. Fruge provided Mr. Casalena with
17 all of the documents. That is what I have been saying.
18 Mr. Casalena was not operating with all of the information.
19 Q. You can't tell us, as you sit here today, that the
20 documents that Mr. Casalena says he never got were actually
21 provided by you?
22 A. Not without going through all my documents, I
23 can't tell you that.
24 Q. Weren't you concerned when you received this
25 report and he said, I didn't get these documents that it was

1 your duty to disclose, you go back and make sure. Yeah, I
2 sent this to you?
3 A. No. Because those were joint account documents.
4 Mr. Fruge and Carol had the equal duty that Steve and I did
5 to accumulate these documents. There were accounts in both
6 people's names. They can both go down to the bank and say, I
7 want all the account statements for the last five years, and
8 then you exchange it. That is what happens in most cases is
9 you end up with doubles of everything.
10 Q. Did you sit down and go through the accounts to
11 see where all the money was going?
12 A. Yeah. I had gone through all of the statements
13 prior to trial.
14 Q. Back to 2004?
15 A. I don't remember if it was 2004 for every account,
16 but I went through everything that I had.
17 Q. You went through everything that you had. Do you
18 know that you had all of the accounts all the way back to
19 2004?
20 A. I know I had all of the accounts going back for
21 several years. I can't tell you for certain if they went all
22 the way back to 2004, 2005. I just can't tell you off the
23 top of my head.
24 MR. AINLEY: Thank you, ma'am. I don't have
25 any other questions for you at this time.

1 THE COURT: Redirect.
2 MR. SEARS: Briefly, your Honor.
3 REDIRECT EXAMINATION
4 BY MR. SEARS:
5 Q. Anna, let's talk about the issue that came up just
6 a moment ago about the dispute about filing separate, filing
7 jointly in the taxes.
8 If I understand the basis of that is at
9 the end of 2007, beginning of 2008, Steve was looking to see
10 if there was a way he could claim part of the money that he
11 had paid to Carol in 2007 after the temporary orders as
12 spousal maintenance and take a deduction for it. Is that
13 essentially correct?
14 A. Right. He consulted with Doug Raider, who was
15 their CPA for about 20 years, and said, here is my temporary
16 orders. Can I claim that as deductible maintenance? And
17 Mr. Raider said yes. Steve had him do a calculation saying
18 if Steve files jointly with Carol, what is the tax liability?
19 If Steve files separately and is able to deduct all of those
20 payments, what is the tax liability?
21 Q. Apparently, when Steve advised Carol that he was
22 going to file separately and that that decision was going to
23 save him money and cost her money, she became upset?
24 A. Right. And I think that was about -- I want to
25 say it was the middle of February of '08 when they had that

1 discussion.
2 Q. Have you seen among the documents, they may be in
3 Exhibit 54, e-mails from both Steve and Doug Raider to Carol
4 discussing this very issue?
5 A. Right.
6 Q. In advance of doing it?
7 A. Yes.
8 Q. So it was no surprise to Carol?
9 A. No. And I think Steve had even proposed that he
10 could file jointly with Carol, but that he wanted to get some
11 benefit from that. Meaning, if it cost him more money to
12 file jointly, then he should get some benefit from that,
13 because he wouldn't be able to claim -- for instance, as an
14 example, if he pays Carol's trash bill. If he files
15 separately, that is support and that is tax deductible. If
16 they filed jointly, the trash bill is not deductible.
17 So that is why Doug Raider had to do the
18 calculation to see how it was more advantageous. I know that
19 Steve at one point said, I will file jointly, but you have
20 got to bear the tax liability for your share of this. And
21 she didn't want to do that.
22 Q. Ultimately, I think you told us, that when it came
23 to the settlement in court, one of the considerations in
24 terms of how much money Carol was going to have transferred
25 to her, was to give her an amount that was equal to her best

1 estimate of what the taxes would be for the alimony payments
2 that she received as a result of Steve claiming that
3 deduction, that money actually was allocated and discussed
4 and transferred to her in the divorce to cover those taxes?
5 A. Right. That is why when we had been negotiating
6 about what we were going to do with the money that was left
7 over out of Steve's 401K, part of the discussion was, okay,
8 are we going to split that left over money 50/50, or
9 two-thirds/one-third? What are we going to do?
10 And Carol said, I want the money to pay
11 my tax liability from -- it would have been her '07
12 liability. And Steve said, Carol can keep all the money that
13 is left over after we pay off B of A, Chase, and $20,000 on
14 the UBS card. That way she would have enough money for her
15 '06 liability. No, sorry. I am messing up the date. This
16 is a 2009 thing.
17 It would have been her liability from '07
18 that would have been due April 15 of '08. So she had enough
19 money to pay that. Then she had enough money to pay her
20 taxes on the distribution of the 401K that is not due until
21 April 15 of '09. Plus Casalena money and Robert Fruge money,
22 for fees.
23 Q. If Carol, unbeknownst to you and Steve, had gone
24 to Wallace and Associates, or some other accountant and
25 complained about this after the fact, was that ever

1 communicated to you, or made known to you that she was still
2 complaining even days or weeks after the divorce that somehow
3 she got a bad deal on these taxes?
4 A. No. The tax issue, in my mind, was completely
5 done, because she got the money to pay her taxes.
6 Q. And was there anything that you could see about
7 the way in which Steve handled the decision to pay -- to file
8 separately, that was done secretly or without Carol's
9 knowledge or done in some way that looked like it was
10 malicious or an attempt to harm her?
11 A. No. He copied her on the e-mails with Doug
12 Raider, so she could see what went into that decision making
13 process about how that was filed.
14 Q. I don't want to put words in your mouth at all,
15 but I get a sense from what you are saying about Casalena's
16 report that the way in which you responded to it was not only
17 due to the fact that it came in the day before trial, just
18 that generally you weren't impressed by these claims?
19 A. No. I wasn't impressed by this as a piece of work
20 from an expert.
21 Q. And had the case been continued and additional
22 time given to Carol to somehow develop those claims, I assume
23 that would have happened. Is that right?
24 A. Right. I would have deposed Casalena and I would
25 have picked this apart, item by item.

1 Q. Did you have any sort of general concern or
2 overall concern that Steve was in trouble because Casalena
3 had uncovered some massive fraud or some asset hiding or
4 something else that he was making these claims about in
5 Exhibit 73?
6 A. No. Because when I looked through this, I thought
7 all of this is explainable. If he would have asked these
8 questions before, we could have answered them.
9 Q. If I understand this, Steve's source of income in
10 the relevant years was from his employment. He didn't have
11 some other source of income?
12 A. Right. It was all through UBS. And we had pay
13 stubs for all of those years, and we provided those to Fruge.
14 Q. It wasn't difficult to track where the money went,
15 because for the longest time, it went into joint accounts
16 with Carol?
17 A. Right.
18 Q. She would know what was in the account. She would
19 have access to them.
20 A. Right.
21 Q. This differed compensation package we were talking
22 about was all UBS stock; right?
23 A. Exactly.
24 Q. Just like many people that hide income for tax
25 purposes. The employer agrees to differ part of it and bank

1 roll it for future withdrawal and taxation at the time it is
2 withdrawn; correct?
3 A. Right.
4 Q. You said that Steve actually to this day doesn't
5 have a vested interest in that differed compensation?
6 A. I know for a fact that the first year vested is
7 2010. I just don't remember the month.
8 Q. To your knowledge that differed compensation was
9 all in UBS stock?
10 A. It was all in UBS stock.
11 Q. Have you noticed that the stock market has seemed
12 to drop a bit over the last few months?
13 A. Yeah. Even during the pendency of this action, we
14 kept having to update the spread sheet that showed what the
15 current value of that was and the current pre-tax value, all
16 those calculations. It is a moving target because of the
17 stock market.
18 Q. Mr. Ainley asked you some loaded questions that
19 were trying to get you to concede that Steve would benefit
20 greatly by the death of Carol, that he would collect this
21 insurance money, and wouldn't have to pay all of this
22 alimony. They have been saying that from the beginning.
23 That is obvious; isn't it?
24 A. Right. That is how spousal maintenance works if
25 you pass.

1 Q. But it is not true, is it, that the debts that
2 were assigned to Carol died with her. Those debts were joint
3 community debts, and if she died without them unpaid, Steve
4 would have to pay them.
5 A. It is actually worse than that. Because, for
6 instance, the second on Bridal Path was only in Steve's name.
7 It was Carol's obligation underneath the decree to pay, but
8 it was only in Steve's name. So, Carol passes, the creditor
9 doesn't care. It is in Steve's name.
10 Same with the mortgage on Bridal Path.
11 We knew that Carol couldn't refinance that. And that's why I
12 told Steve, make sure that payment is made and withhold it
13 from spousal maintenance. If she doesn't make the mortgage
14 payment, because your name is on that, and your credit is
15 associated with that. If you want to keep your license, keep
16 your credit, you know.
17 Q. So that is more than $300,000 in mortgage on
18 Bridal Path that Steve would have to pay or do something in a
19 hurry to satisfy?
20 A. Right.
21 Q. It would be his obligation based on the day she
22 dies?
23 A. I can tell you what it is. Casalena has got it in
24 here as to what the obligations are, because that property
25 basically had no equity in it.

1 Q. If I told you he thought it was around $400,000,
2 does that sound about right?
3 A. That sounds right, because I think the second is
4 right around $80,000. Yeah. It is more than that, actually.
5 It is -- the first mortgage on Bridal Path was right under
6 380,000. The second mortgage was 70,000. So that is 450,000
7 that Steve is on the hook for.
8 Q. And maybe the property would be worth it or maybe
9 it wouldn't?
10 A. We know the property is not worth it.
11 Q. Going back to motivation. The State has an
12 obvious interest that it wants to draw here. By contrast,
13 did you see any indication in your dealings with Steve, your
14 frequent contacts with him, the e-mails, the tone of what he
15 was doing, that indicated that Steve had any serious concern
16 about the burden on him of this financial obligation?
17 A. No. He was relieved.
18 Q. For good reason?
19 A. Absolutely. Yeah. I thought it was is a pretty
20 good deal.
21 Q. If Steve was somehow, unbeknownst to you,
22 intending to kill Carol because he had no intention of paying
23 her spousal maintenance, can you think why he would have
24 spent thousands of dollars on attorneys fees and mediation
25 costs, and drag this case out for more than a year if he was

1 never going to pay her the first payment because he was going
2 to kill her?
3 MR. AINLEY: Objection. Asks for speculation
4 on the part of the witness.
5 THE COURT: Sustained.
6 BY MR. SEARS:
7 Q. It is a fact, isn't it, that Steve spent thousands
8 of dollars in attorney's fees and associated costs throughout
9 the life of this more than a year-long divorce?
10 A. Yes. It ended up being quite expensive.
11 Q. And that Steve was sincerely trying to find a way
12 to get the case resolved through mediation, through direct
13 contact with Carol, through Jodie Brown, through any means he
14 could to find some way to get this case resolved?
15 A. Yes.
16 Q. In fact, that is what eventually happened?
17 A. That is exactly what happened.
18 Q. Is it uncommon, in your experience, for one spouse
19 or the other in a divorce case to have some incriminations
20 about the way it came out, some grief, resentment or anger,
21 or, boy, I got the shaft in this one? Is that something you
22 hear from time to time?
23 A. I hear it in just about every case from both
24 sides.
25 Q. Nobody ever feels like they got it?

1 A. No one feels like they won. You don't win in a
2 divorce case.
3 Q. Okay. Did you have an opinion, based on your
4 understanding of the law, as to whether it was appropriate
5 for Steve to claim the portion of the alimony payment -- the
6 portion of temporary orders payments as alimony, or did you
7 defer to Doug Raider on that?
8 A. I know for a fact that spousal maintenance is tax
9 deductible. That is one of the reasons why you do want
10 temporary orders in some cases, because if you are paying a
11 lot of money and you think the divorce is going to take a
12 while, you surely want to be able to deduct it. Especially
13 if it goes past year end.
14 Q. Mr. Ainley asked you about some large deposits to
15 the National Bank account. Is that a joint account with
16 Carol?
17 A. Yes.
18 Q. Are you saying that the largest part of that, that
19 you can remember off the top of your head, would have been
20 this employee forgivable loan of more than half a million
21 dollars?
22 A. Exactly. I know that they both went down to the
23 bank together and deposited it together.
24 Q. Into a joint account?
25 A. Yes.

1 Q. Do you have any idea what Mr. Casalena or
2 Mr. Ainley are talking about, about money in other people's
3 names or other accounts?
4 A. No. That allegation was never made by Mr. Fruge
5 or Carol during the pendency of the action.
6 Q. Now, it comes to the last minute from Casalena?
7 A. Right.
8 Q. Do you think all the money that Steve earned over
9 this period of time is accounted for by his own records?
10 A. Oh, yes.
11 Q. And bank records?
12 A. Yes.
13 MR. SEARS: Thank you. Nothing further.
14 THE COURT: Any reason to keep Miss Young
15 under her subpoena, or may she be excused?
16 MR. SEARS: It is fine if she is excused with
17 me, your Honor.
18 MR. AINLEY: Yes, sir. That is fine.
19 (Whereupon, this portion of the proceedings were concluded.)
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7 C E R T I F I C A T E
8
9 I, ROXANNE E. TARN, CR, a Certified Reporter
10 in the State of Arizona, do hereby certify that the foregoing
11 pages 1 - 111 constitute a full, true, and accurate
12 transcript of the proceedings had in the foregoing matter,
13 all done to the best of my skill and ability.
14 SIGNED and dated this 26th day of April, 2009.
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22 ROXANNE E. TARN, CR
Certified Reporter
23 Certificate No. 50808
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25