

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO.: 15-81298-CV-MARRA-MATTHEWMAN

JULIAN BIVINS, as Personal
Representative of the ancillary
Estate of Oliver Wilson Bivins,

Plaintiff,

vs.

CURTIS CAHALLONER ROGERS, JR.,
et al.,

Defendants.

DEPOSITION OF: ASHLEY CRISPIN ACKAL, ESQUIRE
DATE: MONDAY, JANUARY 9TH, 2017
TIME: 9:05 A.M. - 1:50 P.M.
TAKEN BY: PLAINTIFF
LOCATION: CLEARLAKE EXECUTIVE SUITES
500 SOUTH AUSTRALIAN AVENUE
SIXTH FLOOR
WEST PALM BEACH, FLORIDA 33401

STENOGRAPHICALLY
REPORTED BY: MARK RABINOWITZ, RPR

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

2..5

Page 2

Page 4

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21 and Stephen M. Kelly
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Appearing on behalf of Curtis Cahalloner Rogers, Jr.
Also Present: Brian M. O'Connell, Esquire

1 P R O C E E D I N G S
2 THE REPORTER: Raise your right hand, please.
3 Do you solemnly swear to speak the truth, the
4 whole truth and nothing but the truth, so help you God?
5 THE WITNESS: Yes, I do.
6 ASHLEY CRISPIN ACKAL, ESQUIRE
7 having first been duly sworn, was examined and
8 testified as follows:
9 DIRECT EXAMINATION
10 BY MR. DENMAN:
11 Q. Would you state your full name.
12 A. Ashley Crispin Ackal.
13 Q. Where are you employed?
14 A. Ciklin Lubitz & O'Connell.
15 Q. How long have you been there?
16 A. Over ten years.
17 Q. When did you graduate law school?
18 A. 2006.
19 Q. Are you an associate or a partner there?
20 A. I am an associate with the firm.
21 Q. Are there different tiers -- associate,
22 juniors, seniors?
23 A. No.
24 Q. Do any associates report to you?
25 A. Yes.

Page 3

Page 5

1 I N D E X
2
3
4 TESTIMONY OF ASHLEY CRISPIN ACKAL, ESQUIRE PAGE
5 DIRECT EXAMINATION BY MR. DENMAN 4
6 CROSS-EXAMINATION BY MS. SCHULTZ 169
7 REDIRECT EXAMINATION BY MR. DENMAN 178
8 CERTIFICATE OF OATH 182
9 REPORTER'S CERTIFICATE 183
10 ERRATA SHEET 184
11 READ LETTER 185
12
13
14
15 EXHIBIT INDEX
16
17 DEFENDANTS' DESCRIPTION PAGE
18 Exhibit 1 6/16/14 Agreement 171
19
20
21
22 S T I P U L A T I O N S
23 It is hereby stipulated and agreed
24 by and between the counsel for the respective parties
25 and the deponent that the reading and signing of the
deposition transcript was reserved.

1 Q. Who?
2 A. Currently?
3 Q. Yes.
4 A. Three.
5 Q. Who are they?
6 A. Joielle Foglietta, Zachary Rothman and Clara
7 Crabtree Ciadella.
8 Q. Do they all primarily do probate guardianship
9 work with you?
10 A. Yes.
11 Q. Who do you report to? Who is your direct
12 supervisor?
13 A. Brian O'Connell.
14 Q. Has he been your supervisor since you've been
15 working with the firm?
16 A. Yes.
17 Q. And what is your area of specialty?
18 A. Litigation, primarily guardianship, estate and
19 trust, but we also handle commercial litigation.
20 Q. What percentage of your work is commercial as
21 opposed to guardianship, estate and trust?
22 A. Five percent.
23 Q. And the rest?
24 (Phone interruption).
25 A. I'm sorry, Ron. My kids just started back to



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

6..9

Page 6

Page 8

1 school and one of them is sick.
 2 **Q. Go ahead.**
 3 A. So I'm just checking.
 4 Okay. Sorry.
 5 **Q. The other 95 percent is guardianship, estate**
 6 **and trust?**
 7 A. Yes, sir.
 8 **Q. And of the guardianship, estate and trust, do**
 9 **you weigh more heavily in guardianship, in estate over**
 10 **trust, or one over the other, or is it pretty much equal**
 11 **across the board?**
 12 A. I think it varies by year, but I would have to
 13 say equal over the ten years, but some years it's more
 14 heavily weighed in one particular area than in others.
 15 **Q. Is Steve Kelly currently a client of yours?**
 16 A. Yes.
 17 **Q. When I say "yours," you understand that to**
 18 **mean of the firm --**
 19 A. Yes.
 20 **Q. -- Ciklin Lubitz O'Connell?**
 21 A. Yes, anything of mine would be of the firm.
 22 **Q. And you worked on matters involving Oliver**
 23 **Bivins, Sr., as a ward of the State of Florida from 2011**
 24 **through current; is that correct?**
 25 A. Yes, I did. I don't know about the ward of

1 2011.
 2 **Q. And then Steve Kelly was removed as the**
 3 **emergency temporary guardian and substituted with Curtis**
 4 **Rogers at some point in 2011, right?**
 5 A. He was not removed. He was succeeded by
 6 Mr. Rogers.
 7 **Q. And once at the point that he was succeeded by**
 8 **Mr. Rogers, did your work cease at that specific point**
 9 **in connection with anything done for Oliver Bivins, Sr.?**
 10 A. We continued to represent Steve Kelly as the
 11 emergency temporary guardian through what would be his
 12 discharge process and the turnover process.
 13 **Q. From the time that Rogers came in as the**
 14 **successor guardian back in 2011 through the time that**
 15 **Kelly came in to succeed Rogers in 2014, did you do any**
 16 **work for Stephen Kelly in connection with Oliver Bivins,**
 17 **Sr.?**
 18 A. I believe so because Steve Kelly was not
 19 discharged as the emergency temporary guardian, so my
 20 representation, I believe, continued. I don't know what
 21 acts I was actually performing and at what particular
 22 time.
 23 **Q. If you performed any services for Steve Kelly**
 24 **as an emergency temporary guardian for Oliver, Sr., from**
 25 **the time that Rogers took over as successor guardian**

Page 7

Page 9

1 the State of Florida, but, yes, we've worked on all
 2 Oliver Bivins, Sr., matters from 2011 to current.
 3 **Q. And just to clarify: For all intent and**
 4 **purposes, you have never been retained by Oliver, Sr.,**
 5 **outside of being a ward; is that correct?**
 6 A. I have never been retained by Oliver Bivins,
 7 Sr., at any time in any capacity.
 8 **Q. At all times that you've worked on any matters**
 9 **pertaining to Oliver Bivins, Sr., he has always been**
 10 **either a ward or deceased; is that correct?**
 11 A. I'm thinking.
 12 He has been a ward, technically. I believe he
 13 was an alleged incapacitated person and not under a
 14 plenary guardian or a limited guardian because I
 15 represented Stephen Kelly as an emergency temporary
 16 guardian. So I don't believe there was an adjudication.
 17 So, I mean, I don't want to be technical, but
 18 I think there was a point where he wasn't actually under
 19 a formal guardianship. It was under an emergency
 20 temporary guardianship.
 21 **Q. And when was that?**
 22 A. In 2011.
 23 **Q. What part of 2011?**
 24 A. I believe my representation of Steve Kelly
 25 began in the first quarter or the second quarter of

1 **through the time that Kelly then took over as successor**
 2 **guardian for Rogers, that would have been something that**
 3 **you billed; is that right?**
 4 A. Oh, most likely.
 5 **Q. And was there a separate matter number that**
 6 **you billed that to for Steve Kelly as the ETG?**
 7 A. I believe so. I want to say, yes, we did,
 8 although, you know, we did have multiple matters going
 9 on at one time. So I don't want to say that each
 10 particular time entry, although billable and
 11 compensable, was, you know, properly billed to the
 12 matter number that we had hoped.
 13 **Q. What I'm trying to understand here, just to**
 14 **make it clear, is: Until Steve Kelly became the**
 15 **successor guardian for Rogers, at best he was ETG?**
 16 MS. STUDLEY: Form.
 17 A. I'm trying to -- until he was discharged he
 18 was ETG, and he wasn't discharged before Curtis Rogers
 19 came on or after Curtis Rogers resigned.
 20 **Q. That sort of answers my question.**
 21 **But until Steve Kelly came on as successor**
 22 **guardian for Curtis Rogers, he was not more than ETG, at**
 23 **best, for Oliver Bivins, Sr.; is that right?**
 24 MS. STUDLEY: Form.
 25 MS. STEIN: Form.



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

1 A. I don't know what you're asking me. I know he
 2 was an ETG. You're asking me if he held any other
 3 capacity that I'm aware of?
 4 Q. Yes.
 5 Did he have any -- did Steve Kelly have any
 6 other capacity besides being appointed ETG in early 2011
 7 through the time that he was officially designated as
 8 the successor guardian for Rogers?
 9 A. I don't believe so.
 10 Q. From the time Rogers came on as successor to
 11 Kelly as the ETG, if you worked for Steve Kelly as the
 12 ETG, that's something that you would have billed to
 13 Steve Kelly's ETG, or would you have put that time under
 14 any of the open matters under Curtis Rogers as the
 15 guardian?
 16 A. I don't know.
 17 Q. Okay. Have you ever filed a petition to the
 18 guardianship court for any services that were performed
 19 for Steve Kelly after Curtis Rogers came on, but before
 20 Steve Kelly became the successor guardian to Curtis
 21 Rogers?
 22 A. I don't know, but possibly.
 23 Q. And when you represented Steve Kelly as the
 24 ETG, he was also the ETG for the Estate of -- excuse me,
 25 for Lorna Bivins, correct?

1 **Lorna Bivins after Curtis Rogers became appointed?**
 2 A. I'm trying to understand your question.
 3 Did I meaning the law firm --
 4 Q. Yes.
 5 A. -- ever file a withdrawal?
 6 Q. I didn't say "file a withdrawal."
 7 Did you ever withdraw or resign from
 8 representing Steve Kelly in any capacity after Curtis
 9 Rogers became the guardian? When I say "withdraw,"
 10 withdraw from Lorna's representation.
 11 A. I don't believe -- I don't know the answer to
 12 that.
 13 Q. But prior to Curtis Rogers coming on as
 14 guardian, you were representing Steve Kelly in his
 15 capacity as ETG for Oliver, Sr., as well as ETG for
 16 Lorna Bivins, correct?
 17 MS. STUDLEY: Form.
 18 A. It's possible.
 19 Q. Because you were billing Lorna Bivins as
 20 attorneys for the ETG, correct?
 21 A. I don't remember it, but it's possible.
 22 Q. I mean, your firm got paid for services
 23 performed for Stephen Kelly as the ETG for Lorna,
 24 correct?
 25 A. Again, I don't remember it, but it's possible.

1 A. I can't tell you when Steve was discharged for
 2 Lorna Bivins.
 3 Q. Do you even know if he was discharged?
 4 MS. STUDLEY: Form.
 5 A. At this time, sitting here, no, I don't.
 6 Q. So going back to the time that you were
 7 representing Steve Kelly as the ETG before Rogers came
 8 on, Steve Kelly was also the ETG for Lorna Bivins,
 9 correct?
 10 A. Yes, there was a time when he was the ETG for
 11 Lorna Bivins.
 12 Q. And then at some point in time Donna Levine,
 13 the attorney for Oliver Bivins, Jr., objected to Kelly
 14 being the ETG for both Lorna and Oliver, Sr., correct?
 15 A. I don't remember.
 16 Q. And in May of 2011 Curtis Rogers took over as
 17 the successor guardian for Oliver, Sr., correct?
 18 A. I believe that's true.
 19 Q. Okay. And at that point in time there was no
 20 petition to seek a discharge of Kelly filed as the ETG
 21 for Oliver, Sr., correct?
 22 A. I don't believe so, no.
 23 Q. If the -- well, let me strike that.
 24 Did you ever resign from or withdraw in any
 25 capacity from representing Steve Kelly as the ETG for

1 Q. At any point in time do you remember ever
 2 filing any type of resignation or withdrawal removing
 3 your firm from representing Steve Kelly as the ETG for
 4 Lorna Bivins?
 5 MS. STUDLEY: Form. Asked and answered.
 6 A. Again, I don't -- I don't even know what that
 7 means, to file a resignation or something like that.
 8 Q. Did you ever take any affirmative act to let
 9 Steve Kelly know that Ciklin Lubitz was no longer
 10 representing him as the ETG for Lorna Bivins?
 11 MS. STUDLEY: Form.
 12 A. To the extent that we did represent him in
 13 that capacity, I don't recall that.
 14 Q. You would have some type of documentation of
 15 that if you did, correct?
 16 MS. STUDLEY: Form. Asked and answered.
 17 A. Again, I don't know exactly what that means.
 18 And I don't know if we even and at what point we were
 19 representing Steve Kelly with respect to the
 20 guardianship of Lorna Bivins.
 21 Q. If you were -- if your firm was representing
 22 Steve Kelly as the ETG for Lorna Bivins, you would agree
 23 with me that your firm would have to do something, some
 24 affirmative act, to stop representing Steve Kelly as the
 25 ETG for Lorna Bivins, correct?



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

1 MS. STUDLEY: Form.
 2 A. I don't know.
 3 **Q. You don't know whether it just ends for doing**
 4 **nothing, or whether you need to take an affirmative act,**
 5 **to end your representation of the firm; is that right?**
 6 MS. STUDLEY: This was asked and answered
 7 several times. Object to form.
 8 MR. DENMAN: Tell her not to answer. It's up
 9 to you.
 10 MS. STUDLEY: Well, you can't keep asking the
 11 same question over and over and over again. So I'll let
 12 her answer it one more time, and then we can move on,
 13 please.
 14 THE WITNESS: I don't know.
 15 BY MR. DENMAN:
 16 **Q. When you were representing -- Well, let me**
 17 **strike that.**
 18 **At some point after Curtis Rogers was**
 19 **appointed as the successor guardian, your firm was**
 20 **retained to assist in litigation for Curtis Rogers,**
 21 **correct?**
 22 A. Yes.
 23 **Q. Okay. Who hired your firm?**
 24 A. Mr. Rogers hired our firm.
 25 **Q. Who is your client?**

1 There were many matters that we handled for
 2 Mr. Rogers with respect to Oliver Bivins. I believe
 3 there may a signed rep agreement for the services for
 4 some of the litigation services, but I can't say for
 5 sure.
 6 **Q. Your firm --**
 7 A. Actually, I'm sorry. I'm pretty sure that
 8 there was a petition that was filed in the guardianship
 9 court for a hybrid contingency fee with respect to the
 10 filing of a petition to determine beneficiaries and
 11 possibly other services that was approved by the Court.
 12 And I believe that representation agreement was Court
 13 approved. So I know of that one.
 14 **Q. Okay. Move to strike.**
 15 **My question to you is: Was there a signed**
 16 **retainer agreement between you and Curtis Rogers once he**
 17 **became successor guardian?**
 18 MS. STUDLEY: Form. Asked and answered.
 19 A. That would be my answer.
 20 **Q. So, then, you don't know if there's an actual**
 21 **signed retainer agreement between your firm and Curtis**
 22 **Rogers; is that right?**
 23 MS. STUDLEY: Form. Argumentative.
 24 A. That would be one that I was just explaining
 25 to you. That would be a representation agreement. That

1 A. In that regard?
 2 **Q. Yes.**
 3 A. With respect to any -- when Curtis Rogers was
 4 guardian of the personal property for Oliver Bivins,
 5 Sr., my client was Mr. Rogers.
 6 **Q. Was Oliver, Sr., your client?**
 7 A. No.
 8 **Q. Okay. Were you performing any services for**
 9 **Oliver, Sr.?**
 10 MS. STUDLEY: Form.
 11 A. I don't believe so.
 12 **Q. Do you believe that you owed any fiduciary**
 13 **duty to Oliver, Sr., while -- during the point in time**
 14 **that Rogers hired your firm while he was successor**
 15 **guardian for Steve Kelly as ETG?**
 16 MS. STUDLEY: Object to form.
 17 A. It's possible, yes.
 18 **Q. You would agree that -- let me strike that.**
 19 **Did Rogers sign a retainer agreement with your**
 20 **firm?**
 21 A. We had various matters that we handled for
 22 him.
 23 **Q. Right now I'm only referring with respect to**
 24 **Oliver, Sr.**
 25 A. I know.

1 would be between myself and Curtis Rogers, or the firm
 2 and Curtis Rogers.
 3 **Q. Maybe it wasn't clear, and I'll try to be**
 4 **clearer.**
 5 A. Okay.
 6 **Q. At least I thought my question was: Is there**
 7 **an agreement that Curtis Rogers signed, a retainer**
 8 **agreement that Curtis Rogers signed, with your firm?**
 9 A. I think so, yes.
 10 **Q. Okay. Do you know if there's more than one?**
 11 A. I don't know that.
 12 **Q. Did you ever review that signed retainer**
 13 **agreement that you think was signed by Curtis Rogers?**
 14 A. I think so.
 15 **Q. Was it your understanding that when your firm**
 16 **entered into a retainer agreement with Curtis Rogers as**
 17 **the successor guardian for Oliver, Sr., that your firm**
 18 **was to provide services for the best interests of**
 19 **Oliver, Sr.?**
 20 MS. STUDLEY: Form. Predicate.
 21 A. I don't have a fee agreement with Oliver
 22 Bivins, Sr. I only have -- anything that I have -- I'm
 23 sorry if I just didn't listen clear enough. I only have
 24 a fee agreement with Curtis Rogers.
 25 **Q. And if I misstated it, I'm sorry. I thought**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

18..21

Page 20

Page 18

1 that I was --

2 A. I think you did.

3 **Q. When you had -- when your firm entered into**
4 **the fee agreement with Curtis Rogers as the successor**
5 **guardian for Oliver Bivins, Sr., you understood that**
6 **that agreement -- that you were acting in the best**
7 **interests of Oliver, Sr., under that agreement; is that**
8 **right?**

9 MS. STUDLEY: Form.

10 A. I was acting under Chapter 744.

11 **Q. Which is to provide for Oliver, Sr., correct?**

12 A. It is to follow the mandates of Chapter 744,
13 which is to provide the representation in accordance
14 with the standards of that chapter and, yes, I believe
15 that that was my obligation.

16 **Q. Which enures to the benefit of Oliver, Sr.,**
17 **correct?**

18 MS. STUDLEY: Form.

19 A. Yes, I believe so.

20 **Q. Do you -- did you ever perform services during**
21 **your representation of Curtis Rogers as the successor**
22 **guardian for Oliver, Sr., that were solely for Curtis**
23 **Rogers and not for the best interests of Oliver, Sr.?**

24 MS. STUDLEY: Form.

25 A. I think the problem is sort of overlapping

1 MS. STUDLEY: Form.

2 MS. STEIN: Form.

3 A. I never did that.

4 **Q. That wasn't my question. My question is:**
5 **Could you?**

6 MS. STUDLEY: Form.

7 MS. STEIN: Form.

8 A. I don't believe I would do that.

9 **Q. So you're saying, then -- my question is: Are**
10 **you permitted, as a Florida lawyer, to represent Curtis**
11 **Rogers as a successor guardian for Oliver, Sr., in any**
12 **capacity that would be against the best interests of**
13 **Oliver, Sr.?**

14 MS. STUDLEY: Calls for speculation. Lack of
15 predicate.

16 A. I'm thinking through your question.

17 MS. STUDLEY: And asked and answered.

18 A. I don't know if you're permitted.

19 **Q. You would agree with me that it would be a**
20 **conflict of interest for you to represent Curtis Rogers**
21 **as successor guardian of Oliver, Sr., in any matter that**
22 **would be against the best interests of Oliver Bivins,**
23 **Sr., the ward, correct?**

24 MS. STUDLEY: I'm going to object. Asked and
25 answered. Lack of predicate. Calls for objection.

Page 19

Page 21

1 of those words because of all of the services that I
2 performed were for Curtis Rogers, all of them. The
3 benefit that you talk about to me is sort of separate
4 and different than sort of who is the client and who
5 you're performing services for.

6 **Q. Were all services that you performed for**
7 **Curtis Rogers as successor guardian for Oliver, Sr.,**
8 **services that you sought to be paid by the guardianship**
9 **of Oliver, Sr.?**

10 A. Yes. I believed -- I believe all of the
11 services that we performed for Mr. Rogers would qualify
12 as compensable services under 744.108.

13 **Q. Which means that they had to be for the**
14 **benefit of Oliver, Sr., correct?**

15 MS. STUDLEY: Form.

16 A. They are actually for the benefit of the ward
17 or the guardian under the rule, under 744.108.

18 **Q. And if the services were to benefit the**
19 **guardian and not benefit Oliver, Sr., would that be a**
20 **conflict of interest?**

21 MS. STUDLEY: Form.

22 A. I don't understand the question.

23 **Q. Could you represent Curtis Rogers as the**
24 **successor guardian in matters that would be against the**
25 **best interests of Oliver, Sr.?**

1 MR. DENMAN: I believe the objection is just
2 to form only, please.

3 BY MR. DENMAN:

4 **Q. Go ahead.**

5 A. I'm not sure because there are situations
6 where -- for example, in a removal proceeding, where --
7 I mean, I can give you tons of examples. I'll just give
8 you one right here where, in a removal proceeding, it
9 really matters how somebody is really quantifying or
10 qualifying benefit to the ward or in the best interests
11 of the ward.

12 So there are times when people would say when
13 a guardian defends themselves in a removal action and is
14 successful. Well, that doesn't benefit the ward. That
15 benefitted the guardian, but that is compensable.

16 So I don't know how to answer the question, I
17 guess, is what I'm trying to say.

18 **Q. At all times that you performed services for**
19 **which you sought compensation from Oliver Bivins, Sr.'s**
20 **money, you understood that you had a fiduciary duty to**
21 **Oliver, Sr., correct?**

22 MS. STUDLEY: Form.

23 MS. STEIN: Form.

24 A. There has been some -- I want to say --
25 uncertainty in the law about the fiduciary duty to the



1 extent that it is the scope of it. And that has been
2 disputed from the time that I started practicing law in
3 this area until currently. So I can't answer
4 affirmatively yes.

5 I can tell you there is law out there that
6 says that there is a fiduciary duty. I'm aware of it,
7 and I operate under it.

8 **Q. So, then, at all times that you sought**
9 **compensation from Oliver, Sr.'s money for your services**
10 **while retained by Curtis Rogers as successor guardian**
11 **for Oliver, Sr., you understood that you had a fiduciary**
12 **duty to Oliver, Sr., correct?**

13 MS. STUDLEY: Form. Asked and answered.

14 MS. STEIN: Form.

15 A. Again, the nature and scope of it could be
16 disputed. But was there a fiduciary duty? At some
17 point I believe there was.

18 **Q. During the course of representation for --**
19 **well, let me back up for a second.**

20 **After Stephen Kelly took over as successor**
21 **guardian for Curtis Rogers, your firm continued to**
22 **represent Stephen Kelly, correct?**

23 A. Yes.

24 **Q. Was there a signed retainer agreement executed**
25 **between Stephen Kelly as successor guardian for Oliver**

1 **Q. So you do administrative and litigation work,**
2 **correct?**

3 A. Yes. Yes, I do.

4 **Q. Prior to Curtis Rogers being appointed as the**
5 **successor guardian -- and just for purposes of the**
6 **deposition so I don't have to drag these questions out,**
7 **whenever I say "successor guardian," you understand I**
8 **mean successor to Stephen Kelly as the ETG for Oliver**
9 **Bivins, Sr., correct?**

10 A. Yes.

11 **Q. Okay. And when I say Steve Kelly was the**
12 **successor guardian for Curtis Rogers, we're talking**
13 **about for Oliver Bivins, Sr., which took place in --**
14 **I think it was in April of 2014; is that right?**

15 A. I don't know the date, but, yes, I understand
16 what you mean.

17 **Q. So from now on I'm going to either refer to**
18 **Steve Kelly as the ETG, which would have been prior to**
19 **Rogers coming on the successor guardian; and then if I**
20 **refer to Steve Kelly as the successor guardian, that**
21 **means after he took over for Rogers.**

22 **Is that fair enough?**

23 A. Fair.

24 **Q. Okay. And if I want to ask you any questions**
25 **about them in any other capacity, I'll try and make it**

1 **Bivins, Sr., and your firm?**

2 A. I don't know.

3 **Q. Did you ever prepare one?**

4 A. I could have. I just don't remember.

5 **Q. Prior to Stephen Kelly retaining your firm as**
6 **the ETG, had you ever worked with Stephen Kelly in the**
7 **past?**

8 A. Yes.

9 **Q. Had Stephen Kelly ever hired your firm in**
10 **other matters?**

11 A. Before 2014 or 2013?

12 **Q. Before 2011 when he first came on as the ETG.**

13 A. The firm?

14 **Q. Yes.**

15 A. I believe so.

16 **Q. Had you ever worked with him, personally,**
17 **representing him as a guardian prior to him being the**
18 **ETG in this matter?**

19 A. I think so.

20 **Q. Had your firm ever -- let me strike that.**

21 **Your firm represents guardians**
22 **administratively and in litigation, correct?**

23 A. Yes.

24 **Q. Do you represent guardians administratively?**

25 A. Yes, I do.

1 **clear that it's not under those definitions that I've**
2 **laid out.**

3 A. Okay.

4 **Q. Had you ever represented Curtis Rogers outside**
5 **of being the successor guardian in your law firm?**

6 A. At any time?

7 **Q. Prior to him being the successor guardian.**

8 MS. STEIN: Form.

9 A. I don't know if I have. I can't speak for
10 Mr. O'Connell or any other member of the firm.

11 **Q. Do you know how Mr. Rogers got to your firm as**
12 **the successor guardian?**

13 MS. STUDLEY: Form.

14 MS. STEIN: Form.

15 **Q. As far as whether he was referred, whether he**
16 **came to you directly, whether he came through other**
17 **attorneys, do you have any idea how he got to your firm?**

18 MS. STUDLEY: Form.

19 A. I don't remember, I really don't.

20 **Q. You know who Ronda Gluck is?**

21 A. Yes.

22 **Q. And you know that Ronda Gluck was representing**
23 **Curtis Rogers as the successor guardian prior to your**
24 **firm being retained by Curtis Rogers as the successor**
25 **guardian, correct?**

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

1 A. Yes, I believe she was the initial -- yeah,
 2 the initial counsel for him. Yes.
 3 **Q. Prior to representing Rogers as the successor**
 4 **guardian, had you ever worked with Ronda Gluck on other**
 5 **matters as co-counsel?**
 6 A. Possibly.
 7 **Q. Since Curtis Rogers became the successor**
 8 **guardian, does your firm represent Curtis Rogers in any**
 9 **capacity outside of Oliver, Sr.?**
 10 A. I can't say. I can't say no or yes because
 11 I just don't know where certain matters are in their
 12 conclusion, but there were other matters that I
 13 represented Mr. Rogers in.
 14 **Q. I'm not asking you whether it's presently. I**
 15 **just mean did your firm represent him after he became**
 16 **successor guardian in other matters. And I guess your**
 17 **answer is yes?**
 18 A. Yes.
 19 MS. STUDLEY: Form.
 20 **Q. Do you know in how many different matters?**
 21 A. Two or three.
 22 **Q. Did your firm work as co-counsel with Ronda**
 23 **Gluck on any matters after Curtis Rogers became**
 24 **successor guardian?**
 25 A. Yes.

1 MS. STUDLEY: Form.
 2 A. No, it's not.
 3 **Q. Do you know who is?**
 4 A. There's a lawyer in Lake Worth that he uses.
 5 I can't recall the name right now.
 6 **Q. Has your firm ever represented -- well, let me**
 7 **strike that.**
 8 **Judge Colin's wife is a guardian, correct?**
 9 A. I think so.
 10 **Q. Has your firm ever represented her in any**
 11 **capacity as the guardian?**
 12 A. No.
 13 **Q. Do you know whether anyone in your firm has**
 14 **ever represented her in any capacity as a guardian?**
 15 A. I'm only speaking for myself because that's
 16 all I know. No, I don't believe so, but we have -- so
 17 Mr. O'Connell and myself work together. And then we
 18 have another lawyer in the firm, Ron Crescenzo, who does
 19 not work on our floor in our department.
 20 I can't tell you what he's done. I don't
 21 believe he has, but I just can't speak for him.
 22 **Q. Have you ever worked on any other matters in**
 23 **which Judge Colin's wife as a guardian was working?**
 24 MS. STUDLEY: Form.
 25 A. Me?

1 **Q. How many?**
 2 A. Maybe five.
 3 **Q. Did any of those involve Curtis Rogers?**
 4 A. Yes.
 5 **Q. How many?**
 6 A. I think one or two.
 7 **Q. After your firm started representing --**
 8 A. I'm sorry. I'm just approximating here. I
 9 just want to make sure.
 10 **Q. After your --**
 11 A. Probably two. Probably two.
 12 **Q. After your firm started representing Stephen**
 13 **Kelly as successor guardian, has your firm represented**
 14 **Stephen Kelly at any other time?**
 15 A. Yes.
 16 **Q. In other guardianship or estate matters?**
 17 A. Yes, or if he served in other capacities,
 18 which he does. He serves as a healthcare surrogate and
 19 things like that.
 20 **Q. Approximately how many times has your firm**
 21 **represented Stephen Kelly?**
 22 A. More than five, but I don't know if it's six
 23 or ten. I don't know, more than five.
 24 **Q. Do you know whether your firm is a primary**
 25 **firm that Stephen Kelly uses for legal services?**

1 **Q. Yes.**
 2 A. No.
 3 **Q. Do you know whether anyone in your firm has?**
 4 A. I don't know of any.
 5 **Q. I mean, do you know if, for example,**
 6 **Mr. O'Connell has worked in any pending guardianship**
 7 **proceedings in which Judge Colin's wife was the**
 8 **guardian?**
 9 MS. STUDLEY: Form.
 10 **Q. So I'm clear: I'm not saying where your firm**
 11 **was actually retained by her as a guardian. I'm saying**
 12 **where your firm -- Mr. O'Connell worked on a matter in**
 13 **which she was a guardian?**
 14 A. I don't know. I don't know.
 15 **Q. Has your firm ever retained Lipa Lieberman in**
 16 **any capacity other than in connection with Oliver**
 17 **Bivins, Sr.?**
 18 A. My firm has never retained him in any fashion.
 19 I believe the guardian in Oliver, Sr.'s guardianship
 20 did.
 21 **Q. Has your firm ever worked with Lipa Lieberman**
 22 **in any capacity other than in connection**
 23 **with Oliver Bivins, Sr.?**
 24 A. I don't know, but I don't think so.
 25 **Q. Lipa Lieberman served as the expert witness in**

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

1 connection with your contingency fee petition, correct?
 2 MS. STUDLEY: Form.
 3 A. Yes, he was an expert witness.
 4 Q. How did you find -- how did your firm find
 5 Lipa Lieberman to work as an expert in that matter?
 6 A. I don't exactly recall.
 7 Q. Did your firm or the guardian at the time,
 8 whether it was Rogers or Kelly, enter into a signed
 9 retainer agreement with Lipa Lieberman to serve as an
 10 expert witness on the contingency fee petition?
 11 A. Did my firm? I don't believe so.
 12 Q. Do you know whether Mr. Rogers did?
 13 A. I don't know.
 14 Q. Have you ever signed a retainer agreement
 15 pertaining to Lipa Lieberman with regard to his services
 16 as an expert witness on the contingency fee petition?
 17 MS. STEIN: Form.
 18 A. I don't know.
 19 Q. Did you ever read Lipa Lieberman's deposition
 20 transcript in this case, not in the federal case? When
 21 I say "this case," I mean in the underlying matters.
 22 A. I think we were on the phone for part of his
 23 deposition, I think. I don't remember. I don't
 24 remember attending that one.
 25 So reading the transcript was your question?

1 Q. Yes.
 2 A. I don't remember it today.
 3 Q. Did you ever participate in any negotiations
 4 with Lipa Lieberman that his expert fee for serving as
 5 an expert in his capacity with the petition for
 6 contingency fees would be compensated in return for
 7 being the exclusive listing agent on 808 Lexington?
 8 MS. STUDLEY: Form.
 9 MS. SCHULTZ: Form.
 10 THE WITNESS: Well, is this work product? I
 11 don't --
 12 MS. STUDLEY: Can you read back the question,
 13 please.
 14 (Question read back).
 15 MS. STUDLEY: Could we take a quick break?
 16 MR. DENMAN: Okay.
 17 (Recess taken).
 18 MS. STUDLEY: You can read it again.
 19 THE WITNESS: Could you repeat the question.
 20 (Question read back).
 21 MS. STUDLEY: I'm going to object on the
 22 predicate.
 23 If you can answer, you can answer.
 24 THE WITNESS: I don't think so.
 25 BY MR. DENMAN:

1 Q. Did your firm ever compensate Lipa Lieberman
 2 for his expert testimony in connection with contingency
 3 fee petition?
 4 MS. STUDLEY: Form.
 5 A. When you say "my firm," do you mean the
 6 guardianship as well?
 7 Q. Well, I'm just starting with your firm.
 8 A. Okay.
 9 Q. For example, did he submit an invoice to your
 10 firm that your firm paid on behalf of his services? And
 11 then the next question will be: You know, was that part
 12 of the petition through the guardianship? Just so you
 13 know where I'm going, I'm just trying to take it
 14 logically.
 15 A. Okay, so starting with the firm.
 16 I don't remember. I would have to go back and
 17 look.
 18 Q. If your firm paid Lipa Lieberman for his
 19 expert testimony in connection with the contingency fee
 20 petition, that would be an expense that your firm would
 21 seek reimbursement from Curtis Rogers as the successor
 22 guardian, correct?
 23 MS. STUDLEY: Form.
 24 A. Yes; if we advanced the costs, we would expect
 25 it to be reimbursed from the guardianship.

1 Q. And the reason for Lipa Lieberman serving as
 2 an expert was so that your firm could get attorneys'
 3 fees in connection with the contingency fee petition,
 4 correct?
 5 MS. STUDLEY: Form.
 6 A. It was in response to an objection to the
 7 petition for the contingency fee. So it was something
 8 that was done because of the objection. He was retained
 9 because of the objection.
 10 Q. You would agree with me in order for your firm
 11 to get a contingency fee award in connection with the
 12 contingency fee petition, there had to be a value set
 13 for the property, correct?
 14 MS. STUDLEY: Form. Predicate.
 15 A. Yes, I would agree.
 16 Q. Without Lipa Lieberman -- let me strike that.
 17 There would have to be some valuation of the
 18 property for you to get fees, a percentage, correct?
 19 MS. STUDLEY: Form. Predicate.
 20 A. I believe so.
 21 Q. Prior to Lipa Lieberman providing testimony as
 22 to the value of 808 Lexington, did your firm or the
 23 guardian have any appraisals of 808 Lexington?
 24 MS. STUDLEY: That is work product, but I
 25 think you can answer.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

1 A. I don't think so.

2 **Q. The same question, but instead of an**

3 **appraisal, any type of market valuation report?**

4 MS. STUDLEY: Form.

5 **Q. Do you want me to ask the whole question**

6 **again, or do you understand it?**

7 A. I understand what you're asking me, I think.

8 Do we have not a formal appraisal, but any

9 valuation --

10 **Q. Yes.**

11 A. -- of any sort?

12 **Q. Yes.**

13 MS. STUDLEY: Form.

14 A. Possibly.

15 **Q. Did your firm actually seek to obtain a**

16 **valuation of 808 Lexington prior to moving for your fees**

17 **under the contingency fee petition?**

18 A. Yes.

19 **Q. From who?**

20 A. I don't know if this is the whole universe,

21 but Lipa Lieberman and his cohorts at his brokerage

22 firm.

23 **Q. And when was that obtained?**

24 A. I can't recall. I mean, possibly 2013.

25 **Q. And when was it obtained?**

1 that the attorney client -- if you're objecting under

2 attorney-client privilege --

3 MS. STUDLEY: And work product.

4 MR. DENMAN: -- and Ms. Crispin cannot waiver

5 the privilege, then I have an issue with you having a

6 consultation with Ms. Crispin over the privilege that

7 you've raised.

8 THE WITNESS: Okay. Well, then let's just

9 keep going.

10 MR. DENMAN: I mean, if you want to withdraw

11 it, that's fine, but if you want to have the privilege,

12 then --

13 MS. STUDLEY: No. Keep going.

14 MR. DENMAN: Okay.

15 BY MR. DENMAN:

16 **Q. Did your firm obtain a valuation from Lipa**

17 **Lieberman for the purpose of the contingency fee**

18 **petition?**

19 MS. STUDLEY: These are all the same

20 questions.

21 MR. DENMAN: No. No. My last question was:

22 Did you obtain -- why did you obtain a valuation from

23 Lipa Lieberman, and that was attorney-client privilege.

24 MS. STUDLEY: Okay.

25 BY MR. DENMAN:

1 A. That would be attorney-client privilege and

2 work product.

3 **Q. Was it obtained for any purpose besides**

4 **seeking recovery for your firm's fees under the**

5 **contingency fee petition?**

6 MS. STUDLEY: Same objection. Obviously, that

7 goes along with the attorney-client privilege and work

8 product.

9 THE WITNESS: Ron, can I have a break to talk

10 to them? I want to make sure if I -- I mean, I want to

11 make -- it is protected. I believe it is protected

12 information. But can I have a moment to speak to them

13 about it to see if it is or isn't, in their opinion?

14 MS. STUDLEY: I think we can --

15 MR. DENMAN: The only problem I have with that

16 is that you're raising the objection on behalf of the

17 guardian because the guardian owns the privilege. So if

18 you're saying that this is a privilege on behalf of the

19 guardian, you also represent Steve Kelly. Then I kind

20 of have an issue with discussing the testimony of the

21 attorney as to whether or not --

22 MS. STUDLEY: Well, the attorney can't waive

23 the privilege, obviously, that we're representing here

24 today.

25 MR. DENMAN: Exactly. So if you're saying

1 **Q. So did your firm obtain a valuation from Lipa**

2 **Lieberman for the purpose of the expert -- as an expert**

3 **for the purpose of the contingency fee petition?**

4 A. Yes, and he testified at a hearing about his

5 findings.

6 **Q. And that was the reason why your firm obtained**

7 **a valuation from Lipa Lieberman; is that correct?**

8 MS. STUDLEY: Form.

9 A. Work product.

10 **Q. Did your firm seek payment for Lipa**

11 **Lieberman's services for providing a valuation in any**

12 **capacity other than as an expert in connection with your**

13 **contingency fee petition?**

14 MS. STUDLEY: Same objections.

15 MR. DENMAN: Off the record.

16 (Fire drill and recess taken).

17 THE WITNESS: Can you read the question again.

18 (Question read back).

19 MS. STUDLEY: To the extent you can answer

20 without waiving work product or attorney-client

21 privilege.

22 THE WITNESS: I'm just going to read this

23 because this is confusing to me. I'm a little confused

24 with the question, and maybe I can tell you, and maybe

25 then you can figure out how to ask it.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

38..41

Page 40

Page 38

1 The contingency fee petition, the value of the
2 building was not the premise for the petition. The
3 petition was the recovery to the guardianship.

4 I don't know if that helps.

5 BY MR. DENMAN:

6 **Q. Well, the fees that your firm sought was based
7 upon the value of the assets brought back to the
8 guardianship estate, correct?**

9 A. The recovery of the asset to the guardianship,
10 yes, the positive result.

11 **Q. And you're contingency fee provided you a
12 percentage of the value of that, correct?**

13 A. Of the positive result, yes.

14 **Q. So in order to determine what the positive
15 result is, your firm had to have a valuation of the
16 assets brought into the estate, correct?**

17 A. Yes, they needed an expert as it related to
18 the positive result.

19 **Q. And your firm used Lipa Lieberman to provide
20 testimony as to that value of what you're referring to,
21 the positive result, correct?**

22 A. In part.

23 **Q. Did your firm pay Lipa Lieberman for his
24 services?**

25 MS. STUDLEY: Form.

1 A. I don't know.

2 **Q. If it wasn't, do you know why not?**

3 MS. STUDLEY: Form. Asks for speculation.

4 A. I don't know.

5 MS. SCHULTZ: I'm going to join the objection
6 as well.

7 BY MR. DENMAN:

8 **Q. Did you ever tell him that he needed to
9 provide a written invoice?**

10 MS. STEIN: Form.

11 A. I don't recall that, but that doesn't mean it
12 didn't happen. I just don't recall it.

13 **Q. But, as we sit here today, you're not aware of
14 any written invoice?**

15 MS. STUDLEY: Form. Asked and answered.

16 A. Again, I don't know it sitting here today.
17 That doesn't mean it doesn't exist. I just don't know.

18 **Q. Well, if it did exist, you would have produced
19 it at some point throughout the discovery or on the fee
20 petition, correct?**

21 MS. STUDLEY: Form.

22 A. I have no idea. I mean, I assume if it was
23 responsive, that it was produced.

24 **Q. Let me restate the question and quickly get
25 this out of the way.**

Page 39

Page 41

1 A. Which services -- his expert testimony?

2 **Q. Coming up with a value of that positive
3 result.**

4 MS. STUDLEY: Form.

5 MS. SCHULTZ: Form.

6 A. I don't recall how much he was paid for that
7 testimony.

8 **Q. Was he paid for that testimony at or about the
9 time that he provided his services?**

10 MS. STUDLEY: Form.

11 A. Well, nobody in the guardianship that has
12 provided services to a guardian has been paid at or
13 around the time of their services.

14 **Q. Bad question.**

15 **Did he submit an invoice that you're aware of
16 for his services at or about the time that he performed
17 those services?**

18 A. I don't know if he gave an invoice. I believe
19 he did give us his time and expenses. I don't know if
20 it was in a written format, or if he told one of us or
21 the guardian telephonically. But I do believe he gave
22 us information about the time he spent and the expenses
23 that he incurred.

24 **Q. And was that ever sought to be recovered in
25 any fee petition?**

1 **You have never deleted any e-mails between you
2 or anyone else in your firm pertaining to any of the
3 underlying matters involving Oliver Bivins, Sr.,
4 correct?**

5 MS. STUDLEY: Objection to form.

6 A. No.

7 **Q. But you're not aware of anyone else who has
8 deleted -- in your firm who has deleted any e-mails
9 pertaining to the underlying matters with Oliver Bivins,
10 Sr., correct?**

11 MS. STUDLEY: Form.

12 A. No.

13 **Q. Are you aware of any witness who has deleted
14 any documents or communications at all in connection
15 with any services performed relating to Oliver Bivins,
16 Sr.?**

17 MS. STUDLEY: Form. Predicate.

18 A. I don't know of any, but I don't speak for
19 them.

20 **Q. I'm not asking -- I'm just asking if you know
21 of any?**

22 A. No.

23 **Q. Are you aware of either Steve Kelly or Curtis
24 Rogers having deleted any communications pertaining to
25 any of the underlying matters?**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

42.45

Page 44

Page 42

1 A. No.

2 MS. STUDLEY: Form.

3 MS. STEIN: Form.

4 **Q. Did you, personally, have communications with**

5 **Lipa Lieberman regarding the valuation of 808 Lexington?**

6 A. Yes.

7 **Q. Do you know if anyone else in your firm did?**

8 A. Yes.

9 **Q. Who?**

10 A. Brian O'Connell.

11 **Q. Do you know if anyone else did?**

12 A. I think that would be the universe.

13 **Q. Were you present during any communications**

14 **between Lipa Lieberman and Curtis Rogers regarding the**

15 **valuation of 808 Lexington?**

16 A. I'm sorry. Can you read that back.

17 **Q. I'll say it again.**

18 **Were you present during any communications**

19 **between Curtis Rogers and Lipa Lieberman concerning the**

20 **valuation of 808 Lexington?**

21 A. Possibly.

22 **Q. Were you present during any communications**

23 **between Ronda Gluck and Lipa Lieberman concerning the**

24 **valuation of the property, 808 Lexington?**

25 A. I think so.

1 communication from him?

2 MS. STUDLEY: Just a report, like a hard

3 written something, not a communication; like a written

4 -- any document that was written that you can think of,

5 if you know, of course.

6 THE WITNESS: I don't know. I don't know;

7 with that definition, I don't know.

8 BY MR. DENMAN:

9 **Q. And the definition being any written**

10 **documentation, be it an e-mail, be it a report, be it a**

11 **letter, be it an analysis; any type of written form of**

12 **communication besides simply telling you verbally what**

13 **he thinks his opinion of the value of the property is.**

14 A. I don't know.

15 **Q. Do you know whether one exists?**

16 A. I don't know, but I believe there were --

17 in his capacity as a witness with respect to the

18 contingency fee petition and valuation of the property,

19 at that time I believe there were documents that were

20 provided. But I believe they were exhibits to his

21 deposition or were exhibits at trial.

22 **Q. In connection with the contingency fee**

23 **petition, correct?**

24 A. I believe that's what I'm talking about.

25 **Q. Was there any -- of that type of documentation**

Page 43

1 **Q. Did you have any communications with Lipa**

2 **Lieberman regarding -- well, let me strike that.**

3 **Did Lipa Lieberman ever provide you a report**

4 **as to his opinions of the valuation of 808 Lexington?**

5 MS. STUDLEY: Form. Predicate. At what time?

6 MR. DENMAN: Well, just ever first and then

7 I'll go to time.

8 MS. STUDLEY: Where it doesn't impinge on work

9 product, you can answer.

10 THE WITNESS: I can't because I don't know

11 what the timing is.

12 MR. DENMAN: So you don't know -- well,

13 whether he's provided a report is not protected by work

14 product.

15 MS. STUDLEY: Okay.

16 MR. DENMAN: I mean, I think you would agree

17 with that.

18 MS. STUDLEY: Okay.

19 MR. DENMAN: Maybe if you want to withhold it,

20 we can discuss that with the Court, but whether he's

21 provided one, I think would be fair game.

22 MS. STUDLEY: Whether he provided one -- yes

23 or no.

24 THE WITNESS: I don't know if "report" is the

25 right word. I don't want to -- even if it's just a

Page 45

1 that you're talking about now -- prepared prior to the

2 negotiations for what was considered or what we've

3 termed the New York settlement?

4 A. What do you mean by "the New York settlement"?

5 I want to make sure we're clear.

6 **Q. The one where you and Brian flew to New York**

7 **and met with Keith Stein and Donna Levine to essentially**

8 **settle the 12 or 13 different actions and exchange 808**

9 **and 67th and Portland Place and 330.**

10 A. That's not my definition, but it was the one

11 that resulted in the settlement and mutual release that

12 was eventually approved by the Court.

13 **Q. The one involving Donna and Rogers and your**

14 **firm that Julian objected to, correct?**

15 MS. STUDLEY: Form.

16 MS. SCHULTZ: Form.

17 A. It's just not my definition, but if we can --

18 **Q. Well, you would agree with me that Julian did**

19 **not agree to the New York settlement and actually voiced**

20 **his objection to that and was not a party to it,**

21 **correct?**

22 MS. STUDLEY: Form.

23 MS. SCHULTZ: Form.

24 A. I would not agree with that.

25 **Q. So when you make representations to the Court**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

46..49

Page 46

Page 48

1 **during hearings, are those truthful representations?**
2 MS. STUDLEY: I'm going to object to form.
3 Argumentative.
4 A. Of course.
5 **Q. Right.**
6 **Because if you're going to make a**
7 **representation to the Court, in order to have the Court**
8 **grant or deny a motion, you expect the Court can rely**
9 **upon your representations being truthful, correct?**
10 MS. STUDLEY: Form. Argumentative and asked
11 and answered.
12 A. Yes.
13 MR. DENMAN: The objection is to form, please;
14 otherwise, it constitutes coaching. I understand what
15 you may think I'm doing. I'm proving my case. I
16 understand the form objection, and if I think it's bad
17 form, I will ask you or I'll adjust the question. But
18 please --
19 MS. STUDLEY: I'm just concerned if this is
20 going to be read to a jury someday. So I want to make
21 sure it's on the record, but go ahead.
22 MR. DENMAN: I can understand your concern.
23 MS. STUDLEY: Okay. So in that capacity, I'll
24 make the objections.
25 THE WITNESS: You were asking me if I was

1 **You've actually used the term, on countless**
2 **occasions in court in the underlying matters, where**
3 **you've referenced a settlement as being the New York**
4 **settlement, correct?**
5 MS. STUDLEY: Form.
6 A. I think I've used the New York Settlement
7 Agreement in a petition before, yes.
8 **Q. And you would agree with me that you**
9 **distinguished the New York settlement from the global**
10 **settlement agreement, correct?**
11 A. I do.
12 **Q. And you distinguished the global settlement**
13 **agreement and the New York settlement from the Texas**
14 **Settlement Agreement, correct?**
15 A. Yes, three different agreements.
16 **Q. So now going back to the original question:**
17 **You had said that you believed there was some type of**
18 **documentation, analysis, a report, something of a**
19 **documentary standpoint from Lipa Lieberman that was**
20 **provided in connection with his testimony concerning**
21 **the contingency fee petition; is that right?**
22 A. Yes.
23 **Q. Okay. Was that documentation, analysis,**
24 **report, or whatever that's loosely been described as,**
25 **provided to you prior to negotiations on the New York**

Page 47

Page 49

1 truthful to the Court?
2 BY MR. DENMAN:
3 **Q. No. I'm finished. You already answered.**
4 A. Okay.
5 **Q. I fully expect that when you made**
6 **representations to the Court, you expected the Court to**
7 **believe that you were telling him the truth, correct?**
8 MS. STUDLEY: Form.
9 A. Yes.
10 **Q. Okay. Julian Bivins was not a signatory to**
11 **the New York settlement, correct?**
12 A. He was not.
13 **Q. Julian Bivins was not a party to the New York**
14 **settlement, correct?**
15 MS. STUDLEY: Form.
16 A. Yes, he was.
17 **Q. Have you ever represented to the Court that he**
18 **was not a party to the New York settlement?**
19 MS. STUDLEY: Form.
20 A. When I say that he was a party, I mean that he
21 participated in the negotiations. Is he a party to the
22 formal written agreement? No, he's not.
23 **Q. Was there any -- going back to the question**
24 **that led to the discussions about the New York**
25 **settlement -- well, let me strike that.**

1 **settlement?**
2 A. Those exact papers?
3 **Q. Any reports in documentary -- excuse me, in**
4 **documentary form from Lipa Lieberman, or from his**
5 **cohorts as you've referred to them?**
6 MS. STUDLEY: Form.
7 THE WITNESS: I think that would be work
8 product.
9 MS. STUDLEY: You're saying from the time
10 period before?
11 THE WITNESS: He's asking you prior to that
12 testimony.
13 MS. STUDLEY: Can I -- okay. Well, I'll
14 instruct the witness not to answer the work product.
15 MR. DENMAN: Okay.
16 BY MR. DENMAN:
17 **Q. At any time prior -- let me strike that.**
18 **Did Lipa Lieberman provide --**
19 A. Well, now on that, because it was a work
20 product objection, can I speak to her to see if that --
21 I mean, to the extent I can testify, I will and to the
22 extent it is, I won't.
23 **Q. I could be wrong. But my understanding is:**
24 **The only time that a break can be taken is whether or**
25 **not a witness has a question about whether it's**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

50..53
Page 52

Page 50

1 attorney-client privilege. I'm not aware of there being
 2 an ability to take a break as to work-product privilege.
 3 A. Okay. Well, I'm just letting you --
 4 Q. If you want to -- for the sense of not having
 5 to come back and do this deposition again, if you want
 6 to take a break to discuss whether or not it's work
 7 product, I'm going to let that happen.
 8 THE WITNESS: Okay.
 9 MS. STUDLEY: Yes, because I can see both
 10 sides. Okay.
 11 MR. DENMAN: Do you want me step out?
 12 MS. STUDLEY: Yes, please.
 13 (Recess taken).
 14 MS. STUDLEY: Ms. Crispin is going to go ahead
 15 and answer.
 16 BY MR. DENMAN:
 17 Q. Go ahead.
 18 A. I don't remember what the question was, but
 19 whatever it was, I'm going to answer it now.
 20 Q. I think my question was: Did you -- have you
 21 explained to me the type of documentary report or
 22 analysis that you had from Lipa Lieberman in connection
 23 with the contingency fee petition.
 24 My question was: Did you have any of that
 25 type of report or analysis from Lipa Lieberman in any

1 fee petition was in 2014, correct?
 2 A. Yes.
 3 Q. Was there any agreement, of which you were
 4 aware, that Lipa Lieberman was to be compensated for
 5 providing the broker's opinion of value that you've
 6 testified about?
 7 A. I don't understand the question. You're
 8 talking about the hearing, and then you asked me if
 9 there was any -- I'm confused.
 10 Q. I'm talking about the broker's opinion of
 11 value that you said was provided sometime prior to the
 12 May 2013 settlement negotiations.
 13 A. Yes.
 14 Q. So my question is: Are you aware of any
 15 agreement regarding the payment of Lipa Lieberman for
 16 the broker's opinion of value that he provided sometime
 17 before the May 2013 settlement discussions?
 18 A. I don't recall what the compensation
 19 arrangement was.
 20 MS. STUDLEY: Form on the last question.
 21 Q. Who negotiated that? Was that Rogers, Stein,
 22 your firm? Do you know?
 23 A. It wasn't me. I don't recall that, so I don't
 24 know.
 25 Q. Do you know whether anyone paid him any money,

Page 51

1 documentary form prior to the hearing on the petition
 2 to approve the New York settlement?
 3 A. Yes.
 4 Q. Was it the same document that we're talking
 5 about or were there different sets?
 6 A. What I recall is a broker's opinion of value
 7 that he gave, Lipa that is, gave to Mr. O'Connell and
 8 myself and, I believe, Mr. Stein.
 9 Q. Do you know when that was received?
 10 A. I'm trying to work backwards.
 11 I recall that settlement agreement was
 12 approved in September of 2013. So it was in 2013.
 13 Q. Was it provided prior to the settlement
 14 conference in New York?
 15 A. Yes.
 16 Q. In the settlement conference in New York, do
 17 you recall that being in approximately May of 2013?
 18 A. That sounds about right.
 19 Q. Do you know whether Lipa Lieberman was
 20 compensated -- let me strike that.
 21 Do you know whether Lipa Lieberman provided a
 22 request for any compensation in 2013 for the services
 23 provided in providing that broker's opinion of value?
 24 A. I don't know.
 25 Q. The hearing on the petition, the contingency

Page 53

1 paid Lipa Lieberman or his firm or cohorts any money,
 2 in 2013 for the broker's opinion that you -- that we've
 3 been talking about in the last few questions?
 4 MS. STUDLEY: Form. Asked and answered.
 5 MS. SCHULTZ: Form.
 6 A. I don't know.
 7 Q. Do you know whether Lipa Lieberman provided
 8 any broker's opinion of value as to the 67th Street
 9 property?
 10 A. Yes, I believe he did.
 11 Q. And was that also prior to May of 2013?
 12 A. Yes.
 13 Q. And do you know what the value was?
 14 A. It was shared at the settlement conference.
 15 I can't remember today.
 16 Q. Do you have that documentation?
 17 MS. STUDLEY: Form. Predicate.
 18 A. I don't know. I'm not sure on 67th Street
 19 whether that was in a written format.
 20 Q. You don't know one way or another; that could
 21 have been verbal?
 22 A. It could have been verbal.
 23 Q. And, as we sit here today, you have no idea
 24 what his verbal valuation was?
 25 MS. STUDLEY: Form. Asked and answered.



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

54..57

Page 56

Page 54

1 A. I don't. I don't today. I just recall
2 sharing it with the participants at the settlement
3 conference and having a debate.

4 **Q. Do you know whether the value of 67th Street**
5 **that was shared with you was greater or lower than 808**
6 **Lexington?**

7 A. I don't recall. What I recall was a debate
8 about the value where Oliver Bivins' counsel from New
9 York and Donna Levine were present; Julian Bivins
10 and his wife were present and his lawyer, myself,
11 Mr. O'Connell, Keith Stein and maybe Roy Justice.

12 I don't remember.

13 **Q. Do you recall during the -- well, let me**
14 **strike that.**

15 **Do you know whether the -- let me strike that.**

16 **During the petition to approve the New York**
17 **settlement, do you know whether any representations were**
18 **made by your firm to the Court that the value of 67th**
19 **Street and 808 Lexington were approximately the same?**

20 MS. STUDLEY: Form.

21 A. I don't remember anything with respect to that
22 hearing.

23 **Q. Do you agree with me that as of the time of**
24 **the petition for the New York settlement, you knew from**
25 **Lipa Lieberman that the values of 808 Lexington and 67th**

1 testified to it.

2 **Q. You were at his deposition that was taken**
3 **where he testified as to the valuation, weren't you?**

4 MS. STUDLEY: Form.

5 A. I don't know, and the case has been going on
6 on five years. I don't remember. I think his
7 deposition has been taken more than once.

8 **Q. Do you recall being at the first deposition**
9 **where he testified as to the value of 67th Street being**
10 **between 10 and \$20 million?**

11 MS. STUDLEY: Form.

12 A. I don't recall.

13 **Q. When you presented argument before the Court**
14 **to approve the New York settlement, did you advise the**
15 **Court that the value of 67th Street was substantially**
16 **greater than that of 808 Lexington?**

17 MS. STUDLEY: Form. Predicate.

18 A. I don't recall. I don't recall is what I told
19 you.

20 **Q. But you knew at that time that the value of**
21 **67th Street was much greater than 808 Lexington,**
22 **correct?**

23 MS. STUDLEY: Okay. We've gone through this
24 several times now. Asked and answered.

25 MR. DENMAN: It's form.

Page 55

Page 57

1 **Street were not the same?**

2 MS. STUDLEY: Form.

3 MS. SCHULTZ: Form.

4 A. I don't agree with you.

5 **Q. You think -- so what is your opinion of that?**

6 MS. STUDLEY: Form.

7 A. I don't recall exactly what the broker's
8 opinion of value was with respect to 67th Street and
9 808 at the time that it was given to me, and then the
10 hearing was later. And I don't recall what that was,
11 if there was even --

12 **Q. But you would agree with me at the time of the**
13 **hearing that you knew that the value of 67th Street was**
14 **substantially greater than the value of 808 Lexington,**
15 **correct?**

16 A. No, I wouldn't agree with you on that.

17 MS. STUDLEY: Form. Predicate.

18 MS. SCHULTZ: Form.

19 **Q. You are aware that at the time of the petition**
20 **for the approval of the New York settlement, that**
21 **Oliver, Jr., had testified that he thought the value of**
22 **the building was somewhere between 10 and \$20 million,**
23 **correct?**

24 MS. STUDLEY: Form.

25 A. I don't know what he testified to and when he

1 MS. STUDLEY: I will allow her to answer one
2 more time. It's been asked and answered many times.

3 THE WITNESS: Can you repeat that. I'm sorry.
4 (Question read back).

5 MS. STUDLEY: We need to move on.

6 THE WITNESS: At the time of the hearing?

7 MR. DENMAN: Yes.

8 THE WITNESS: I don't know.

9 BY MR. DENMAN:

10 **Q. So, as we sit here today, you do not recall**
11 **whether you ever knew that the value of 67th Street was**
12 **much greater than 808 Lexington?**

13 MS. STUDLEY: Form. Asked and answered.
14 That's the last time.

15 MR. DENMAN: That's not the same question that
16 I've asked and was answered. I asked her --

17 THE WITNESS: At any time?

18 MR. DENMAN: At any time.

19 MS. STUDLEY: It has been many times. The
20 record will reflect how many times you've asked that
21 question.

22 MR. DENMAN: Please stop interrupting. It's
23 objection to the form. It's getting redundant at this
24 point.

25 BY MR. DENMAN:



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

58..61

Page 60

Page 58

1 **Q. So the question is: Prior to the sale of 808**
2 **Lexington -- excuse me, prior to the sale of 67th Street**
3 **property --**
4 A. The 67th Street property?
5 **Q. -- you did not know that the value of 67th**
6 **Street was much greater than 808 Lexington, correct?**
7 A. Ron, the problem with the question --
8 MS. STEIN: Form.
9 A. The problem with the question --
10 MS. STUDLEY: Form.
11 A. -- is that 67th Street had a substantial
12 mortgage associated with it. So when you talk about the
13 value of the property, there was a netting that was
14 occurring in 2013 and 2014 when there was an analysis
15 about the value that was occurring. I don't remember
16 the exact figures of the mortgages or the liens or the
17 obligations and encumbrances with respect to 67th Street
18 and 808 Lexington, but I know that they were considered.
19 So when you asked me if I knew the values of
20 808 Lexington and 67th Street, I don't know sitting
21 here, and I don't remember what I did know. But I do
22 recall, going through sort of this netting process, to
23 make a determination about what their value was.
24 **Q. And when you did the netting process, did you**
25 **put that into a communication or document?**

1 comments.
2 **Q. Do you understand the question?**
3 A. I don't know. I'm not sure. I don't want to
4 say I do.
5 **Q. You told me before that you did an analysis.**
6 **Do you have that in writing somewhere where you analyzed**
7 **what you considered to be the market value, less**
8 **encumbrances, to get to a net value of the four**
9 **properties that were at issue in the New York**
10 **settlement?**
11 MS. STUDLEY: Form.
12 A. I don't know if I have that. I know we were
13 working through that at the settlement conference. I'm
14 sure I was taking notes, but I don't recall having that
15 in my file.
16 **Q. Did you ever obtain an appraisal of the**
17 **Portland Place property?**
18 A. A formal appraisal, no.
19 **Q. Did you have an informal appraisal?**
20 A. I had information on value, yes.
21 **Q. What type of information?**
22 A. I had information at the settlement conference
23 that was provided for Mr. O'Connell and I to look at
24 that, I believe, Oliver Bivins or his lawyer had in
25 their possession.

Page 59

Page 61

1 A. Yes, it was in a communication. It was part
2 of the settlement conference there was -- that occurred
3 during that conference. I mean, I know what occurred
4 on other occasions. I just don't remember exactly when.
5 But I remember that settlement conference
6 having numerous conversations about the value of the
7 property; looking at the encumbrances associated with
8 the property and going through that process during the
9 negotiations which -- you know, particularly on the 67th
10 Street and Portland Place properties, the position was
11 that the guardianship had no interest.
12 So a lot of settlement conference was an
13 information gathering from Oliver Bivins, which that did
14 occur during that settlement conference and that netting
15 occurred then.
16 **Q. I'm trying to find out -- and I appreciate**
17 **your answers and arguments. That's wonderful.**
18 **What I'm trying to find out is: What**
19 **documentation exists where -- as the lawyers for Curtis**
20 **Rogers at the time with the duties that you've described**
21 **to Oliver Bivins, Sr., that you had concerning the net**
22 **valuation of the four properties in your possession**
23 **prior to the time that you presented the petition for**
24 **the New York settlement to be approved by the Court?**
25 MS. STUDLEY: Move to strike counsel's

1 **Q. Do you know what it would have cost to do an**
2 **appraisal of the Portland Place property?**
3 MS. STUDLEY: Form. Predicate.
4 A. No, I don't.
5 **Q. Did you ever seek to have an appraisal done of**
6 **the Portland Place property?**
7 A. The documents that Mr. O'Connell and I
8 reviewed were akin to an appraisal, but --
9 **Q. Well, you know what an appraisal is from a**
10 **legal standpoint, correct?**
11 A. I understand what an appraisal is.
12 **Q. And when you say "the documents were akin,"**
13 **you understand that those were not an appraisal. There**
14 **was no appraisal performed of Portland Place that was**
15 **requested by you, correct?**
16 MS. STUDLEY: Form.
17 A. That's not true.
18 **Q. You did request an appraisal?**
19 MS. STUDLEY: Form.
20 A. I reviewed, along with Mr. O'Connell,
21 valuation documents of Portland Place at that settlement
22 conference.
23 **Q. I'm sorry. My question was very limited.**
24 **Did you ever request an appraisal?**
25 MS. STUDLEY: Form.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

62..65

Page 62

Page 64

1 A. From who? No.

2 **Q. For Portland Place.**

3 A. I didn't feel that we needed to.

4 **Q. Okay. Did you ever request an appraisal of**

5 **67th Street?**

6 A. I've discussed with you what we did with

7 respect to 67th Street.

8 **Q. I'm sorry. I'm just asking about an**

9 **appraisal. Did you ever request an appraisal of 67th**

10 **Street?**

11 MS. STUDLEY: Form.

12 You can answer how you deem appropriate.

13 A. We had a broker's opinion of value.

14 **Q. This is a yes or no and then you can explain.**

15 **Did you ever have an appraisal for 67th**

16 **Street?**

17 MS. STUDLEY: And you can answer how you deem

18 appropriate.

19 MR. DENMAN: And you know what, you have to

20 stop coaching her, please. Please. The next time,

21 honestly, I want to get on the phone with Judge

22 Matthewman. I've asked you, please. It's objection to

23 the form. That is an absolute coaching. That is not

24 even an objection.

25 MS. STUDLEY: That's not true.

1 MR. DENMAN: I understand that --

2 MS. STUDLEY: That's not --

3 MR. DENMAN: -- and that's not an objection.

4 MS. STUDLEY: I gave her an instruction,

5 that's why, because of your instruction.

6 MR. DENMAN: If you want to instruct her not

7 to answer, we'll take it up. That's later.

8 MS. STUDLEY: I'm telling her not to answer.

9 MR. DENMAN: Then please, please, please stop

10 coaching, Rachel.

11 MS. STUDLEY: I am not coaching. I am telling

12 you not to tell my client how to answer questions.

13 That's the problem.

14 BY MR. DENMAN:

15 **Q. Yes or no. Did you obtain an appraisal on**

16 **67th Street?**

17 MS. STUDLEY: Move to strike counsel's

18 instructions.

19 But you can answer.

20 THE WITNESS: At what time?

21 MR. DENMAN: Ever.

22 MS. STUDLEY: Same objection.

23 THE WITNESS: I've never sought an appraisal

24 for 67th Street.

25 BY MR. DENMAN:

Page 63

Page 65

1 THE REPORTER: Hold it. Hold it. One at a

2 time. One at a time.

3 MR. DENMAN: That's not an objection. That is

4 answer how you deem appropriate.

5 MS. STUDLEY: You're instructing my client how

6 to answer the question.

7 MR. DENMAN: It's not even evidentiary

8 appropriate.

9 MS. STUDLEY: That you must answer yes or no,

10 and I am moving to strike that.

11 MR. DENMAN: That's not true. I have a right

12 to ask --

13 MS. STUDLEY: She can answer how she wants to.

14 We're not in trial right now.

15 MR. DENMAN: I have a right to ask questions

16 that as though we're in trial. That's what the rules

17 say. I'm asking if she wants to answer yes or no. She

18 can explain as long as she wants, but I'm asking a

19 simple yes or no and then feel free. Take two hours to

20 explain it if you want.

21 I do not want to limit your explanation, but

22 I'm entitled to a yes or no as to whether you obtained

23 an appraisal.

24 MS. STUDLEY: And I think she can answer how

25 she deems appropriate.

1 **Q. Are you aware of anyone who has sought an**

2 **appraisal for 67th Street?**

3 A. Yes.

4 **Q. Who?**

5 A. Oliver Bivins.

6 **Q. Oliver Bivins, Jr.?**

7 A. Jr., or his counsel.

8 **Q. And do you know when that occurred?**

9 A. I don't.

10 **Q. Have you ever seen that appraisal?**

11 A. I don't know.

12 **Q. Do you know if that appraisal was obtained**

13 **prior to the motion to approve the New York settlement?**

14 A. No, I don't know.

15 **Q. Do you know what the value of that appraisal**

16 **was?**

17 A. No, I don't know.

18 **Q. Do you know what the value -- do you know what**

19 **Oliver Bivins, Jr., sold 67th Street for?**

20 A. I believe I have had that information. I just

21 don't recall it sitting here.

22 **Q. Do you recall it being \$22.5 million?**

23 A. I don't recall.

24 **Q. Do you recall it being more than \$20 million?**

25 A. I believe it was around that number. I don't



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

1 know the exact figure. I don't know if it was 18. I
2 don't know if it was 25, but I remember it being around
3 that number.

4 **Q. At the time -- okay.**

5 **Do you know when it was sold?**

6 **If I told you in the fall of 2014, would that**
7 **refresh your recollection?**

8 A. I wouldn't dispute it, but I don't know.

9 **Q. And if I told you there was a representation**
10 **in court that the mortgage on the 67th Street property**
11 **was approximately \$2.5 million, do you dispute that?**

12 MS. STUDLEY: Form.

13 A. I don't know what the amount of the mortgage
14 was when it was eventually paid off. I believe it was
15 in default, but I don't know.

16 **Q. Do you recall the value of the mortgage being**
17 **approximately \$2.5 million?**

18 A. I can't say that, no.

19 **Q. Have you ever reviewed documents in connection**
20 **with your work on the underlying matters where you saw**
21 **the amount of the underlying mortgage; I mean, the**
22 **mortgage on the 67th Street property?**

23 MS. STUDLEY: Form.

24 A. I believe so, yes.

25 **Q. I mean, you would agree with me that you had**

1 **or on behalf of Curtis Rogers, obtain an appraisal on**
2 **the 67th Street property prior to the petition seeking**
3 **approval of the New York settlement?**

4 MS. STUDLEY: Form.

5 A. I don't know.

6 **Q. Did you ever obtain an appraisal -- I mean,**
7 **you, your firm, or anyone on behalf of Curtis Rogers --**
8 **that you're familiar with that obtained an appraisal**
9 **prior to the New York settlement motion on 808**
10 **Lexington?**

11 A. I don't know, and on both of these properties
12 I've already explained to you the broker's opinion of
13 value.

14 **Q. Did you ever request from anyone the cost for**
15 **performing an actual appraisal of 808 Lexington or 67th**
16 **Street?**

17 MS. STUDLEY: Form.

18 MS. STEIN: Form.

19 A. At what time?

20 **Q. At any point in time prior to the approval of**
21 **the New York settlement.**

22 A. I don't know. I don't believe so because I
23 had the broker's opinion.

24 **Q. Have you ever seen, in any documentary form,**
25 **a broker's opinion analysis on the 67th Street property?**

1 **that documentation within the discovery that was**
2 **exchanged in the underlying matters, correct?**

3 MS. STUDLEY: Form.

4 A. I don't know if it was in the discovery
5 process, but I don't dispute that I received the
6 information.

7 **Q. You know what, let me redefine that just to**
8 **make sure it's broad.**

9 **When I say "discovery," whether it's informal**
10 **discovery, or formal discovery, or an exchange, or files**
11 **that were exchanged in the underlying matters, within**
12 **the files and documentation that you had privy to and**
13 **you reviewed, you would agree with me that you saw the**
14 **amount of the underlying mortgage in the 67th -- on the**
15 **67th Street property, correct?**

16 MS. STUDLEY: Form.

17 A. I believe I did.

18 **Q. And you also knew what the mortgage was on the**
19 **808 Lexington property, right?**

20 A. I did. I do and did.

21 **Q. Other than Oliver Bivins -- let me strike**
22 **that.**

23 **Other than your belief that Oliver Bivins at**
24 **some point in time may have obtained an appraisal on the**
25 **67th Street property, did you or anyone in your office,**

1 MS. STUDLEY: Form.

2 A. In a written format?

3 **Q. Yes.**

4 A. Possibly.

5 **Q. Do you know if you've got that in your**
6 **possession?**

7 A. I don't know because -- and the reason I
8 hesitate is because there were communications with Lipa
9 Lieberman, mostly telephonic and also in person. I
10 don't remember. And the reason I'm hesitating is: If
11 he wrote us an e-mail with respect to this, that I don't
12 know, but if he did, it would be in our files.

13 **Q. Were you involved at all in the execution of**
14 **the exclusive listing agreement with Lipa Lieberman?**

15 A. Yes, I believe I was involved. I don't know
16 exactly what you're talking about. I was involved with
17 respect to the sale of the 808 Lexington property.

18 So I say yes because of that, but not because
19 of the exclusive listing agreement that you're talking
20 about. I can't say I wasn't involved in that because I
21 was.

22 **Q. Well, you understand that an exclusive listing**
23 **agreement was executed by Steve Kelly with Lipa**
24 **Lieberman giving him a percentage of the sale price of**
25 **808 Lexington, correct?**

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

70..73

Page 70

Page 72

1 MS. STUDLEY: Form.
 2 A. Yes, as part of our agreement. Yes.
 3 **Q. Part of whose agreement?**
 4 A. Julian Bivins and Mr. Kelly.
 5 **Q. When did Julian Bivins agree to Lipa Lieberman**
 6 **executing a retainer -- excuse me, an exclusive listing**
 7 **agreement?**
 8 A. He agreed to the brokerage fee that would be
 9 paid to Lipa Lieberman.
 10 **Q. The brokerage -- that was after an exclusive**
 11 **listing agreement had been executed in favor of Lipa**
 12 **Lieberman, right?**
 13 MS. STUDLEY: Form.
 14 MS. SCHULTZ: Form.
 15 A. It may have been.
 16 **Q. You don't know?**
 17 A. It may have been.
 18 **Q. Well, Mr. Bivins was not involved at all in**
 19 **the execution of the exclusive listing agreement with**
 20 **Lipa Lieberman, correct?**
 21 MS. STUDLEY: Form.
 22 A. I can't say that, no.
 23 **Q. Well, what evidence do you have at all that**
 24 **Julian Bivins was in any way involved with the execution**
 25 **of the exclusive listing agreement with Lipa Lieberman?**

1 A. Because when the global settlement order was
 2 negotiated, an extreme amount of time was spent about
 3 Lipa Lieberman's involvement after that hearing and what
 4 that involvement would look like.
 5 **Q. What does it mean to execute a contract?**
 6 MS. STUDLEY: Form.
 7 A. I think you mean sign it.
 8 **Q. Exactly, so we both have the same**
 9 **understanding.**
 10 **At the time of the global settlement, the**
 11 **exclusive listing agreement with Lipa Lieberman had been**
 12 **executed, correct?**
 13 A. I can't parse it. It's not that narrow, Ron.
 14 It is much more substantial. Because, yes, I believe
 15 that Mr. Kelly had already agreed for Lipa Lieberman to
 16 be the selected broker; however, during the negotiations
 17 whether he would even continue on was negotiated. And
 18 then how much he would get as a result of his continued
 19 service, that was also negotiated.
 20 So I can't parse it out as narrowly as I think
 21 you believe it is.
 22 **Q. Prior to you walking into court to argue the**
 23 **motion to sell the property in September of 2014, you**
 24 **were involved in obtaining a signature from Steve Kelly**
 25 **giving Lipa Lieberman an exclusive listing on it,**

Page 71

Page 73

1 MS. STUDLEY: Form.
 2 A. Well, he was involved with the fee that was
 3 paid to him --
 4 **Q. That's not what I asked you.**
 5 A. -- pursuant to that contract.
 6 **Q. Pursuant to the contract that had been**
 7 **executed, correct?**
 8 MS. STUDLEY: Form.
 9 A. I don't know the time frame on it, but the fee
 10 was paid pursuant to the contract, and Mr. Bivins agreed
 11 to the fee.
 12 **Q. Ms. Crispin, you said that Mr. Bivins was**
 13 **involved in the execution of the contract?**
 14 A. Well, he was involved.
 15 **Q. Hold on.**
 16 A. Sorry.
 17 **Q. Perhaps I heard you wrong. So I want to make**
 18 **sure we're clear.**
 19 **What evidence do you have that Julian Bivins**
 20 **was involved in any way, shape or form with the**
 21 **execution of the exclusive listing agreement between**
 22 **Lipa Lieberman and Curtis Rogers --**
 23 MS. STUDLEY: Form.
 24 **Q. -- excuse me, and Steve Kelly?**
 25 MS. STUDLEY: Form.

1 **correct?**
 2 MS. STUDLEY: Form.
 3 A. I believe so.
 4 **Q. Prior to walking into court on that motion to**
 5 **sell the property, you had never communicated -- I mean,**
 6 **you or your firm or anyone that you're aware of**
 7 **representing Stephen Kelly had ever communicated to**
 8 **Julian Bivins that Lipa Lieberman had actually executed**
 9 **an exclusive listing agreement, correct?**
 10 MS. STUDLEY: Form.
 11 A. I don't know if that was communicated, but
 12 Mr. Bivins and you were well-aware that Lipa Lieberman
 13 would be involved with the sale of the property.
 14 **Q. My question was clear as day.**
 15 A. And I think I answered it.
 16 **Q. No. No. No. You answered what you wanted to**
 17 **answer.**
 18 **My question was: At the time you walked into**
 19 **court on the motion to sell the property, you know that**
 20 **the exclusive listing agreement, or the fact that one**
 21 **had been executed by Lipa Lieberman, had never been**
 22 **communicated to my client, correct?**
 23 MS. STUDLEY: Move to strike counsel's
 24 comments.
 25 But you can answer again.



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

74..77

Page 76

Page 74

1 A. I believe Mr. Lieberman had explained to you,
2 Ron, that he would be involved, if there was ever going
3 to be a sale. So I think his involvement -- I think --

4 **Q. When did he explain that?**

5 A. I believe it was either -- I believe it was at
6 his deposition. I believe I listened to it.

7 **Q. So you remember that part of his deposition**
8 **where he said that he was hopeful that he would get the**
9 **listing on this property in exchange for providing**
10 **expert services on the petition, on the contingency fee**
11 **petition, correct?**

12 MS. STUDLEY: Form. Move to strike.

13 MS. SCHULTZ: Form.

14 A. I don't believe that was his testimony, and if
15 that was his testimony, that wasn't my understanding.

16 **Q. So at the time of his testimony you understand**
17 **that there was no executed agreement, correct?**

18 A. No, I don't believe there was an executed
19 agreement at that time.

20 **Q. Right.**

21 **As a matter of fact, the executed listing**
22 **agreement was signed by Steve Kelly within two or three**
23 **days of you walking into court to argue the petition to**
24 **sell 808 Lexington, correct?**

25 MS. STUDLEY: Form.

1 **Q. Okay.**

2 A. I'm not --

3 **Q. Exactly.**

4 **There was no agreement to sell it prior to**
5 **Lipa Lieberman entering into the exclusive listing**
6 **agreement, correct?**

7 MS. STUDLEY: Form.

8 MS. SCHULTZ: Form.

9 A. When I say "agreement," I mean the guardian
10 hadn't made a decision --

11 **Q. I'm talking about --**

12 A. -- to sell it.

13 **Q. -- just for purposes so we have a clear**
14 **record. We've already gone through this. You**
15 **understand what an executed contract is, correct?**

16 A. Yes, we have talked about this.

17 **Q. So when we're talking about the executed**
18 **listing agreement, we're talking about the executed**
19 **contract that gave Lipa Lieberman an exclusive right to**
20 **a percentage of commission if the property is sold to**
21 **anyone within a certain period of time.**

22 **You understand that, correct?**

23 MS. STUDLEY: Form.

24 A. Yes, I do.

25 **Q. Okay. Prior to the execution of that listing**

Page 75

1 MS. SCHULTZ: Form.

2 A. I don't remember the exact timing, but I do
3 believe that it was in a short time frame before that
4 petition was filed or the hearing was.

5 **Q. And before that exclusive listing agreement**
6 **was executed, Mr. Lieberman had no agreement, had no**
7 **written contract, with the guardian to obtain any**
8 **specific percentage in connection with any sale of 808**
9 **Lexington, correct?**

10 A. I don't believe --

11 MS. STUDLEY: Form.

12 MS. SCHULTZ: Form.

13 MS. STUDLEY: Predicate.

14 A. (Continuing) -- the guardian's petition to
15 sell 808 Lexington is in time with the retaining of
16 Mr. Lieberman as the broker.

17 **Q. Prior to the execution of the exclusive**
18 **listing agreement, Mr. Lieberman had no contractual**
19 **agreement with the guardian as to a percentage that he**
20 **would receive in connection with the sale of 808**
21 **Lexington, correct?**

22 MS. STUDLEY: Form.

23 MS. SCHULTZ: Form.

24 MS. STUDLEY: Predicate.

25 A. There was no agreement to sell it at --

Page 77

1 **agreement, Mr. Lieberman did not have a right to a**
2 **specific percentage of the value of the sale price of**
3 **the property to anyone, correct?**

4 MS. SCHULTZ: Form.

5 MS. STUDLEY: Form.

6 A. I agree, I think, if I understand your
7 question.

8 **Q. Right.**

9 **So let's just say hypothetically so we're**
10 **clear here and to make sure I'm clear here. Let's just**
11 **say hypothetically -- let's say it's September 10th of**
12 **2014 is the date that Lipa Lieberman -- or, excuse me,**
13 **Steve Kelly executed the Lipa Lieberman exclusivity**
14 **contract. Are you with me?**

15 A. Okay.

16 **Q. If, on September 9th, a stranger came up to**
17 **you and said I want to pay \$20 million for 808**
18 **Lexington, did Lipa Lieberman have a contractual right**
19 **to a six percent commission of that \$20 million --**

20 MS. STUDLEY: Form.

21 MS. SCHULTZ: Form.

22 **Q. -- on September 9th?**

23 A. I don't believe so.

24 MS. STEIN: Form.

25 **Q. On September 11th if some stranger --**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

78..81

Page 80

Page 78

1 A. We're using September 10th as the executed
 2 date? I'm sorry. I forgot.
 3 **Q. I'm using that as a hypothetical date because**
 4 **I also don't recall.**
 5 A. Okay.
 6 **Q. I think it was the 14th and the hearing was**
 7 **the 17th. I could be wrong. So let's just use this for**
 8 **the purposes of my hypothetical.**
 9 A. I just forgot what it was.
 10 **Q. Okay. For purposes of my hypothetical, let's**
 11 **say September 10th is the date that the contract was**
 12 **executed.**
 13 A. Okay.
 14 **Q. You've told me under that hypothetical date**
 15 **if someone, a stranger, came in and offered \$20 million**
 16 **and entered into a contract on September 9th to buy**
 17 **the property for \$20 million, Lipa Lieberman had no**
 18 **contractual right to a six percent commission on that**
 19 **\$20 million, correct?**
 20 MS. STUDLEY: Form.
 21 MS. SCHULTZ: Form.
 22 MS. STEIN: Form.
 23 A. Yes, but I believe his contract provided for
 24 like a cooperation broker. I mean, I think there were
 25 more terms. You're saying Lipa Lieberman, six percent.

1 MS. SCHULTZ: Form.
 2 MS. STUDLEY: Predicate.
 3 A. I don't know the timing that's part of your
 4 question, but I believe I received it from Mr. Stein.
 5 **Q. So I just want to make sure I'm clear.**
 6 **Are you saying that there was not an effort on**
 7 **your part with Mr. Stein to get the exclusive listing**
 8 **agreement executed prior to walking into court on**
 9 **September -- on the date of the -- here. I'll tell you**
 10 **exactly.**
 11 **September 19th, 2014, on the petition to sell**
 12 **808 Lexington?**
 13 A. I believe that was --
 14 MS. SCHULTZ: Form.
 15 A. I believe that was one of the motivations to
 16 get it signed. Yes.
 17 **Q. And you also knew, prior to walking into court**
 18 **on September 19th, 2014, that Julian Bivins wanted to**
 19 **purchase 808 Lexington rather than have it sold to a**
 20 **third party, correct?**
 21 MS. STUDLEY: Form.
 22 A. No, I did not.
 23 **Q. I want to make sure we're clear.**
 24 **You're saying right now, that prior to**
 25 **September 19th, 2014, you had absolutely zero knowledge**

Page 79

1 I'm not sure, depending on your terms of the
 2 hypothetical, who would get what. But, yes, his
 3 brokerage firm would be entitled to some percentage
 4 after September 10th, your hypothetical date.
 5 **Q. But not before September 10th?**
 6 A. No. No, not before September 10th.
 7 **Q. So on September 11th if somebody came up, a**
 8 **stranger came up to you, and said, hey, I want to buy**
 9 **this property, not a broker, but a stranger came up and**
 10 **said, Ashley, I know you represent the guardian in this**
 11 **matter. I want to buy 808 Lexington for \$20 million.**
 12 **We're now on September 11th.**
 13 **Under that exclusive listing agreement that**
 14 **Steve Kelly executed in favor of Lipa Lieberman, he**
 15 **would be entitled to a commission based upon what's in**
 16 **that exclusive listing agreement, correct?**
 17 A. I believe he would.
 18 **Q. Okay. You reviewed the exclusive listing**
 19 **agreement contract for Steve Kelly before it was**
 20 **executed, correct?**
 21 A. I believe I did.
 22 **Q. As a matter of fact, that contract was**
 23 **provided to you by Mr. Stein to be signed prior to the**
 24 **petition to sell the property hearing, correct?**
 25 MS. STUDLEY: Form.

Page 81

1 **that Julian Bivins wanted to buy the property 808**
 2 **Lexington rather than have it go to a third party?**
 3 MS. STUDLEY: Form.
 4 A. Okay. I misunderstood your question.
 5 MS. STEIN: Form.
 6 **Q. Okay. Good. I thought so.**
 7 MS. STUDLEY: Move to strike.
 8 A. I don't remember what I knew about what Julian
 9 Bivins wanted to do with the 808 Lexington property. I
 10 do recall communications earlier on, maybe year or so
 11 prior, about his desire; or maybe it was Oliver's desire
 12 to have him assume a mortgage on 808 Lexington and she
 13 declined. If you're asking me about him purchasing it--
 14 **Q. That's exactly what I'm asking you, and I'll**
 15 **make my question clearer.**
 16 **Isn't it true that you knew that Julian Bivins**
 17 **wanted to purchase 808 Lexington rather than have it go**
 18 **to a third party prior to the date you walked in and**
 19 **argued to sell the property on September 9th, 2014?**
 20 MS. STUDLEY: Form.
 21 MS. SCHULTZ: Form.
 22 A. I remember at the hearing representations
 23 being made that Julian Bivins wanted to have the
 24 property because he did not want it to go to a third
 25 party.



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

82..85

Page 82

Page 84

1 Q. And you remember telling the Court that you
2 knew, prior to September 9th, 2014, during what you
3 termed to be confidential settlement negotiations that
4 Julian Bivins wanted to buy 808 Lexington, correct?

5 MS. STUDLEY: Form.

6 A. I don't remember that.

7 MS. STEIN: Form.

8 A. I don't remember that.

9 Q. But you knew during the settlement
10 negotiations, prior to walking in with the motion to
11 sell the property on September 19th, 2014, that Julian
12 Bivins wanted to purchase the 808 Lexington property
13 directly?

14 MS. STUDLEY: Form.

15 A. I don't remember that.

16 MS. STUDLEY: Asked and answered.

17 MS. SCHULTZ: Form.

18 A. I don't remember that.

19 Q. You knew, prior to having Steve Kelly sign the
20 exclusive listing agreement, that Julian Bivins wanted
21 to buy the property directly from the guardianship,
22 correct?

23 MS. STUDLEY: Form.

24 A. I don't remember that.

25 Q. But you knew at the time that Steve Kelly

1 place it on the market for a potential sale that way.

2 And I believe that's an important analysis.

3 Q. At the hearing you were representing -- the
4 hearing on the motion to sell, you were representing
5 that Lipa Lieberman had brought in offers from \$5.5
6 million to \$6.1 million; is that right?

7 MS. STUDLEY: Form.

8 A. I don't remember what I said in that regard.

9 Q. Did you rely upon Lipa Lieberman for properly
10 assessing the value of the property?

11 MS. STUDLEY: Form.

12 A. At that time I was relying on Lipa Lieberman
13 to bring offers from third parties.

14 Q. Did you rely upon Lipa Lieberman's assessment
15 of the value of the property?

16 MS. STUDLEY: Form.

17 A. At the time of that hearing?

18 Q. Yes.

19 A. I don't believe that was a consideration. I
20 believe he was operating as a broker and obtaining, I
21 guess, offers.

22 Q. Well, isn't it true that you represented to
23 the Court that you wanted the Court to authorize the
24 sale so that one of the offers that Lipa Lieberman had
25 presented at the time of the hearing would be accepted?

Page 83

Page 85

1 signed the exclusive listing agreement with Lipa
2 Lieberman that even if Julian Bivins wanted to buy 808
3 Lexington directly from the guardianship, that Lipa
4 Lieberman would be entitled to a commission of six
5 percent, correct?

6 MS. STUDLEY: Form.

7 MS. SCHULTZ: Form.

8 A. I didn't think of it that way, but I do
9 believe that after the execution of the exclusive
10 listing agreement that there may have been a contractual
11 right to a fee.

12 Q. If Julian Bivins had communicated his intent
13 to buy 808 Lexington prior to the execution of the
14 exclusive listing agreement, but then after the
15 exclusive listing agreement sought to purchase it, that
16 would cost the guardianship of Oliver Bivins, Sr., a six
17 percent commission?

18 MS. STUDLEY: Form.

19 MS. SCHULTZ: Form.

20 A. I just can't answer the question because I
21 don't understand the timing, and initially there's some
22 other factors that are important. Because if Julian
23 Bivins was going to purchase the property for an amount
24 that was lower than what could be received by the
25 market, then it would be beneficial to go ahead and

1 MS. STUDLEY: Form.

2 A. I believe that the petition was -- I believe
3 I said what I said. I don't know what I exactly said at
4 that time.

5 Q. So whatever you said, you would agree was
6 correct and truthful?

7 A. Yeah. I just don't recall exactly what I
8 said, and I don't -- and because of the fact that that
9 hearing was cut short for our settlement negotiations,
10 I don't know what was said sort of pre-settlement
11 negotiations and post-settlement negotiations.

12 Q. One of the representations made by you to the
13 Court to get the petition to sell granted was that the
14 guardianship did not have the funds to be able to pay
15 the mortgage; is that correct?

16 A. I don't remember if I said that, but I do
17 recall that being a problem.

18 Q. Did you ever look at the amount of what was
19 in the guardianship accounts on or about September 19th,
20 2014, to see whether the guardianship could pay the
21 mortgage?

22 MS. STUDLEY: Form.

23 A. I believe the guardian did.

24 Q. Did you ever look at the bank account
25 statements to see how much money was in the guardianship



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

86..89

Page 86

Page 88

1 accounts at the time you came in with the petition to
2 sell the property?

3 MS. STUDLEY: Form.

4 A. I had a working knowledge of what those were.
5 I didn't actually look at the bank statement on that
6 day, but I had a very clear working knowledge, and I
7 also relied upon my client.

8 Q. Do you recall representing to the Court that
9 the Trust was not paying the Ward's current living
10 expenses and, for that reason, the property had to be
11 sold for cash flow purposes?

12 A. I recall that being a problem.

13 Q. Did you ever look at the Trust statements to
14 see whether, in fact, the Trust was actually making
15 payments for the Ward's living expenses at that time?

16 MS. STUDLEY: Form.

17 A. I believe that they were making some payments.
18 I just don't believe they were making all that was being
19 requested by the guardian. So I don't remember which
20 particular expenses, but I do remember that being sort
21 of the theme.

22 Q. Did you ever look at the Trust documents to
23 see what was actually being paid at that time?

24 A. I don't know if my client did. I did not, but
25 I believe my client.

1 respect to the Ocean Boulevard property for the property
2 taxes to be paid. I don't know if that was ever agreed
3 upon or paid by the Oliver Bivins Management Trust, but
4 that's what I recall going on. I did not say that -- or
5 I'm not telling you that the Trust did not make payments
6 for the Ward's providers.

7 It's just that there were payments that were
8 being requested to being made that weren't be made.

9 Q. Isn't it true that the Trust, all the way up
10 through the time you walked into court on the petition
11 to sell the property, had been paying the quarterly
12 condominium association fees for 330?

13 A. It's very possible they were.

14 Q. And isn't it true that in January 2014 that
15 the Trust reimbursed the guardianship for the entire
16 amount of the property taxes that the guardianship had
17 paid for 330 in 2013?

18 MS. STUDLEY: Form.

19 A. Well, that's very possible.

20 Q. And isn't it true that every single monthly
21 expense to nurses, FPL, Comcast, Mermaid, United
22 Nursing, Physician Services were being paid in the same
23 manner on a monthly basis prior to you walking in on the
24 motion to sell 808 Lexington as after you left court on
25 the motion to sell 808 Lexington?

Page 87

Page 89

1 Q. So you relied upon your client?

2 A. It wasn't necessarily a reliance. I was aware
3 at the time. I had a working knowledge of what was
4 being paid and what wasn't being paid.

5 Q. But you didn't look Trust documents to see
6 what was actually being paid and what wasn't being paid,
7 correct?

8 MS. STUDLEY: Form.

9 A. I can't tell you when; there was a time when
10 I did have Trust statements, I just don't -- I can't
11 remember right now during this time frame.

12 Q. So if the same monthly payments on the Trust
13 documents show the same payments to the same providers
14 both prior to the time you came into court on the motion
15 to sell and after the date of the motion to sell, you
16 would agree with me that would show that the same
17 payments were being made and, in fact, the Trust wasn't
18 withholding payments?

19 MS. STUDLEY: Form.

20 A. Actually, what I know -- what I remember is
21 that the Trust was making payments, I believe, for some
22 care services. I think the demand on the Trust was to
23 make real property tax payments and other payments with
24 respect to 808 Lexington, which was declined.

25 I don't know what demands were made with

1 MS. STUDLEY: Form.

2 A. See, the problem with that is this: Before
3 the Texas settlement, my guardian was receiving the
4 royalty interest, or at least what was left of it. And
5 that was being received directly to the guardianship;
6 after that settlement, those payments were going to the
7 Trust. So then the Trust was to pay for the benefit of
8 Oliver.

9 So after that Texas settlement the guardian
10 received less money per month and had to rely on the
11 Oliver Bivins Management Trust to make payments on
12 behalf of the ward. So after that occurred, there was
13 a shift in the guardian paying for some things and the
14 management Trust paying for some things because now the
15 management Trust had assets, which the guardian was
16 previously getting, and assets that were previously held
17 by your client.

18 MR. DENMAN: Would you read back my question,
19 please.

20 (Question read back).

21 THE WITNESS: That's where I go off the rules
22 because there was a change after that Texas settlement.
23 There was a different mechanism of payment after the
24 Texas settlement because guardianship assets that would
25 have been guardianship assets, either that were being

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

90..93

Page 90

Page 92

1 received by the guardian, or were due to the
2 guardianship from Julian Bivins, were paid to the Oliver
3 Bivins Management Trust.

4 So then the Oliver Bivins Management Trust
5 began paying some of Oliver Bivins' expenses.

6 BY MR. DENMAN:

7 **Q. After -- that was in April of 2013, correct?**

8 A. Yes, but --

9 **Q. You said that you --**

10 MS. STUDLEY: She was not finished.

11 Were you finished?

12 THE WITNESS: No, I'm not done.

13 MS. STUDLEY: Let her finish.

14 THE WITNESS: I can be done because you have a
15 follow-up and maybe --

16 BY MR. DENMAN:

17 **Q. April of 2013 is when the management Trust was
18 created and became funded and was supposed to pay the
19 living expenses of Oliver Bivins, Sr., correct?**

20 A. It was supposed to be living expenses and
21 other expenses as dictated by the terms of the agreement
22 and the Trust.

23 **Q. And I probably should have just narrowed my
24 question because I didn't think we were going to go that
25 far back. So let's just go for the year 2014.**

1 MS. STUDLEY: You keep cutting her off.

2 A. Yeah. There were other expenditures, and I
3 believe there was a process by which the Trust would --
4 the guardianship would have to make the payment, and
5 then the Trust would then reimburse the guardianship,
6 thereby the guardian having to have the funds to begin
7 with.

8 **Q. At the time that you walked into court for the
9 motion to sell the property, did you know how many tens
10 of thousands of dollars were sitting in the guardianship
11 account?**

12 MS. STUDLEY: Form.

13 A. I don't know how many tens of thousands were
14 sitting there, no.

15 **Q. Did you ever look at the Trust documents to
16 see whether, in fact, any payments by the Trust were
17 taking longer than 30 days to be paid -- well, let me
18 strike that.**

19 **Is it your testimony that the guardianship
20 throughout 2014 was actually having to pay the expenses
21 and then seek reimbursement from the Trust?**

22 A. Not for all of them, but for some of them.

23 **Q. Like what?**

24 A. The cleaning people, I believe. I don't
25 exactly remember, but I believe there were expenses for

Page 91

Page 93

1 A. Okay.

2 **Q. January 1st, 2014, through September 19th,
3 2014, which we have talked about, is the date that you
4 walked into court on the motion to sell the property?**

5 A. Uh-hum.

6 **Q. You would agree with me that throughout
7 January -- throughout 2014 through the time that you
8 walked into Court and you made representations in order
9 to get the Court to grant an order selling the property,
10 that the Trust was paying on a monthly basis United
11 Nursing, FPL, Comcast, Mermaid, Physician -- I can't
12 read my own handwriting -- for physicians on a monthly
13 basis just as after September 2014?**

14 MS. STUDLEY: Form.

15 A. I don't have an exact knowledge of that right
16 now. I believe that that is correct, but your client
17 received the Trust statements the same as my client
18 either did or should have at the time of September of
19 2014. So everyone was aware of what was being paid and
20 what wasn't being paid. The problem was what wasn't
21 being paid.

22 **Q. And you represented to the Court that the
23 Trust wasn't paying living expenses, correct?**

24 A. I don't know what I said, but there are other
25 expenditures.

1 that that were occurring.

2 **Q. Do you know how much that was?**

3 A. I don't know.

4 **Q. But you would agree with me throughout 2014
5 on monthly basis, every month prior to the time you
6 went into court on the motion to sell and after, that
7 the Trust was paying United Nursing directly?**

8 MS. STUDLEY: Form.

9 A. I don't recall that, but I don't -- I can't
10 say yes or no.

11 **Q. The Trust was paying the income taxes?**

12 A. I don't know.

13 **Q. The Trust was paying FPL on a monthly basis?**

14 A. Again, I don't know sitting here. I was aware
15 of the working -- the inner workings of the expenses at
16 the time of that hearing.

17 **Q. And the Trust was paying Comcast on a monthly
18 basis?**

19 A. My answer would be the same for all of them,
20 as we sit here today.

21 **Q. And the Trust had reimbursed the guardianship
22 for the property taxes paid on 330 in January of 2014,
23 correct?**

24 A. I don't know when that happened.

25 **Q. Do you know how long a period of time went by**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

94..97

Page 94

Page 96

1 -- let me strike that.

2 Do you know how quickly the Trust paid back

3 the guardianship for the property taxes it paid in 2013?

4 MS. STUDLEY: Form.

5 A. I don't know that.

6 Q. Do you know how quickly the Trust reimbursed

7 the guardianship for any insurance payments that it

8 made?

9 MS. STUDLEY: Form.

10 A. No, I don't, not sitting here today.

11 MS. STUDLEY: We have been going for a couple

12 of hours. Are you okay?

13 THE WITNESS: Yeah.

14 MS. STUDLEY: How about you? Are your fingers

15 okay? Do you need a break?

16 THE REPORTER: Yes, please.

17 MR. DENMAN: Sure. We can take a break.

18 (Recess taken).

19 BY MR. DENMAN:

20 Q. Keith Stein came down to Florida for the

21 hearing on the petition to sell the property; is that

22 right?

23 A. Yes.

24 Q. Without going into the --

25 MR. DENMAN: Well, I assume that you're going

1 But, again, the question is: You would agree

2 that if you made a representation to the Court, you made

3 it truthfully?

4 MS. STUDLEY: Form.

5 A. Like I said, yes.

6 Q. Do you know how much money was actually netted

7 to Oliver, Sr., in connection with the sale of 808

8 Lexington?

9 A. To your client? The sale of 808 Lexington to

10 your client?

11 Q. I think you understand my question,

12 Ms. Crispin.

13 A. I'm just asking.

14 MS. STUDLEY: Form.

15 Q. No. You're being sarcastic.

16 A. No, sir.

17 Q. The question was clear as day.

18 MS. STUDLEY: Form.

19 Q. Do you know how much was netted to Oliver,

20 Sr., as a result of the sale of 808 Lexington?

21 MS. STUDLEY: Move to strike counsel's

22 comments.

23 A. And you want to know how much the guardianship

24 got out of --

25 Q. I want to know how much was netted to Oliver,

Page 95

Page 97

1 to maintain an attorney-client privilege with regard to

2 any communications that you had with Keith Stein in

3 preparation for that hearing, correct?

4 MS. STUDLEY: Yes.

5 Q. You did have meetings and communications with

6 Keith Stein to prepare for that hearing, correct?

7 A. I believe so.

8 Q. Okay. I mean, you billed your time for that,

9 correct?

10 A. Yes, I think so.

11 Now, I would need to see my fee petition to

12 know how much I had time-wise or not, but I believe that

13 to be correct.

14 Q. You believed that as a result of the petition

15 to sell the property that Oliver, Sr., his accounts

16 would net approximately \$5 million, correct?

17 A. I don't recall.

18 Q. But if you made that representation to the

19 Court, that would have been a representation that you

20 made truthfully, correct?

21 MS. STUDLEY: Form.

22 A. I would like to see the transcript where I

23 made that representation, maybe it would fresh my

24 recollection.

25 Q. Okay. Well, we'll get there.

1 Sr., as a result of the sale --

2 MS. STUDLEY: Form.

3 Q. -- after fees and costs.

4 A. Fees and costs associated with the sale?

5 Q. Do you recall, in the motion to sell the

6 property, you telling the Court that net of mortgage and

7 net of fees -- let me strike that.

8 Do you recall the representation being made

9 that net of mortgage and net of fees that Oliver, Sr.,

10 would net somewhere around \$5 million if the Court

11 approved the sale of 808 Lexington?

12 MS. STUDLEY: Form.

13 A. I don't know what you're talking about unless

14 I see the transcript. But if your question is not what

15 did I say, but what did it net, of course, that would be

16 different. Because what was being presented to the

17 Court were offers from third-party buyers; what ended up

18 happening was a negotiated-upon sale to Julian Bivins

19 for a negotiated amount.

20 Q. I'm talking about as far as when your side, on

21 behalf of the guardian, made arguments to the Court in

22 order to approve the sale of 808 Lexington. The

23 arguments were that, based upon the offers presented by

24 or received by Lipa Lieberman, that Oliver, Sr., would

25 net, after fees and mortgage, somewhere around \$5



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

98..101

Page 98

Page 100

1 million?

2 A. I would need to see the transcript and the
3 context to understand what you're saying. What I recall
4 was that there were third-party possible buyers.

5 **Q. And you would agree that at the point in time**
6 **of the petition to sell the property, all of the orders**
7 **regarding fees for the contingency fee, for your hourly**
8 **fee, for Stein's fee, for Ronda's fee, all of those had**
9 **already been entered, correct?**

10 MS. STUDLEY: Form.

11 A. They are ongoing.

12 **Q. There were orders as of that time that are**
13 **even part of the global settlement, correct?**

14 MS. STUDLEY: Form.

15 A. Yes. There are orders that are part of that,
16 I believe, but the fees to Ms. Gluck, my firm,
17 Mr. Stein, those fees are ongoing.

18 **Q. And do you --**

19 A. So those orders weren't finite.

20 **Q. Do you deny that representations were made to**
21 **the Court by your side in order to get the Court to**
22 **approve the settlement, that net of all of the fee**
23 **orders existing at that time and net of the mortgage,**
24 **that somewhere around \$5 million would go to Oliver,**
25 **Sr., based upon the offers presented by Lipa Lieberman?**

Page 99

1 MS. STUDLEY: Form. Asked and answered.

2 MS. SCHULTZ: Form.

3 A. The settlement with Julian Bivins or --
4 because you said the settlement.

5 **Q. I'm sorry. I'm sorry, if the Court were to**
6 **have approved the sale.**

7 A. The sale, okay.

8 MS. STUDLEY: Same objection.

9 A. Again, I would have to see the transcript to
10 understand what I said and what the context was.

11 **Q. So, as we sit here today, you don't remember**
12 **that argument being made to the judge by your side?**

13 MS. STUDLEY: Form.

14 A. I don't remember it. I don't dispute it. I
15 don't say you're wrong. I don't say you're right. I
16 just don't remember.

17 **Q. And you do know, though, at that time that the**
18 **highest offer by Lipa Lieberman that he had received**
19 **that you presented to the Court was \$6.1 million?**

20 MS. STUDLEY: Form.

21 A. I don't recall.

22 **Q. Okay. Around that amount?**

23 MS. STUDLEY: Form.

24 **Q. Do you recall anything in the sevens?**

25 MS. STUDLEY: Form.

1 A. I don't recall anything in the sevens.

2 **Q. Anything in the eights?**

3 A. I don't recall.

4 **Q. Anything in the nines?**

5 MS. STUDLEY: Form.

6 A. No.

7 **Q. Do you recall your side representing to the**
8 **Court that Lipa Lieberman's exclusive agreement had been**
9 **in place for a year?**

10 A. I don't recall that, but in thinking about his
11 exclusive listing, I know when I previously answered
12 questions I said it was near in time to that hearing. I
13 believe that there may have been an agreement for his
14 exclusive listing in 2014, sometime earlier than August
15 or September.

16 **Q. Do you know if that was ever produced and**
17 **discovered?**

18 A. I don't know. I don't know, and I don't
19 remember the exact date.

20 **Q. I'll represent to you the only -- well, let me**
21 **strike that.**

22 **You were at Stein's fee petition hearing in**
23 **December, correct?**

24 A. Of '14, '15?

25 **Q. '15.**

Page 101

1 A. Yes, I was.

2 **Q. And you remember during Stein's fee petition**
3 **hearing that one of the exhibits that came out was the**
4 **exclusive listing agreement with Lipa Lieberman and the**
5 **e-mail exchange leading up to that, correct?**

6 A. I remember that, yes.

7 **Q. And you remember those e-mails and that**
8 **exclusive agreement showing that there was a rush to get**
9 **it signed prior to the petition to sell 808 Lexington,**
10 **correct?**

11 MS. STUDLEY: Form.

12 A. I don't remember the rush part, but I do
13 remember there being e-mails in either August or
14 September attempting to sign a listing agreement.

15 **Q. Let me see if I can help refresh your**
16 **recollection.**

17 **Do you recall that within five days of the fee**
18 **petition hearing that there was an e-mail that came into**
19 **evidence between Lipa and Stein where Stein is kind of**
20 **disparaging you and Brian as to why you guys weren't**
21 **getting off your tails to get the listing agreement**
22 **signed?**

23 MS. STUDLEY: Form.

24 A. I don't remember it exactly, but I remember
25 the tenure of that questioning.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

102..105

Page 102

Page 104

1 Q. Right.

2 You remember there being a document admitted

3 into evidence showing where Stein was frustrated that he

4 was sending you e-mails -- he was sending e-mails to

5 Lipa Lieberman asking why you guys weren't getting that

6 done as quickly as he wanted it?

7 A. Right. And I remember, in advance of that,

8 having discussions with Lipa about an exclusive listing

9 in advance of that.

10 Q. And during the questioning of Mr. Stein --

11 really, I'm offering this. I'm not asking you to

12 impeach Stein's testimony. I'm trying to refresh your

13 recollection.

14 During the questioning of Mr. Stein questions

15 were asked, are you aware of the existence of any other

16 exclusive contract, a written contract, with

17 Mr. Lieberman prior to that one signed within a few days

18 of the hearing, and he said no. You've now told me that

19 you think there may be another contract.

20 Does that refresh your recollection? Do you

21 still believe there's another written contract someplace

22 with Lipa Lieberman?

23 A. I just --

24 MS. STUDLEY: Wait. If you're going to

25 refresh her recollection, you have to show her the

1 agreements for you to have Kelly sign, through the paper

2 mail these days, are they?

3 MS. STUDLEY: Form.

4 A. I mean, most likely not, but I just can't say

5 for sure.

6 Q. So you could easy go back to your computer,

7 and if there was an exclusive agreement with Lipa

8 Lieberman prior to the one that came out in Stein's

9 testimony in December of 2015, you would be able to

10 easily locate that, correct?

11 MS. STUDLEY: Form.

12 A. You would have to ask my lawyer.

13 Q. Are all of your e-mails still in your system?

14 MS. STUDLEY: Form.

15 A. My e-mails?

16 Q. Yes.

17 A. Yes.

18 Q. So all of the e-mails involving the underlying

19 case are still in your system?

20 MS. STUDLEY: Form.

21 A. I believe so.

22 Q. And what do you use -- Microsoft Office?

23 A. I think so.

24 Q. Outlook?

25 A. I'm not very tech savvy, but I believe it's

Page 103

Page 105

1 document. That's improper.

2 MR. DENMAN: No, I don't.

3 MS. STUDLEY: I believe you do. It's

4 improper.

5 THE WITNESS: I just can't --

6 MR. DENMAN: You can do whatever you want when

7 you question.

8 THE WITNESS: I just can't -- go ahead.

9 Sorry.

10 MS. STUDLEY: In the event it's going to be

11 read to a jury, I think that's improper.

12 MR. DENMAN: Okay.

13 MS. STUDLEY: Okay. Go ahead.

14 THE WITNESS: I can't say for sure.

15 BY MR. DENMAN:

16 Q. Today I've never seen any other contract

17 throughout, you know, the 50,000 documents that have

18 been provided to us, and we've had to painfully go

19 through all of these PDFs.

20 If you had an exclusive listing agreement with

21 Lipa Lieberman, that would be something that would have

22 probably been exchanged in e-mail, correct?

23 MS. STUDLEY: Form.

24 A. I don't know.

25 Q. I mean, nobody is sending you mail, exclusive

1 Outlook.

2 Q. I'm sure you've done Outlook searches before,

3 right?

4 A. Sure.

5 Q. Do you recall the -- you represented Rogers

6 in connection with the Court approving the New York

7 settlement, correct?

8 A. Yes.

9 Q. And you would agree with me that the

10 representations made to the Court to get him to -- to

11 get the approval of the settlement was that the

12 refinancing of the Beachton mortgage was part of the

13 settlement?

14 MS. STUDLEY: Form.

15 A. I don't recall what I said. I would have to

16 see the transcript. I recall Beachton being a party to

17 the agreement.

18 Q. And you recall the refinancing was part of the

19 settlement to have Beachton paid?

20 MS. STUDLEY: Form.

21 A. I recall part of the settlement was to pay

22 Beachton.

23 Q. Through refinancing, correct?

24 MS. STUDLEY: Form.

25 A. The settlement agreement speaks for itself.



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

106..109

Page 106

Page 108

1 Q. So, then, if you made representations to the
2 Court that refinancing was part of the settlement
3 agreement, those were not correct?

4 MS. STUDLEY: Form.

5 A. I would have to see what I said in the context
6 in which I said it.

7 Q. So you can't answer that yes or no, as we sit
8 here today?

9 A. I just can't answer it. I just recall the
10 contract, I mean, the settlement and mutual release, but
11 without it in front of me, I can't recall exactly what
12 it says.

13 Q. Did you ever look at -- let me strike that.
14 Did you ever advise Curtis Rogers not to pay
15 one half of the mortgage -- one half of the Sovereign
16 mortgage when it was due?

17 A. Attorney-client privilege.

18 MS. STUDLEY: I'm going to move for protective
19 order and instruct her not to answer.

20 MS. STEIN: Form.

21 Q. You know that if the mortgage is not paid, it
22 goes into default, correct?

23 MS. STUDLEY: Form. Predicate.

24 A. I believe it's pursuant to whatever the
25 mortgage documents say.

1 court reporter can only record one speaker at a time.

2 So I wanted to make sure mine was lodged in there, too.

3 THE REPORTER: Okay. Would you like to state
4 your objection now so I can get it, please.

5 MS. STUDLEY: You're talking about the
6 question about the advice given?

7 MS. STEIN: Yes. Correct.

8 MS. STUDLEY: Okay. I moved for protective
9 order. That's where the objection goes.

10 MS. STEIN: Okay.

11 THE REPORTER: Okay. Thank you very much.
12 BY MR. DENMAN:

13 Q. Do you remember Deborah Kuhnel's deposition in
14 connection with the motion to compel Oliver, Jr., to
15 comply with the New York Settlement Agreement that we
16 reviewed e-mails between Curtis Rogers and Deborah
17 Kuhnel where it indicates that Curtis Rogers was not
18 paying the mortgage based upon advice of counsel?

19 Do you recall that?

20 A. I don't recall that.

21 MS. STUDLEY: Form.

22 Q. Did you ever examine the bank accounts to
23 determine whether the guardian had sufficient money in
24 the bank to pay one half of the Sovereign mortgage at
25 the time it went into default?

Page 107

Page 109

1 Q. Did you ever review the Sovereign mortgage
2 documents to determine what would occur if the mortgage
3 wasn't paid?

4 A. Yes.

5 Q. And you would agree with me that if the
6 mortgage wasn't paid, it goes into default?

7 MS. STUDLEY: Form.

8 A. The Sovereign documents would be the best
9 descriptor of that, but I believe in summation, yes.

10 MS. STEIN: Can I interrupt for one second. I
11 just want to make sure that the court reporter got my
12 objection. I know that sometimes with a speakerphone if
13 one person is talking, you won't hear the other one. I
14 just want to make sure my -- because it sounded like I
15 objected at the same time as someone else, and I just
16 want to make sure it's on the record.

17 I objected to the previous question as to
18 advice to Curtis Rogers.

19 THE REPORTER: Counsel, this is the reporter.

20 I heard no objection come over the phone line
21 at all, but all previous other objections I've heard and
22 reported.

23 MS. STEIN: Okay. Because I figured since
24 they were talking at the same time as me, it probably
25 didn't come over the speakerphone because I know the

1 MS. STUDLEY: Form.

2 A. At that time was I made aware -- I can't
3 answer the question without revealing attorney-client
4 privilege.

5 Q. The question was whether you reviewed the bank
6 statements to determine whether there was sufficient
7 money in the accounts to pay the mortgage at the time it
8 went into default?

9 A. Again, I can't answer it without attorney-
10 client privilege.

11 Q. So you're saying the act of whether or not you
12 reviewed the bank statements is an attorney-client
13 privilege?

14 MS. STUDLEY: That could be.

15 A. It's the way that you asked the question. You
16 said at the time that it went into default.

17 Q. Do you know when it went into default?

18 A. That's attorney-client privilege. That's why
19 I'm raising it.

20 Q. Did you ever receive any documents from
21 Sovereign Bank showing when the mortgage went into
22 default?

23 A. I did at some point.

24 Q. So based upon documents you have from
25 Sovereign Bank, you know when the mortgage went into



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

110..113

Page 110

Page 112

1 default, correct?
 2 MS. STUDLEY: Form.
 3 A. The documents that I reviewed from Sovereign
 4 Bank were after the time that it went into default.
 5 Q. How long after?
 6 A. That would be attorney-client privilege.
 7 Q. Well, no. The documents you received tell
 8 you when it went into default, and you know when you
 9 received them. Again, that would be communication from
 10 a third party. That would not be attorney-client
 11 privilege. So it's easy to deduce that without actually
 12 telling us attorney-client privilege of when your client
 13 perhaps would have told you it was in default.
 14 Again, I'm only asking you a question. That's
 15 why I'm giving the clarification just with regard to the
 16 document you received from Sovereign Bank.
 17 A. Again, I received it from my client. It's
 18 attorney-client privilege.
 19 Q. It doesn't matter if you received a document
 20 from your client or not; if the document is from
 21 Sovereign Bank, that's not attorney-client privilege.
 22 A. But when I received it, it is.
 23 Q. No. Okay. Let me see if I can back up.
 24 The document you received from Sovereign Bank
 25 tells you when it went into default, correct?

1 Q. Yes, or anyone from your office.
 2 A. I don't know.
 3 Q. Do you know whether your office provided any
 4 communications to Sovereign Bank in any way to try to
 5 negotiate an extension or refinance or some sort manner
 6 of preventing the continued default of the mortgage?
 7 A. Yes, we did take action to try to satisfy the
 8 Beachton mortgage.
 9 Q. I'm talking about -- I thought I was pretty
 10 clear about when it was still Sovereign.
 11 I said did your office reach out to Sovereign?
 12 A. I don't know. I did not, but I don't know.
 13 And this is where my timing problem is: I'm not sure
 14 that I had the information about the default until after
 15 it was -- after or near in time to when it was acquired
 16 by Beachton.
 17 Q. Well, you were present at the deposition of
 18 Curtis Rogers when he testified that he knew the
 19 mortgage was in default, correct?
 20 A. Yes.
 21 Q. And you were also present during the
 22 deposition of Curtis Rogers when he said he did nothing
 23 to prevent the mortgage from going into default?
 24 MS. STUDLEY: Form.
 25 Q. Do you remember that?

Page 111

Page 113

1 A. I didn't receive it from Sovereign Bank.
 2 Q. The document from Sovereign Bank tells you
 3 when it went into default, correct?
 4 A. I believe I have a document that has a
 5 calculation that shows when it went into default.
 6 Q. So based upon you now knowing from that
 7 document when it went into default, the question is:
 8 Did you ever look at the bank statements at around the
 9 time that the mortgage went into default to know whether
 10 or not the guardian had the money to pay one half of the
 11 mortgage?
 12 MS. STUDLEY: Form.
 13 A. I believe so.
 14 Q. And do you know how much money was in the
 15 account?
 16 A. I did at the time.
 17 Q. And was it more than one half of the mortgage?
 18 MS. STUDLEY: Form.
 19 A. It was a communication from my client. So I
 20 don't know. I can't answer.
 21 Q. Did you ever attempt to negotiate -- let me
 22 strike that.
 23 Did you ever reach out to Sovereign Bank
 24 regarding the default?
 25 A. Me, personally?

1 MS. STUDLEY: Form.
 2 A. I don't -- I don't recall what he testified to
 3 in that regard right now. I understand that's what --
 4 you're telling me that he said it, but I just don't know
 5 unless I look at it.
 6 Q. You would agree with me it would not be in the
 7 Ward's best interest for the mortgage on the property to
 8 go into default?
 9 MS. STUDLEY: Form. Predicate.
 10 MS. STEIN: Form.
 11 A. I can't agree with you because given the facts
 12 and circumstances of this guardianship, the guardian
 13 paid for the care and maintenance of the ward as a
 14 primary position of where the assets would be allocated.
 15 Q. And if his care and treatment were being
 16 provided, and there were still assets to pay half of the
 17 mortgage, you would agree that it would not be in the
 18 best interest to the ward to allow the mortgage to go
 19 into default, correct?
 20 MS. STUDLEY: Form.
 21 MS. STEIN: Form.
 22 A. I can't answer your question.
 23 Q. So is it your testimony that there were no
 24 funds available to pay one half of the mortgage and pay
 25 for the care and treatment of the ward? Is that your

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

114..117

Page 114

Page 116

1 testimony?

2 MS. STUDLEY: Form.

3 A. I would have to go back and look at the
4 position of where the guardianship was at the time in
5 which Mr. Rogers was made aware that the mortgage was
6 in default, but I believe he performed that analysis.

7 **Q. Did you ever perform that analysis?**

8 MS. STUDLEY: Form.

9 MS. STEIN: Form.

10 A. I don't remember it specifically, but I do
11 recall participating with Mr. Rogers in the analysis.

12 **Q. Do you recall -- was it your understanding**
13 **that upon the Court's approval of the New York**
14 **settlement, that the rent receipts to Rogers would**
15 **double next month?**

16 MS. STUDLEY: Form.

17 A. I recall it being anticipated that the
18 transfer of the property from the joint status between
19 the Lorna Estate and the guardianship would occur
20 expeditiously.

21 **Q. So, then, you never advised the Court that**
22 **upon the approval of the settlement Rogers' rental**
23 **receipts would double the next month?**

24 MS. STUDLEY: Form.

25 A. I don't recall those exact words because I

1 **The representations to the Court were that the**
2 **ward was in better need of health care, and that's why**
3 **the approval of the New York settlement would**
4 **immediately improve his cash flow?**

5 MS. STUDLEY: Form.

6 MS. SCHULTZ: Form.

7 A. It would improve his cash flow, yes, it would.

8 **Q. And he needed to have his cash flow improved**
9 **because he needed better health care?**

10 MS. STUDLEY: Form.

11 A. I don't recall what circumstances were going
12 on at the time, and I don't know what was said in that
13 regard. If you want to show me the transcript, I will
14 look at it and review the context in whatever you're
15 saying I said was said, and I can explain it if you need
16 further explanation.

17 **Q. Do you deny that representations were made to**
18 **the Court to get the New York settlement approved that**
19 **Oliver, Sr., was in need of cash flow for better care?**

20 MS. STUDLEY: Form. Asked and answered --

21 MS. STEIN: Form.

22 MS. STUDLEY: -- multiple times.

23 MS. SCHULTZ: Form.

24 MS. STUDLEY: You can answer again.

25 A. Without looking at the transcript, I can't say

Page 115

Page 117

1 just don't recall what was said, but I do recall that it
2 was the anticipation of the guardian that the property
3 would be transferred expeditiously, and that the sole
4 ownership would garner Mr. Rogers, or Mr. Kelly
5 eventually, all of the rents associated with the
6 property.

7 **Q. So, then, it's your testimony here today that**
8 **you had no understanding that upon the Court's approval**
9 **the rent receipts would double the next month?**

10 A. No, not that's what I'm saying.

11 MS. STUDLEY: Form.

12 A. That's not what I'm saying. I don't know if
13 -- I don't know if that's what was said, but I think it
14 was anticipated that that would happen.

15 **Q. And, as a matter of fact, that's what was**
16 **represented in order to get the Court to approve the New**
17 **York settlement because of the immediate need for cash**
18 **flow for the ward for his health care; is that right?**

19 MS. STUDLEY: Form. Predicate.

20 Argumentative.

21 A. I don't recall what was stated at the hearing.
22 What you're asking me is: Did I believe that the
23 guardianship would reap a hundred percent of the rent
24 post-settlement and that was the anticipation. Yes.

25 **Q. And the reason the -- let me strike that.**

1 what was said at that hearing.

2 **Q. As we sit here today, do you know whether**
3 **Oliver, Sr., needed the New York settlement to be**
4 **approved so that he could obtain better cash flow, or**
5 **so he could obtain cash flow because he needed better**
6 **health care?**

7 MS. STUDLEY: Form.

8 A. I don't know that, particularly sitting here
9 today. I would have to go back to the context at the
10 time; however, I can tell you the benefits of that
11 agreement, if that's what you're asking me.

12 **Q. You were part of the negotiations of the Texas**
13 **Settlement Agreement, correct?**

14 MS. STUDLEY: Form. Predicate.

15 A. In limited part.

16 **Q. You were part of -- well, you were --**

17 A. I didn't attend the mediation conference. I
18 did participate by phone as needed.

19 **Q. Have you ever prepared a Trust document?**

20 A. Yes.

21 **Q. Is that something that you do as part of your**
22 **business?**

23 A. Yes.

24 **Q. How long have you been preparing Trust**
25 **agreements?**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

118..121

Page 118

Page 120

1 A. Simple ones, maybe for eight years or so. I
 2 mean, on my own, I mean, I've done -- for the last ten
 3 years I've participated in the drafting of them.
 4 **Q. Have you ever prepared a Trust agreement for**
 5 **Texas?**
 6 A. For Texas?
 7 **Q. Yes.**
 8 A. No.
 9 **Q. Are you familiar with Texas state law**
 10 **regarding Trust agreements?**
 11 MS. STUDLEY: Form. Predicate.
 12 A. I'm not licensed in Texas, and I don't know
 13 their laws. But, as it relates to Oliver, Sr., I did
 14 help negotiate terms of the management Trust.
 15 **Q. I mean, you actually spent dozens of hours**
 16 **revising and editing the Texas Trust Agreement, correct?**
 17 A. Yes.
 18 **Q. And you know that the attorneys in Texas were**
 19 **operating under a contingency fee agreement, correct?**
 20 A. I believe I knew that from their initial
 21 hiring when I came onboard with Mr. Rogers.
 22 **Q. And part of the agreement of the Texas lawsuit**
 23 **would have -- part of the settlement of the Texas**
 24 **lawsuit involved a settlement agreement and Trust**
 25 **agreement, correct?**

1 **reached on behalf of the guardian with Oliver, Jr.,**
 2 **correct?**
 3 MS. STUDLEY: Form.
 4 A. Yes.
 5 **Q. And that was approximately \$120,000, correct?**
 6 MS. STUDLEY: Form.
 7 A. I don't recall what it was.
 8 **Q. But Julian objected to that settlement because**
 9 **he believed it was too low, correct?**
 10 MS. STUDLEY: Form.
 11 A. I don't know if he filed a formal objection
 12 with his position. I don't remember. I remember having
 13 discussions with you outside the courtroom. I don't
 14 remember what they were, but you were objecting.
 15 **Q. And recall that Julian was actually able to**
 16 **negotiate a settlement for \$315,000 in connection with**
 17 **the petition it had filed to compel Oliver to comply**
 18 **with the New York settlement, correct?**
 19 A. I don't think --
 20 MS. STUDLEY: Form.
 21 A. -- it was all your doing. Yes, you were part
 22 of it.
 23 **Q. You recall that the settlement was \$315,000,**
 24 **correct?**
 25 MS. STUDLEY: Form.

Page 119

Page 121

1 A. Yes, it was a settlement agreement and a
 2 Trust.
 3 **Q. And the contingency fee agreement pertained to**
 4 **the entire Texas transaction, correct?**
 5 A. I don't know. I didn't review it for that,
 6 Mr. Heinrich and his peers.
 7 **Q. Did you or your firm ever seek reimbursement**
 8 **for all of the fees that you spent in connection with**
 9 **revising and editing the Texas Trust Agreement from the**
 10 **contingency fee award that Heinrich received?**
 11 A. We petitioned for our fees from the
 12 guardianship with respect to the time that we spent with
 13 respect to the Texas litigation.
 14 **Q. You were involved in negotiation of the New**
 15 **York settlement?**
 16 A. Yes.
 17 **Q. You were involved in the negotiation of the**
 18 **global settlement?**
 19 A. Yes.
 20 **Q. You were involved with the petition to compel**
 21 **compliance by Oliver, Jr., to comply with the New York**
 22 **settlement, correct?**
 23 A. Yes.
 24 **Q. As a matter of fact, you actually filed a**
 25 **motion for court approval of the settlement that you had**

1 A. I remember it was in an order.
 2 **Q. For \$315,000, correct?**
 3 A. I don't know. I don't remember right now.
 4 I'll take your word that's what it was, but I don't
 5 remember.
 6 **Q. And you recall that Julian filed a petition**
 7 **to force Oliver Bivins to comply with the New York**
 8 **settlement in July of 2014, correct?**
 9 A. I know he filed either a petition or a motion.
 10 I don't remember when. But, yes, I don't dispute that
 11 he filed something saying that Oliver was in breach of
 12 the agreement.
 13 **Q. And the breach was that Oliver, Jr., had been**
 14 **keeping half of the Fig & Olive rents as opposed to**
 15 **paying them over pursuant to the New York settlement,**
 16 **correct?**
 17 A. Yes.
 18 **Q. And also that Oliver, Jr., was not paying**
 19 **taxes, correct?**
 20 A. I believe that was Julian's position.
 21 **Q. And that Oliver, Jr., was not paying rental**
 22 **income from Pinafore or his friend on the fourth floor,**
 23 **correct?**
 24 A. I don't remember exactly what Julian said,
 25 but, yes, it was more than just the Fig & Olive rents.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

122..125

Page 122

Page 124

1 Q. And you understood that as a result of the
2 additional income, that Oliver, Sr., was supposed to
3 receive in connection with 808 Lexington from the New
4 York settlement, that that would have doubled a minimum
5 of the amount of gross income from 808 Lexington,
6 correct?

7 MS. STUDLEY: Form.

8 MS. SCHULTZ: I'm going to join that
9 objection.

10 A. I don't understand exactly what you're asking
11 me, but if -- what was intended to be the guardian
12 owning the entire amount of 808, which was the
13 guardian's position, and he filed a motion, Mr. Kelly
14 did, to get the rents back from the inception of the New
15 York Settlement Agreement.

16 Q. And that was actually filed about six months
17 after the petition filed by Julian in January of 2015,
18 correct?

19 A. It was afterwards. I don't know the timing.

20 Q. Do you dispute that the petition filed by you
21 on behalf of Steve Kelly was filed in January of 2015?

22 MS. STUDLEY: Form.

23 A. I don't dispute that.

24 Q. As a matter of fact, in January of 2015, some
25 six months after Julian filed his same petition, you

1 guardianship estate, correct?

2 MS. STUDLEY: Form. Argumentative.

3 A. No, not at all. We believe that was the best
4 way in which to deal with the matter --

5 Q. And it was not --

6 A. -- was to ensure that we had all of the civil
7 rules available to the guardian, which we believed
8 necessitated the invocation of 5.025.

9 Q. And, as a matter of fact, you also sought
10 approval to go to New York to incur expenses in
11 connection with the motion, your adversary proceeding on
12 the motion to compel enforcement, correct?

13 MS. STUDLEY: Form. Lack of predicate.

14 A. Well, no matter what, whether it was your
15 motion or whether it was my motion, it was going to be
16 an evidentiary hearing. So no matter what, we needed
17 to take the depositions of the people we believed had
18 information. And so we wanted to make sure that they
19 were going to be admissible in Court.

20 At that time I really believed that we had the
21 same -- we, meaning your client and my client, had the
22 same motive, which was to receive back the rental income
23 that was due to the guardianship.

24 Q. But you do agree that we objected to the
25 depositions in New York seeking a much less costly

Page 123

Page 125

1 actually sought to have the petition declared adversary,
2 correct?

3 A. My petition?

4 Q. Yes.

5 A. Against Oliver, Jr.?

6 Q. Yes.

7 A. I believe I did.

8 Q. Okay. As opposed to a motion, a simple
9 motion, to enforce the settlement agreement, correct?

10 A. I know that was always your position. My
11 position was that the guardian properly moved for the
12 relief that he sought.

13 Q. And an adversary proceeding is similar to a
14 full lawsuit invoking all rights of civil procedure,
15 etcetera, and at trial, correct?

16 A. What it says under Rule 5.025, yes.

17 Q. Whereas a motion to compel would be something
18 that is much less formal before the Court who retains
19 jurisdiction to enforce the terms of a settlement
20 agreement, correct?

21 MS. STUDLEY: Form. Predicate.

22 A. I believe it's a distinction without a
23 difference in this matter.

24 Q. Well, the distinction is that the more
25 complex, the more legal fees your firm gets from the

1 alternative first for this motion to compel rather than
2 incurring dozens of attorneys' fees hours and costs
3 going to New York on that, correct?

4 MS. STUDLEY: Form.

5 A. I don't know. I don't remember your position.
6 I know -- I don't dispute your position. My problem
7 then wasn't Julian Bivins. It was Oliver, Jr. He was
8 the adverse party because what the Court had declared
9 was, I believe, that you were able to come in as a
10 intervenor.

11 And I believe we were advocating the same
12 position, and I didn't know what the objections were
13 going to be by Oliver, Jr., which is why we proceeded to
14 take discovery in the formal manner.

15 Q. And, as a matter of fact, we had to come in as
16 an intervenor because -- on behalf of the guardian --
17 you objected to Julian's petition saying that he had --
18 that he was not a party to the New York settlement, and
19 therefore had no standing to enforce the terms of the
20 New York settlement, correct?

21 MS. STUDLEY: Form.

22 A. Agree. Agree that that was part of the
23 argument. I don't recall if there were more matters,
24 but I do remember the objection to him participating in
25 the agreement between him and Oliver Bivins, Jr., and



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

126..129

Page 126

Page 128

1 the guardian.
2 **Q. During the time that Oliver, Jr., was not**
3 **complying with the New York Settlement Agreement, the**
4 **interest on the Beachton mortgage was increasing,**
5 **correct?**

6 MS. STUDLEY: Form.

7 A. I believe it was, but, you know, I don't put
8 them together, I think, in the way that you do.

9 **Q. During the New York settlement conference in**
10 **New York you became aware that Beachton had taken a**
11 **40 percent interest in Oliver, Jr.'s, or the Estate of**
12 **Lorna's, ownership of 808 Lexington in connection with**
13 **the mortgage, correct?**

14 MS. STUDLEY: Form.

15 A. I became aware of that. I don't recall if the
16 problem was just with the Estate's interest, or the
17 whole interest, or whether that was debatable, but I
18 recall learning about --

19 **Q. You recall learning that there was additional**
20 **interest given to Beachton in connection with the**
21 **mortgage upon which they were seeking default interest,**
22 **correct?**

23 MS. SCHULTZ: Form.

24 MS. STUDLEY: Form.

25 A. I remember learning there was a percentage

1 MS. STUDLEY: Form.

2 A. When I was in the settlement negotiations,
3 there were numerous conferences between Oliver, Jr.,
4 counsel and Beachton.

5 **Q. But you did know --**

6 A. I had nothing to do with the negotiation of
7 this 40 percent or this 20 percent.

8 **Q. Okay. But you did know that Beachton got an**
9 **interest, whether it was claimed interest, whether it**
10 **was an absolute interest, whatever it was, you knew that**
11 **Beachton had an interest in 808 Lexington from Oliver,**
12 **Jr., and then that would -- at some point was converted**
13 **to an interest in 67th Street --**

14 MS. STUDLEY: Form. Asked and answered.

15 **Q. -- correct?**

16 MS. SCHULTZ: Form.

17 MS. STUDLEY: Mischaracterization.

18 A. I tell you what I tell you. I learned about
19 the 40 percent and whatever these details were at the
20 settlement conference. I don't believe I knew anything
21 about Beachton having some kind of interest, if they
22 even do in 67th Street, until after the settlement
23 conference.

24 **Q. And how long after the settlement conference**
25 **did you learn about the interest being released from 808**

Page 127

Page 129

1 that was due, that Beachton believed was due to them.
2 But I don't remember whether or not it was on -- if
3 Beachton believed it was on the total, the hundred
4 percent ownership in 808.

5 **Q. Did that matter?**

6 MS. STUDLEY: Form.

7 A. Yes, it did.

8 **Q. Even if it's on half of the ownership, if they**
9 **believed they were entitled to a 40 percent interest and**
10 **half of the ownership of 808 Lexington, did that have a**
11 **value?**

12 A. I don't know.

13 MS. SCHULTZ: Form.

14 A. I believe there was time spent debating it at
15 the settlement conference because of the fact that the
16 guardian did not have anything to do with this
17 agreement, whatever this agreement with Beachton was,
18 about the validity of this agreement.

19 **Q. And you do know at the settlement conference**
20 **that in order to clear 808 Lexington, that Oliver, Jr.,**
21 **had to give Beachton 20 percent interest in 67th Street**
22 **and release the 40 percent interest in whatever he had**
23 **in 808 Lexington -- that they had in 808 Lexington?**

24 MS. SCHULTZ: Form.

25 A. I found that out after the fact.

1 **to go into 67th?**

2 A. I have no idea.

3 **Q. Well, you knew that by the time you walked**
4 **into court to argue for the approval of the New York**
5 **settlement, correct?**

6 MS. STUDLEY: Form.

7 A. I did not see any documentation with respect
8 to this until, I believe, Beachton filed a lawsuit
9 against Oliver, Jr.

10 **Q. But my question was: You knew about this**
11 **purported release of 808 and interest in 67th Street in**
12 **connection with the Beachton mortgage prior to walking**
13 **in and seeking Court approval of the New York**
14 **settlement, correct?**

15 MS. STUDLEY: Form.

16 A. I knew about it after the conference and
17 before I actually saw the documentation that proved it;
18 where that falls in that line, I don't know.

19 **Q. When you saw the documents, it was prior to**
20 **seeking approval in the New York settlement, correct?**

21 MS. STUDLEY: Form.

22 A. That's what I'm trying to tell you, is that
23 after the settlement conference. And then there was a
24 time when I actually saw a lawsuit where there was
25 purported documents that supported this 20 percent or

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

130..133

Page 130

Page 132

1 not, but whatever they were relying on, I had knowledge
2 of that. That they were going -- that they had some
3 kind of interest in 67th Street in advance of seeing the
4 documents that they were relying on for that.

5 **Q. And if Beachton was correct, based upon what**
6 **you knew at the time of the settlement conference, that**
7 **it had a 40 percent interest in 808, whether this was in**
8 **the whole property or half of the property, if they were**
9 **correct that they were entitled to 40 percent, even in**
10 **half the property, that amount still would have been**
11 **several hundred thousand dollars, correct?**

12 MS. STUDLEY: Form.
13 MS. SCHULTZ: Form.
14 MS. STEIN: Form.
15 MS. STUDLEY: Speculation.

16 A. But it --

17 **Q. But it what?**

18 A. It's not a reality.

19 MS. STUDLEY: Form.

20 A. Because under the agreement we got the
21 property, and there was no Beachton encumbrance other
22 than the takeover of the Sovereign note and the terms
23 associated with the mortgage and note from Sovereign.

24 **Q. Beachton bought the note from Sovereign,**
25 **correct?**

1 know under New York law, but what I do know are the
2 facts of this case, which is that not only -- that that
3 40 percent interest never enured to the property.

4 **Q. Did anyone -- did you ever retain any New York**
5 **counsel to investigate whether, under New York law, the**
6 **fact that Beachton got an interest over and above**
7 **default interest it was claiming under the note would be**
8 **considered either usuary or a novation of the original**
9 **loan document?**

10 MS. STUDLEY: Form.

11 MS. SCHULTZ: Form.

12 A. I mean, Roy Justice and Keith Stein were
13 involved, but there wasn't a need to do that because any
14 percentage that Beachton was claiming was due, they were
15 claiming was due from Oliver, Jr.

16 **Q. In connection with the note that Sovereign had**
17 **on 808 Lexington that they acquired from Sovereign,**
18 **correct?**

19 MS. STUDLEY: Form.

20 A. I don't know what their terms were. They were
21 never part and parcel of the guardianship. The guardian
22 never had anything to do with them, and they enured to
23 the 808 Lexington property.

24 **Q. But you said that you reviewed the Sovereign**
25 **documents, right?**

Page 131

Page 133

1 A. Agree.

2 **Q. Okay. And Beachton --**

3 A. I think it's notes, but yeah.

4 **Q. And then Beachton proceeded to charge default**
5 **interest?**

6 A. Pursuant to the mortgage and note documents,
7 yes.

8 **Q. And if Beachton -- well, let me strike that.**

9 **Well, if Beachton got an additional interest**
10 **in its favor in connection with the note -- you've told**
11 **me that you do commercial litigation -- that would be an**
12 **additional benefit to it under the note, and therefore**
13 **considered part of the interest on the loan, correct?**

14 MS. STUDLEY: Form.

15 MS. SCHULTZ: Form.

16 A. I disagree. Because if you look at the facts
17 of this case, you have that the guardianship did not owe
18 any additional moneys to Beachton under -- other than
19 what was due under the Sovereign note and mortgage.

20 **Q. Does it matter who owes, or does it matter**
21 **whether they are getting an additional benefit under the**
22 **loan that was originally created against the property?**

23 MS. STUDLEY: Form.

24 MS. SCHULTZ: Form.

25 A. I can't answer that question because I don't

1 MS. STUDLEY: Form.

2 A. Yes, I've seen them. Sure.

3 **Q. Did the Sovereign documents provide any**
4 **ability for Sovereign to gain an additional interest in**
5 **connection with the Sovereign loan over and above the**
6 **16 percent default interest?**

7 A. No, and neither did Beachton.

8 **Q. But Beachton did, as you know, according to**
9 **what you learned, obtain an interest in 808 --**

10 A. No, they never did.

11 MS. STUDLEY: Form.

12 **Q. -- in connection with the loan?**

13 MS. SCHULTZ: Form.

14 A. They never did.

15 MS. STUDLEY: Join.

16 A. They asserted that they did, but they -- they
17 asserted at the settlement conference that they did, but
18 they never did.

19 **Q. So Beachton asserted that they got an**
20 **additional interest. So in their mind --**

21 A. No, not --

22 THE REPORTER: Hold it. Hold it.

23 **Q. -- they now have been paid more; in their mind**
24 **they are now being paid more on the underlying loan than**
25 **the default interest?**

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

134..137

Page 134

Page 136

1 MS. STUDLEY: Form.
 2 A. No. Let me be clear.
 3 MS. STUDLEY: Move to strike.
 4 A. When this was being discussed with me, I
 5 recall it being Oliver Bivins, Jr., discussing an
 6 additional -- some obligation that he believed that he
 7 had to Beachton.
 8 **Q. In connection with what?**
 9 A. I don't know. How would I know? The guardian
 10 had nothing to do with it; to me it was completely void.
 11 **Q. Was it in connection with the note?**
 12 A. I have no idea.
 13 **Q. Was it in connection with Beachton forbearing**
 14 **from foreclosing?**
 15 MS. STUDLEY: Form.
 16 MS. STEIN: Form.
 17 MS. SCHULTZ: Form.
 18 A. Well, I never heard that.
 19 **Q. You've never heard that?**
 20 A. No, I've never heard that.
 21 **Q. You never hired Brian O'Connell represent that**
 22 **to Judge Colin in court?**
 23 MS. STUDLEY: Form.
 24 A. Well, that was because --
 25 MS. STEIN: Form.

1 **Q. Hold on.**
 2 **What does it matter whether it made the claim**
 3 **against the guardian? If "A" gives a loan and "A"**
 4 **claims it's in entitled to more than default interest,**
 5 **usurious amounts, what does it matter who it claims it**
 6 **from?**
 7 A. Because how can an agreement --
 8 MS. STUDLEY: Hold on. Object to form.
 9 MS. SCHULTZ: Form.
 10 A. An agreement cannot be made to a -- about a
 11 property without the agreement being made by the people
 12 who own it, and the guardian owned the property. The
 13 agreement -- the guardian had claimed that it owned the
 14 property.
 15 **Q. Did you do research of law to formulate the**
 16 **opinion you've just rendered?**
 17 MS. STUDLEY: Form.
 18 A. No, I didn't make -- I didn't research law to
 19 give you this opinion.
 20 **Q. Did you --**
 21 A. Hold on.
 22 THE REPORTER: Hold it. Hold it.
 23 MS. STUDLEY: Wait. Wait.
 24 A. I'm not done. I'm not done.
 25 Additionally, this 40 percent never came to

Page 135

Page 137

1 MS. SCHULTZ: Form.
 2 A. -- it was part of the settlement.
 3 **Q. Oh, so you did hear it?**
 4 MS. STUDLEY: Form.
 5 A. I don't know what you're talking about because
 6 you need to show me the transcript. But if you read the
 7 settlement agreement and mutual release, you'll see that
 8 Beachton agreed to forebear. So it is --
 9 **Q. Which means that there would be no additional**
 10 **consideration for Beachton to get a percentage of the**
 11 **interest that it claimed that it got in the Lexington**
 12 **property in connection with the same note that it was**
 13 **getting default interest on, correct?**
 14 A. There is not one document --
 15 MS. STUDLEY: Objection to the form.
 16 A. -- to support the fact that Beachton has
 17 claimed an interest in the guardianship's property.
 18 Now, what he's working out --
 19 **Q. I'm sorry. What does that matter whether it's**
 20 **the guardianship's property if the property at issue --**
 21 **the interest that Beachton claims it got was a result of**
 22 **the note, the same note that is attached to Lexington**
 23 **signed by the parties it's claiming this additional**
 24 **interest? What does this matter?**
 25 A. They never got it.

1 fruition.
 2 **Q. Well, isn't Beachton suing in New York Oliver,**
 3 **Jr., for 20 percent of 67th saying in the pleadings that**
 4 **the 20 percent was converted from the 40 percent of the**
 5 **half interest that Oliver provided to Beachton in**
 6 **consideration for Beachton not foreclosing on 808**
 7 **Lexington? You've read the pleadings. Is that not what**
 8 **the pleadings say?**
 9 MS. STUDLEY: Form.
 10 MS. STEIN: Form.
 11 A. The guardian never made any agreement and was
 12 never involved in anything with respect to that.
 13 **Q. Did you hire -- you said that Roy Justice and**
 14 **Keith Stein were New York attorneys.**
 15 A. Yeah.
 16 **Q. That's what you said in response to my**
 17 **question.**
 18 **Did you retain anyone to -- retain or consult**
 19 **with anyone to investigate this issue? You said they**
 20 **were your New York attorneys.**
 21 **My question is: Did you, on behalf of the**
 22 **guardianship, ever specifically retain any New York**
 23 **litigation counsel to evaluate whether there was a**
 24 **viable usuary or novation claim against Beachton in**
 25 **connection with the interest that it claims that it got**

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

138..141

Page 138

Page 140

1 in Lexington and then converted to an interest in 67th?

2 MS. STUDLEY: Objection. Predicate.

3 MS. SCHULTZ: Form.

4 A. No one was hired for that purpose. But, at
5 the same point, you had been telling me about these
6 legal theories for at least over six months. And when
7 your client had the opportunity to purchase it through
8 our agreement, we discussed -- you, myself, Keith Stein,
9 Brian O'Connell, your New York counterpart, I believe --
10 about Julian taking the property and assuming the
11 mortgage so you could bring these legal theories that
12 had never yet been backed up, but that you believed were
13 viable and you failed or refused to do so.

14 Because when we were evaluating this, and you
15 wanted us to evaluate it through our agreement, you made
16 lots of representations to us when we were trying to do
17 this global agreement, about Beachton and about these
18 various sundry legal theories that you believed that
19 could possibly be successful.

20 So we made sure that we negotiated for our
21 client a very limited amount of effort that he would
22 have to undertake to determine whether there could be
23 a reduction in the Beachton mortgage, whether for this
24 legal theory or whatever legal theory. And so that was
25 negotiated that there would be a very minimal

1 keeping his million dollars --

2 MS. STUDLEY: I would ask that you not yell at
3 my client, please.

4 Q. -- agreed?

5 A. You filed an emergency petition to give your
6 client an extension of time. I wrote you and said this
7 is a time of the essence contract. We will close. We
8 are prepared and ready to close, and the terms of what
9 you negotiated for your client was that we kept -- the
10 guardianship kept the million dollars, and we were
11 prepared to continue on with the contract that way.

12 It was your client who chose not to set that
13 petition for hearing, or to not go forward on that
14 petition, or whatever was your choice. But what your
15 client's choice was, was to close and honor the
16 agreement, the global settlement agreement, and the
17 purchase and sale contract and to close and to sign the
18 closing documents as is.

19 Q. As a matter of fact, it was a separate
20 hearing, and Judge Colin cancelled because he was sick
21 and couldn't come in, correct?

22 MS. STUDLEY: Form. Predicate.

23 A. I don't know what it was.

24 Q. So you don't know. So you just testified
25 about this whole thing under oath, but you don't know?

Page 139

Page 141

1 negotiation with Beachton, and that was -- hold on --
2 and that was negotiated in the global settlement.

3 Q. As a matter of fact --

4 A. And then after that, when you continued on
5 about it, we gave you and your client that opportunity
6 to go ahead and assume the mortgage so you could bring
7 these various sundry legal theories, but your client
8 failed and refused to do so.

9 Q. And, as a matter of fact, my client mailed a
10 petition -- well, as a matter of fact, you guys said
11 that if he does not close on the property with his hard
12 money lender, you were going to keep his million
13 dollars?

14 MS. STUDLEY: Form.

15 Q. You specifically wrote correspondence and
16 argued to the Court, Ms. Crispin, that if he did not
17 close exactly as in that settlement agreement, that you
18 were keeping his million dollars -- yes or no?

19 A. You filed --

20 Q. Yes or no?

21 MS. STUDLEY: Form.

22 THE REPORTER: Hold it. Hold it.

23 Q. You can explain whatever you want. Yes or no?

24 You specifically said if he did not close on
25 time exactly as in the settlement agreement, you were

1 MS. STUDLEY: Form. Predicate.

2 Argumentative.

3 A. Well, I said that you did not move forward on
4 your petition.

5 Q. You said --

6 THE REPORTER: Hold it. Hold it. One at a
7 time. One at a time.

8 Q. You said we never set it for hearing.

9 MS. STUDLEY: She wasn't finished.

10 Q. It was set for hearing, was it not?

11 MS. STUDLEY: She was not finished.

12 A. I don't know, but I know it never was heard.

13 Q. And it was not heard, but we had requested the
14 extension to pursue Beachton, and you refused or else he
15 would forfeit the million dollars, correct?

16 MS. STUDLEY: Form.

17 A. And your client closed anyway.

18 Q. Correct?

19 MS. STUDLEY: Form.

20 MS. STEIN: Form.

21 A. Your client closed.

22 Q. Because if he didn't, you said you were
23 keeping his million dollars as a default, correct?

24 A. That was the terms of the contract.

25 MR. HECHTMAN: Well --

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

142..145

Page 142

1 MR. DENMAN: Okay. You know, we got the form.
 2 She objected.
 3 MR. HECHTMAN: (No response).
 4 MS. STUDLEY: It's 12:00.
 5 MR. DENMAN: Okay. I'm almost done here.
 6 BY MR. DENMAN:
 7 **Q. You said time was of the essence in your**
 8 **statement.**
 9 A. The contract said it, so did the global
 10 settlement order.
 11 **Q. Right.**
 12 **Did you guys comply with time of the essence**
 13 **in moving Oliver, Sr., back to Texas --**
 14 MS. STUDLEY: I'm going to object to form.
 15 **Q. -- yes or no?**
 16 MS. STUDLEY: Predicate.
 17 A. That was not part of the agreement. The
 18 agreement was that he would be moved back, and he was.
 19 **Q. The agreement -- it was not part of the**
 20 **agreement that he would be moved back in a period of**
 21 **time?**
 22 MS. STUDLEY: Form. Argumentative.
 23 A. I don't remember what occurred with the timing
 24 of it, but I do recall that he was moved back.
 25 **Q. After the deadline set for in the agreement?**

Page 143

1 MS. STUDLEY: I'm going to object. Predicate.
 2 A. I don't recall.
 3 MS. STUDLEY: I want to take a break.
 4 MR. DENMAN: I'm almost done. So let's go
 5 ahead and get this done.
 6 MS. STUDLEY: And you're yelling.
 7 MR. DENMAN: I'm not yelling.
 8 MS. STUDLEY: It sounds like it.
 9 MR. DENMAN: You know what, I am not yelling.
 10 MS. STUDLEY: You're getting a little heated
 11 is what I meant.
 12 MR. DENMAN: Cross-examination is heated.
 13 That's part of the litigation. I'm not yelling.
 14 MS. STUDLEY: Well, we are not in trial. We
 15 are in a deposition.
 16 BY MR. DENMAN:
 17 **Q. In your answer to the complaint you stated**
 18 **that the divorce in Texas was fraudulently procured.**
 19 **That it was determined that the divorce in Texas was**
 20 **fraudulently procured. Where was that determined?**
 21 A. I know that it was the guardian's position
 22 in the estate proceeding; that it was fraudulently
 23 procured.
 24 **Q. Where was that -- I'm sorry. Go ahead.**
 25 A. I don't know of an order that says that.

Page 144

1 **Q. Where was it espoused that the divorce was**
 2 **fraudulently procured?**
 3 A. In the petition to determine beneficiary filed
 4 in the Lorna Estate.
 5 **Q. If the divorce order was fraudulently procured**
 6 **in Texas, why was there not an attack on the divorce**
 7 **order in Texas?**
 8 A. The ability to -- in strategizing in the best
 9 ability to bring the most to the ward, the legal theory
 10 was the full faith and credit in the estate. Because
 11 there was an ability under a petition to determine
 12 beneficiary if we could get the Florida estate court not
 13 to give full faith and credit for the divorce for
 14 Oliver, Sr., to at least assert he was a beneficiary of
 15 the estate, and thus thereby being able to attempt to
 16 attack some of the assets of the Lorna Estate.
 17 **Q. And if the divorce order was attacked in**
 18 **Texas, then it would be a Texas firm that would have to**
 19 **attack it, correct?**
 20 MS. STUDLEY: Form.
 21 A. I mean, if there was a proceeding in Texas, it
 22 would be by a Texas law firm.
 23 **Q. Which means that your firm wouldn't be able to**
 24 **get the fees under the contingency fee arrangement for**
 25 **trying to attack it in Florida under this petition to**

Page 145

1 **compel beneficiaries?**
 2 MS. STUDLEY: Form. Improper. Argumentative.
 3 A. Because Mr. Rogers would have had us be
 4 admitted pro hac vice.
 5 **Q. Why? How would that be in the best interest**
 6 **of the ward to have Ronda Gluck involved, your firm pro**
 7 **hac vice and then paying Texas attorneys?**
 8 MS. STUDLEY: Form.
 9 A. It would --
 10 **Q. Is that how you would want to have your dad's**
 11 **estate handled?**
 12 MS. STUDLEY: Form.
 13 MS. STEIN: Form. Argumentative.
 14 MS. STUDLEY: Speculative.
 15 A. Understanding the complexities of this
 16 guardianship and the series of events that occurred
 17 prior to the inception of the ETG...
 18 **Q. But the Heinrich firm had been doing the Texas**
 19 **case. It knew everything about it. They could have**
 20 **done the case, and you guys wouldn't have had to get**
 21 **charged for all of the time and the contingency fee that**
 22 **you brought under the petition to determine**
 23 **beneficiaries, correct?**
 24 MS. STUDLEY: Form.
 25 A. I don't know where you are --

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

146..149

Page 146

Page 148

1 MS. STEIN: Form.

2 A. -- gathering this series of information, but

3 the strategy that was laid out proved to be successful.

4 **Q. I'm just going by your answers to the**

5 **complaint that said that the divorce was determined to**

6 **be fraudulently procured. And I know that you moved to**

7 **set aside things in the underlying case when there was**

8 **fraud involved. So I would just wonder why you wouldn't**

9 **want to do that in the divorce case and save Oliver,**

10 **Sr., hundreds of thousands of dollars?**

11 MS. STUDLEY: Form. Predicate.

12 A. It doesn't work like that.

13 **Q. Well, if the order in Texas were set aside,**

14 **you wouldn't need the petition to determine**

15 **beneficiaries, correct?**

16 MS. STUDLEY: Form.

17 A. Well, the strategy --

18 **Q. I'm sorry. Just answer my question.**

19 A. I am. I'm just --

20 THE REPORTER: Hold it. Hold it. One at a

21 time. One at a time.

22 **Q. You can explain. But the question is: If the**

23 **divorce order was set aside in Texas, you wouldn't need**

24 **the petition to determine beneficiaries, correct?**

25 MS. STUDLEY: Form.

1 **explanation.**

2 A. Okay.

3 **Q. As a matter of fact, I want to preserve my**

4 **right to go to the judge to have him compel you to**

5 **answer yes or no on that basic question. So please go**

6 **ahead and answer now.**

7 A. An evaluation was undertaken to determine what

8 the least -- what the path of the least resistance would

9 be to obtain assets that were being claimed by the Lorna

10 Estate, and the strategy was to proceed with the

11 petition to determine beneficiary.

12 **Q. If the divorce order were set aside, then the**

13 **parties were -- for all intent and purposes would have**

14 **been married, correct?**

15 A. You're assuming that that could be done or

16 that was strategically the best thing to be done.

17 **Q. If you can answer. Just answer the question.**

18 **If the divorce were set aside in Texas, for**

19 **all intent and purposes, the parties would still be**

20 **married, correct?**

21 MS. STUDLEY: Objection. Asked and answered.

22 **Q. That would be the legal effect of the divorce**

23 **order being set aside; is that correct or not?**

24 A. I don't know. I mean, I don't know as in the

25 way that you've asked it of me.

Page 147

Page 149

1 A. Valuations were made about what -- hold on.

2 **Q. Is that a correct statement or not?**

3 A. No, I can't answer it. It's not yes or no for

4 me.

5 **Q. Okay. Okay.**

6 A. And I would like to answer it, if I can.

7 MS. STUDLEY: You can answer.

8 **Q. So you can't answer that yes or not?**

9 MS. STUDLEY: You can answer the --

10 THE REPORTER: One at a time. One at a time.

11 MR. DENMAN: No. You can stop interfering and

12 coaching, please.

13 MS. STUDLEY: You're interfering and

14 disrupting the deposition, but not allowing the witness

15 to answer. She's talking --

16 BY MR. DENMAN:

17 **Q. You're telling me that you cannot answer that**

18 **question that I just asked you? It's a yes or no. Is**

19 **that correct?**

20 MS. STUDLEY: I'm going to strike this

21 question. It's not yes or no.

22 A. I can't answer with a yes or no. I would like

23 to answer it.

24 **Q. Please. Go ahead and answer it then. If you**

25 **say you can't answer it yes or no, then please give your**

1 **Q. Let me -- maybe I can make it more basic.**

2 A. Okay.

3 **Q. If the divorce order in Texas were set aside**

4 **in Texas, then the parties would continue to be married**

5 **for all intent and purposes, correct?**

6 MS. STUDLEY: Form.

7 A. It depends, because there are mechanisms by

8 which they are void, and there are mechanisms by which

9 they are voidable. And I was not aware what the

10 positions would be of the parties in that respect.

11 **Q. Okay. I mean --**

12 A. So I can't tell you yes or no, but assuming

13 that you were able to get through what would be a lot of

14 legal hurdles and factual hurdles in Texas, and actually

15 get a court to set aside the divorce order, there is

16 definitely a possibility that the Court could say that

17 they were still validly married.

18 **Q. Well, if the order is set aside, then the**

19 **order has no force and effect, correct?**

20 MS. STUDLEY: Object to the form.

21 **Q. Yes or no?**

22 MS. STUDLEY: Form.

23 A. I would say yes. I would say that there is no

24 legal effect.

25 **Q. So if the order --**

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

150..153

Page 150

Page 152

1 A. I don't know what the practical ramifications
2 are of that.

3 **Q. If the order divorcing the parties is set
4 aside and it's no longer in effect, then the parties are
5 still married, correct?**

6 MS. STUDLEY: Form.

7 A. It's possible.

8 **Q. And if the parties are still married, then the
9 ward would, by virtue of Lorna's intestate death, own
10 all of 808 and all of 330, correct?**

11 MS. STUDLEY: Form.

12 A. All of -- possibly all of 330, but with 808
13 there was a dispute by Oliver, Jr., about how that
14 property was held. So to the extent that there were
15 survivorship issues, and they were not severed through
16 the divorce, then it's possible.

17 But I also want to say in this evaluation that
18 Julian has always contended that the divorce was valid.
19 So there was going to be significant factual hurdles
20 here.

21 **Q. This whole line of questioning came from the
22 fact that your answer to our lawsuit says that it was
23 determined that the divorce was fraudulently procured.
24 That's how this all started.**

25 MS. STUDLEY: Is that a question?

1 **(Phone interruption).**

2 THE WITNESS: One second.

3 MS. STUDLEY: Hold on one second.

4 Do you need a break?

5 THE WITNESS: No.

6 BY MR. DENMAN:

7 **Q. In paragraph 42 of your Answer and Affirmative
8 Defenses it's indicated that the Court approved the
9 broker to exclusively sell 808. Where was that approved
10 for him to exclusively sell 808?**

11 A. He did exclusively sell 808.

12 **Q. No. Where did the Court approve the broker to
13 exclusively sell 808?**

14 A. In the order in the global settlement.

15 **Q. But never prior to the execution of the
16 exclusive listing agreement, correct?**

17 MS. STUDLEY: Form.

18 MS. SCHULTZ: Form.

19 MS. STUDLEY: Asked and answered.

20 A. Never.

21 **Q. The Court never approved the guardian to enter
22 into an exclusive listing agreement with the broker to
23 sell 808, correct?**

24 MS. STUDLEY: Form. Predicate.

25 MS. SCHULTZ: Form.

Page 151

Page 153

1 MR. DENMAN: Yes.

2 **Q. So having said that, you would agree that the
3 consequence of the Court determining that the divorce
4 was fraudulently procured would be that the parties were
5 still married; and if the parties were still married,
6 then by operation of intestacy law and survivorship law,
7 808 and 330 would go to Oliver, Sr.?**

8 MS. STUDLEY: Object to form.

9 A. I mean, if you were able to do all of this
10 with the factual and legal problems and possibly Statute
11 of Limitations and other defenses, then that is a
12 possibility.

13 **Q. And in instead of doing this, your firm
14 settled 12 other cases, dropped the disgorgement against
15 Oliver, Jr., got several hundred thousand dollars in
16 attorneys' fees, and paid several hundred thousand
17 dollars more on the Beachton mortgage, correct?**

18 MS. STUDLEY: Objection. Mischaracterization
19 of facts.

20 THE WITNESS: No.

21 MS. STUDLEY: How much longer do you think?
22 We've been going a long time.

23 MR. DENMAN: A couple of minutes.

24 BY MR. DENMAN:

25 **Q. In the answer in paragraph 42 --**

1 A. You're talking about other than that global
2 settlement order?

3 **Q. You've said the global settlement order. So
4 all I said in my question, if you didn't understand me,
5 was: Prior to the entry of the global settlement
6 agreement, are you aware of any other court order or
7 approval for the broker to exclusively sell 808?**

8 MS. STUDLEY: Objection. Lack of predicate.

9 A. Your question assumes that that was required,
10 but nonetheless, no.

11 **Q. So in paragraph 42 of your affirmative
12 defenses, when you answered that the Court approved the
13 broker to exclusively sell 808, that's also suggesting
14 there that that's not required, and that's what you
15 meant that the Court approve it?**

16 MS. STUDLEY: Form. Lack of predicate.

17 A. No, what that meant is that the order on the
18 global settlement did that.

19 **Q. So your position in 42 of the affirmative
20 defenses is that the order on the global settlement is
21 the Court approval of the broker to exclusively sell
22 808?**

23 A. Yes.

24 **Q. But nothing else --**

25 MS. STUDLEY: Form.



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

154..157

Page 154

Page 156

1 Q. -- meaning no other orders, no other
 2 approvals, no other pleadings or anything else besides
 3 the order on the global settlement, correct?
 4 MS. STUDLEY: Form. Lack of predicate.
 5 A. I think there are other defenses. I think
 6 there are, you know, waiver, laches and the rest of
 7 those. If you're asking about is there any other court
 8 order, I believe that that provides you not only an
 9 authorization, but a confirmation of that act.
 10 Q. Got it.
 11 Do you know how much money was transferred to
 12 the Trust from your firm after the sale of 808?
 13 A. Not exactly, but I have some idea.
 14 Q. How much?
 15 A. It was a million dollars that was transferred,
 16 I believe, in either December or January after the sale.
 17 I'm just trying to think. I think the sale was in '14.
 18 So it was either in December of '14 or January of '15.
 19 I believe there was another transfer to the
 20 Trust maybe in the summer. I don't -- or maybe the
 21 second quarter of '16, and then there was another order
 22 that had us transfer three or \$400,000 to the Trust.
 23 Q. So my question -- just so we're clear -- is
 24 from the proceeds of the sale of 808. The transfer in
 25 the summer was from the sale of 330, correct?

1 the sale of 808 Lexington was in December of 2014/
 2 January of 2015 was \$250,000, correct?
 3 MS. STUDLEY: Form.
 4 A. I mean, the law -- the legal fees to
 5 Mr. Heinrich are for the benefit of the ward. So a
 6 million dollars is for the benefit of the ward, and he
 7 performed --
 8 MR. DENMAN: Will you read back my last
 9 question, please. Thank you.
 10 (Question read back).
 11 THE WITNESS: That's not correct. I mean, the
 12 administrative costs to the guardian's lawyers are for
 13 the benefit of the ward and our cash flow then available
 14 to pay appropriate expenses of the ward, which the legal
 15 fees were one of them.
 16 BY MR. DENMAN:
 17 Q. You would agree with me that \$250 [sic] net of
 18 the attorneys' fees and net of a mortgage is a lot
 19 different than \$5 million net of attorneys' fees and net
 20 of mortgage, correct?
 21 A. I just think your math is off.
 22 MS. STUDLEY: Object to the form.
 23 THE REPORTER: Excuse me, Counsel. "\$250" was
 24 said on the record.
 25 MR. DENMAN: \$250,000. Excuse me.

Page 155

Page 157

1 A. There was one from 330.
 2 Q. And then there was the other one in December
 3 of 2015 in connection with our motion to enforce
 4 compliance with the global settlement, correct?
 5 A. The order that resulted that's on appeal?
 6 Q. Well, the order on appeal is the amount that
 7 the Court did not transfer, but the amount that you
 8 transferred was based upon our motion to have your law
 9 firm compel with -- to compel compliance of your law
 10 firm to transfer proceeds from the sale of 808, correct?
 11 MS. STUDLEY: Form.
 12 A. I don't recall the timing; I just remember
 13 these transfers.
 14 Q. So in January of 2015, or December of 2014,
 15 right after the sale of 808, a million dollars was
 16 transferred to the Trust?
 17 A. I believe so.
 18 Q. And the sale amount was \$5 million, correct?
 19 A. Yes.
 20 Q. And of that \$1 million that went to the Trust,
 21 750 was immediately paid to Heinrich in connection with
 22 the contingency fee under the Texas settlement, correct?
 23 A. I didn't know that.
 24 Q. Assuming that's the case, then that means that
 25 the total cash flow for the benefit of Oliver, Sr., from

1 THE REPORTER: Thank you, sir.
 2 THE WITNESS: Even so. Your math is off.
 3 BY MR. DENMAN:
 4 Q. Other than the deposition transcripts or
 5 documentary evidence that was exchanged between the
 6 parties in connection with the Texas federal litigation,
 7 are you aware of any other documentary evidence that
 8 supports the contention that Oliver, Sr., lacked
 9 testamentary capacity at the time of the execution of
 10 the Last Will and Testament?
 11 MS. STUDLEY: Form.
 12 A. I'm going to try to do this by process of
 13 elimination. Other than the depositions that were taken
 14 in Texas?
 15 Q. Correct, and the discovery that was exchanged
 16 in Texas, all of the documentation, medical records,
 17 etcetera.
 18 A. Exactly.
 19 Also, the guardian's records, whether it be
 20 Stephen Kelly or Curtis Rogers, stemming back earlier
 21 than January of 2011.
 22 Q. Well, those were all exchanged in the Texas
 23 litigation, correct?
 24 A. I believe so.
 25 Q. Okay.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

158..161

Page 158

Page 160

1 A. The examining committee reports from December
2 of 2010 or January of 2011. I don't recall exactly
3 when.

4 **Q. January/February of 2011, correct?**

5 A. Those -- the problem is: I don't have a feel
6 of the exact document exchange in the Texas federal
7 case. I didn't review everything that was -- I did
8 review some, but I haven't reviewed everything. I think
9 I have all of the depositions that were transcribed.
10 I'm in the process of going through any of the documents
11 that I didn't go through because there wasn't a need to
12 then.

13 So there might be -- so I guess those were
14 exchanged during that process. I know discovery is
15 ongoing in our case. I mean, not that I can think of
16 right now.

17 **Q. And all of the depositions and discovery in
18 the Texas case pertain to the claim to set aside
19 transfers that occurred in the latter part of 2011,
20 correct?**

21 MS. STUDLEY: Form.

22 A. I don't remember the exact dates and times of
23 all of those documents.

24 **Q. I apologize. 2010.**

25 A. I think a majority of them were 2010. I can't

1 I think that's appropriate, but I can't because it's
2 work product and attorney-client privilege.

3 **Q. Well, your firm brought the claim to set aside
4 the will because you're saying that you're a creditor of
5 the will, and that's why you, your firm, specifically
6 argued to the Court that your firm has the right to set
7 aside and have standing to set aside the will because
8 your firm is a creditor, correct?**

9 A. Ron, I would ask you to get out the petition
10 to revoke because I believe it's Curtis Rogers and
11 Stephen Kelly in their capacity as guardians, not me,
12 Ashley, or Ciklin Lubitz.

13 **Q. So I just want to make sure we're clear then.
14 Your firm is taking the position that your
15 firm is not the creditor to invoke standing under
16 contesting of the will; is that right?**

17 MS. STUDLEY: Form.

18 A. No. Because I just want to clear it up for
19 you. My firm is a creditor of the estate 100 percent.
20 We filed our claim. We have the objections. We're
21 proceeding on the petition for fees. Absolutely. But
22 the petition to revoke the will and challenge Julian
23 Bivins, the will that he's operating under, that's being
24 done by Curtis Rogers and Stephen Kelly in their
25 capacity as guardians.

Page 159

Page 161

1 tell you if there was any from 2009. I don't remember.

2 **Q. Well, that's exactly where I'm going. You
3 know that the Texas case involved allegations of undue
4 influence or lack of capacity to transfer from the time
5 that the divorce decree came out in July of 2010 through
6 the transfers that occurred through November of 2011 --
7 excuse me, November of 2010, correct?**

8 MS. STUDLEY: Form.

9 A. Yes, I recall that.

10 **Q. And all of the evidence and testimony pertains
11 to trying to set aside those transfers in the latter
12 part of 2010, correct?**

13 A. A majority of the evidence does, yes.

14 **Q. And what I'm getting at -- I'm trying to be
15 specific since I understand that, according to the
16 ruling, that I don't have the ability to come back and
17 ask you questions involving your firm's claim to set
18 aside the will from 2009.**

19 **What evidence do you have that at the time the
20 will was signed in 2009 that suggested that there was a
21 lack of evidentiary capacity or undue influence in 2009?**

22 A. I really can't testify to this because it is
23 work product. There's a pending litigation. I'm the
24 lawyer for the client. I'm not personally seeking it.
25 My clients are seeking it. So if you want to ask them,

1 MR. DENMAN: Okay. I am not going to argue
2 with you. I'm just reserving my right to depose you
3 after we, you know, talk with the judges.

4 MS. STUDLEY: And we reserve all objections.

5 MR. DENMAN: Why don't we take a two-minute
6 break, and then we'll see if we want to adjourn. I
7 mean, you guys can ask your questions, or course. I
8 just meant whether we're done. Okay?

9 MS. STUDLEY: Okay.

10 MR. DENMAN: Because I think I'm done. Let me
11 just talk to my client.

12 MS. STUDLEY: All right.

13 (Recess taken).

14 BY MR. DENMAN:

15 **Q. Are you aware that Julian's lender would not
16 permit him to acquire the Beachton mortgage in
17 connection with the closing on the sale of 808
18 Lexington?**

19 MS. STUDLEY: Form. Predicate.

20 A. I did not hear that.

21 **Q. So you don't know?**

22 A. Hold on. I'm thinking, please.

23 I don't believe I heard from his lender. I
24 don't know whether I heard it at any time from his New
25 York lawyer.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

162..165

Page 162

Page 164

1 Q. You are aware that due to the time
2 requirements, that Julian sought a hard money lender as
3 opposed to a commercial lender in order to meet the
4 closing time limitations, correct?

5 A. I had no idea what he was doing in order to
6 close. I mean, I know that there was a representation.
7 I believe it was from you that that's what he was doing
8 because I think you may have even pled that, possibly.

9 Q. What agreement does your firm have with Steve
10 Kelly that it gratuitously provided him a defense before
11 the insurance company came in?

12 MS. STUDLEY: I'm going to object. That's
13 attorney-client privilege. For us? You're asking us,
14 how we're providing --

15 MR. DENMAN: I asked what agreement did Ciklin
16 Lubitz have with Stephen Kelly --

17 THE WITNESS: You're asking if there is any
18 agreement --

19 BY MR. DENMAN:

20 Q. -- that permitted Ciklin Lubitz to
21 gratuitously represent Stephen Kelly before the
22 insurance company came in.

23 A. It wasn't gratuitous.

24 Q. Stephen Kelly was paying an hourly fee to
25 Ciklin Lubitz to defend this federal lawsuit?

1 BY MR. DENMAN:

2 Q. Do you know why -- let me strike that.
3 Do you know why your insurance company is
4 providing a gratuitous defense to Stephen Kelly?

5 A. Again, I believe that they are -- they can be
6 compensated under 744.108. So I'm not sure that the
7 word "gratuitous" is correct. So I can't answer the
8 question.

9 Q. If you believe that Stephen Kelly can be
10 compensated for representation he receives in connection
11 with this federal action from the guardianship, then to
12 that take that one step further then, any attorney that
13 Stephen Kelly hires to represent him in connection with
14 this federal action can be compensated from the
15 guardianship. Is that your position?

16 A. Yes, I believe so.

17 Q. And your firm chose to represent Stephen Kelly
18 initially before the insurance company came in in
19 connection with this lawsuit with the intent to seek
20 reimbursement for your firm's attorneys' fees as opposed
21 to advising Stephen Kelly to seek independent counsel,
22 correct?

23 MS. STUDLEY: I'm going to object. That's
24 work product and attorney-client.

25 A. I can answer part of the question until you

Page 163

Page 165

1 A. No, it will be compensated through the
2 guardianship courts.

3 Q. So there's fee petitions that Ciklin Lubitz
4 intends to file for its defense of Stephen Kelly in
5 connection with the federal action; is that correct?

6 A. Yes. And I believe that we filed a petition
7 that may include some of those services. I believe that
8 might have been filed in the summer of '16, possibly.

9 Q. And do you know whether an agreement exists
10 with Ciklin Lubitz and its own insurance company to
11 provide a gratuitous defense for Stephen Kelly?

12 A. An agreement between Ciklin Lubitz and Stephen
13 Kelly?

14 Q. An agreement between Ciklin Lubitz and its own
15 insurance company.

16 MS. STUDLEY: I think this is privileged.

17 THE WITNESS: I don't -- can I testify?

18 MS. STUDLEY: Hold on. I'm going to say that
19 that's privileged. I think that's privileged. You're
20 asking whether there's an agreement between Ciklin
21 Lubitz and its insurance company?

22 MR. DENMAN: That provides for the gratuitous
23 defense of Stephen Kelly in this lawsuit.

24 MR. HECHTMAN: Because you're asking for the
25 content of the agreement, it's privileged.

1 got to the last part.

2 Julian Bivins filed a lawsuit, and Mr. Kelly
3 has chosen Ciklin Lubitz to be his counsel and to defend
4 him against the allegations. Those are compensable
5 services pursuant to 744.108 case law.

6 Q. And you don't see any conflict of interest
7 there?

8 MS. STUDLEY: I'm going to object, and I'm
9 going to -- I'm not going allow her to answer that
10 question.

11 MR. DENMAN: Why not?

12 MS. STUDLEY: As far as what --

13 MR. DENMAN: Well, you're objecting. You
14 didn't give a ground other than you're just going to
15 object.

16 MS. STUDLEY: Work product.

17 MR. DENMAN: Work product?

18 MS. STUDLEY: Yeah, and attorney-client, as
19 far as communications with the client. Since the
20 lawsuit was filed, since this federal action was filed
21 you're asking?

22 MR. DENMAN: I'm asking her whether she
23 considers it to be a conflict of interest for her firm
24 to represent Stephen Kelly in connection with this
25 lawsuit with the intent to seek attorneys' fees from the

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

166..169

Page 166

Page 168

1 guardianship court.
 2 MS. STUDLEY: Okay. I'm going to object.
 3 MR. DENMAN: I'm not going to argue with you.
 4 MS. STUDLEY: I'm going to object. I don't
 5 think it's --
 6 MR. DENMAN: Okay.
 7 THE WITNESS: I think you're asking me whether
 8 or not there's some ethical violation. I think that's a
 9 violation of our Bar rules. I don't think you can ask.
 10 That's just my opinion. You can ask me that. I mean,
 11 it's the same thing if I asked you if it's a conflict
 12 of interest to continue in this lawsuit when you
 13 represented Julian Bivins in the guardianship court.
 14 BY MR. DENMAN:
 15 Q. Wait until you're the attorney that gets to
 16 ask me questions, and you can do what you wish.
 17 MS. STUDLEY: You can't.
 18 Q. But right now the question is -- the issue is:
 19 You want -- your firm wants to seek attorneys' fees for
 20 representing Stephen Kelly in an action in which
 21 allegations have been made against your firm and Stephen
 22 Kelly, correct?
 23 A. Yes.
 24 Q. And it's your position that under guardianship
 25 law any firm can -- that represents Kelly in connection

1 A. I don't think I did.
 2 Q. Did your firm at all represent Curtis Rogers
 3 in connection with the federal lawsuit?
 4 MS. STEIN: Form.
 5 A. I don't know. I don't know. I wasn't
 6 admitted at that time.
 7 Q. This federal lawsuit I'm talking about.
 8 A. Yeah.
 9 Q. You said you weren't admitted at that time?
 10 A. Into the Southern District I wasn't admitted
 11 at the time of the filing of the lawsuit.
 12 Q. But I was asking did your firm. I probably
 13 said did your firm represent Curtis Rogers?
 14 A. I don't remember. It may have, but I don't
 15 remember.
 16 Q. Do you know whether your firm has any claims
 17 for fees that it intends to, or that it's been holding
 18 and intends to file in the guardianship court in
 19 connection with the representation of Curtis Rogers in
 20 this lawsuit?
 21 A. I would have to speak to Mr. O'Connell about
 22 that. I don't know.
 23 MR. HECHTMAN: Ron, it's been hours since you
 24 said you were taking a few more minutes.
 25 MR. DENMAN: I'm done.

Page 167

Page 169

1 with this federal lawsuit can seek attorneys' fees,
 2 correct?
 3 A. Well, I don't know if I would go that broad
 4 and tell you that. I think that the Court has to make
 5 an evaluation under Rowe and the standards of 744.108 of
 6 whether or not it's compensable. I don't think it's
 7 just a foregone conclusion, which is why you've been
 8 able to come in and object on behalf of your client.
 9 Q. And did you seek court approval from the
 10 guardianship court for your law firm to represent
 11 Stephen Kelly in connection with the federal lawsuit?
 12 A. Not required.
 13 MS. STEIN: Form.
 14 Q. Listen to my question. Did you?
 15 MS. STUDLEY: Form. Predicate.
 16 A. No, because it's not required.
 17 Q. Have you maintained all of your time that you
 18 spent in connection with the defense of Steve Kelly in
 19 this lawsuit?
 20 A. Not all of it.
 21 Q. Did you represent Steve -- excuse me.
 22 Did you represent Curtis Rogers at all in
 23 connection with the federal lawsuit?
 24 A. I didn't.
 25 Q. Do you intend to make -- okay.

1 THE WITNESS: Just like that?
 2 MR. DENMAN: I mean, I'm just reserving all of
 3 my rights to come back regarding the objections, but I'm
 4 done.
 5 CROSS-EXAMINATION
 6 BY MS. SCHULTZ:
 7 Q. I have a couple of questions.
 8 Ms. Crispin, is it your understanding that
 9 Keith Stein and -- I'm going to refer all of them as the
 10 Stein defendants. I mean, Keith Stein and Beys Liston
 11 and the Law Offices of --
 12 THE REPORTER: I'm sorry. I couldn't hear
 13 you. Please speak up a little bit.
 14 MS. SCHULTZ: Oh, I'm sorry.
 15 BY MS. SCHULTZ:
 16 Q. Keith Stein, Beys Liston and the Law Offices
 17 of Keith, all of whom were brought in as defendants.
 18 I'm just going to refer to them as the Stein defendants.
 19 Is it your understanding that the Stein
 20 defendants were brought in to render legal services that
 21 are required for -- or that were required as necessary
 22 in connection with the litigation relating to 808
 23 Lexington such as title and partition of ownership and
 24 investigating delinquent mortgage issues and the
 25 potential sale of the New York property?



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

170..173

Page 170

Page 172

1 **Would you agree with that?**
 2 MR. DENMAN: Objection. Leading.
 3 A. Yes, I think that's accurate.
 4 MR. DENMAN: It's not cross. This is a
 5 codefendant.
 6 MS. STUDLEY: I think you can do it, but --
 7 MR. DENMAN: Okay, a codefendant. I mean,
 8 it's not cross. This is not an adverse situation.
 9 MR. HECHTMAN: Do you want her to go one by
 10 one and take another hour to do that?
 11 MR. DENMAN: Yes.
 12 MS. STEIN: She doesn't need to do that. It's
 13 cross-examination. Under the deposition rules we're not
 14 in trial. She can ask a leading question.
 15 MS. STUDLEY: Go ahead.
 16 MR. DENMAN: I disagree, but, I mean, I just
 17 voiced my objection. Go ahead.
 18 MS. STUDLEY: Okay.
 19 MR. DENMAN: I can't stop you.
 20 MS. SCHULTZ: That's fine. You voiced your
 21 objection. That's fine.
 22 BY MS. SCHULTZ:
 23 **Q. Was Mr. Stein trained to perform any services**
 24 **in connection with the 67th Street property?**
 25 A. I think that's attorney-client.

1 **Q. So review this agreement. What's the date on**
 2 **this agreement?**
 3 A. June 16th, 2014.
 4 **Q. So this would have been several months before**
 5 **the hearing where the terms of the global settlement**
 6 **were read onto the record; is that right?**
 7 A. Yes, and this is where I think my testimony
 8 was that I was confused.
 9 **Q. And, additionally, it was discussed at the**
 10 **hearing, and also it was discussed earlier in this**
 11 **deposition, that Lipa Lieberman had obtained several**
 12 **letters of interest in terms of purchasing of 808**
 13 **Lexington?**
 14 A. Yes.
 15 **Q. Would you agree with me on that?**
 16 A. Yes.
 17 **Q. And as far as your -- strike that.**
 18 **Would you disagree with me if I told you that**
 19 **the dates of those letters, those offers to purchase,**
 20 **were September 11th, 2014, and September 12th, 2014?**
 21 A. I would it, but I don't dispute that. I don't
 22 dispute that Lipa was seeking those in September.
 23 **Q. And if there had been no exclusive sales**
 24 **agreement in place prior to the time that these offers**
 25 **were obtained, would there have been any reason for**

Page 171

Page 173

1 MS. STUDLEY: Yeah, to the extent that's not
 2 attorney-client, but, yeah.
 3 THE WITNESS: Okay. I'm not sure how to parse
 4 that out.
 5 MS. STUDLEY: I don't know.
 6 BY MS. SCHULTZ:
 7 **Q. Okay. That's fine.**
 8 **There were some discussions before about the**
 9 **timing of the exclusive sales agreement that was entered**
 10 **into by the guardian with Lipa Lieberman. If I told you**
 11 **that there was an agreement dated June 16th, 2014, that**
 12 **sets forth an exclusive sales agreement, would you have**
 13 **any reason to disagree about that?**
 14 MR. DENMAN: Objection to form.
 15 A. Well, I would like to see it. But, I mean, I
 16 think I testified I wouldn't -- I thought that there may
 17 be an agreement that predated the one that Mr. Denman
 18 was discussing with me. I just don't recall it. So I
 19 need to see it.
 20 MR. SCHULTZ: Well, I can show you this, and
 21 perhaps this will refresh your recollection.
 22 We can mark that as Defendants' Exhibit 1.
 23 (Defendants' Exhibit 1 was marked for
 24 identification).
 25 BY MS. SCHULTZ:

1 **Mr. Lieberman to go out and get these offers?**
 2 MR. DENMAN: Objection to form.
 3 A. I don't know, but the agreement that you've
 4 provided me as Exhibit 1 says in Term Number 1 that the
 5 agreement shall commence on the date hereof, which is
 6 June 16th, 2014, and shall continue in effect through
 7 June 16th, 2015. So that's what it says. I don't --
 8 **Q. Okay. So do you have any knowledge as to**
 9 **whether -- at the time that Mr. Lieberman was going out**
 10 **to obtain these letters to find a purchaser for 808**
 11 **Lexington, that he was under the impression that there**
 12 **was an agreement regarding his commission if he found**
 13 **someone who was interested in purchasing the property?**
 14 MR. DENMAN: Objection to form.
 15 A. I don't know. I really don't know right now.
 16 **Q. But would there have been any reason for him**
 17 **to be going out and looking for purchasers if there was**
 18 **no, at least, contemplated agreement in place?**
 19 MR. DENMAN: Objection to form.
 20 A. It would seem so.
 21 **Q. Was Keith Stein ever asked to obtain any kind**
 22 **of appraisal of the 67th Street property?**
 23 MS. STUDLEY: It's attorney-client. I'm going
 24 to -- I don't think you can answer that.
 25 THE WITNESS: Work product.



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

174..177

Page 174

Page 176

1 MS. STUDLEY: Yeah, work product, too. Yeah,
 2 work product.
 3 BY MS. SCHULTZ:
 4 Q. Well, the 67th Street property, that was in
 5 Lorna's -- that was titled in the Estate of Lorna
 6 Bivins' name; isn't that right?
 7 A. Yes.
 8 Q. So since Oliver, Sr., and Lorna Bivins were
 9 divorced and the property was in Lorna Bivins' name,
 10 Oliver, Sr., probably wouldn't have had any rights to
 11 that property; isn't that right?
 12 MR. DENMAN: Objection to form.
 13 A. If you continued on the status quo, that's
 14 completely correct. The guardian chose to seek
 15 authorization to pursue an avenue which may have allowed
 16 Oliver Bivins, Sr., to make a claim to the access of the
 17 Lorna Bivins' estate where 67th Street was titled.
 18 Q. What was that avenue?
 19 A. It was a petition to determine beneficiary;
 20 the guardian sought approval to file that action, which
 21 is an adversary action in the Estate of Lorna Bivins,
 22 and the guardianship court granted the authorization to
 23 pursue that.
 24 So the guardian pursued that and made the
 25 claim that the divorce should not be given full faith

1 defendants were retained, was the Beachton -- I'm sorry.
 2 At the time that Mr. Stein and the Stein
 3 defendants were retained, was the mortgage on the 808
 4 Lexington property already in default?
 5 A. I think so.
 6 Q. And the loan had already been accelerated at
 7 that point, correct?
 8 A. I think so. I don't exactly remember at that
 9 particular point. So I'm going to have to say I don't
 10 know.
 11 Q. If I told you that the Sovereign mortgage --
 12 they had already notified the owners of the property
 13 that the mortgage was in default in August of 2012, and
 14 Mr. Stein was retained in November of 2012, it would
 15 make sense that that was before Mr. Stein had been
 16 retained, correct?
 17 MR. DENMAN: Form.
 18 A. I can't -- what you've asked me, I don't know;
 19 in the question you've assumed things that I don't know
 20 if they are true or not.
 21 Q. Was Mr. Stein ever asked to collect real
 22 estate taxes from Oliver, Jr., or Lorna Bivins' estate?
 23 MS. STUDLEY: Any communications between the
 24 lawyers, I'm going to object on work product. I don't
 25 think you can go there.

Page 175

Page 177

1 and credit in the State of Florida because of the fact
 2 that it was void or voidable on various legal bases.
 3 Q. But was there ever a final determination made
 4 on that?
 5 A. It was settled.
 6 Q. All right. And this was settled at which
 7 point? Was it part of the Texas settlement?
 8 A. This is part the New York settlement. The
 9 settlement agreement and mutual release was one of the
 10 Exhibit A items, litigations that were settled.
 11 Q. Was Mr. Stein ever retained to collect rents
 12 from the tenants at the 808 Lexington property?
 13 A. No.
 14 MR. DENMAN: I mean --
 15 Q. That was "no"?
 16 MS. STUDLEY: I think I'm going to object on
 17 the form. You can ask it in a different way, but she's
 18 already answered. I think it's done.
 19 THE WITNESS: Well, are --
 20 MS. STUDLEY: Right. Okay.
 21 BY MS. SCHULTZ:
 22 Q. Was Mr. Stein ever asked to renegotiate any
 23 leases with any tenants on the property?
 24 MS. STUDLEY: Work product.
 25 Q. At the time that Mr. Stein and the Stein

1 Q. Well, as far as your understanding, was that
 2 within the scope of his representation to collect taxes
 3 from the estate?
 4 MR. DENMAN: Form.
 5 MS. STUDLEY: Yeah. I think it's the same. I
 6 have to instruct the witness not to answer.
 7 MS. SCHULTZ: Just bear with me.
 8 (Short pause).
 9 BY MS. SCHULTZ:
 10 Q. Is it your understanding that when Mr. Rogers
 11 was retained, or when Mr. Rogers was appointed as the
 12 guardian, part of the responsibility that he was allowed
 13 to undertake on behalf of the ward included the right to
 14 enter into contracts?
 15 MS. STEIN: Form.
 16 MS. STUDLEY: I think you can answer.
 17 A. Yes.
 18 Q. So any exclusive sales agreement that he may
 19 have entered -- that the guardian may have entered into
 20 with Lipa Lieberman would have been acceptable under the
 21 responsibilities that the Court allowed the guardian to
 22 undertake; isn't that right?
 23 MR. DENMAN: Form.
 24 MS. STUDLEY: You can answer that.
 25 THE WITNESS: Yes, he can do that.

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
ASHLEY CRISPIN ACKAL, ESQUIRE

178..181

Page 178

Page 180

1 MS. SCHULTZ: Okay. That's all I have.
 2 MR. DENMAN: May I see Defendants' Exhibit 1.
 3 THE WITNESS: Yeah. This is underlined. Did
 4 you want that?
 5 MS. SCHULTZ: No.
 6 MR. DENMAN: It's an exhibit.
 7 MS. SCHULTZ: That's fine.
 8 THE WITNESS: Well, I didn't know which one,
 9 whether it was inadvertently --
 10 MR. DENMAN: I thought it was underlined, not
 11 from you.
 12 MS. SCHULTZ: It's fine. There aren't any
 13 notes or anything on there.
 14 THE WITNESS: Okay.
 15 REDIRECT EXAMINATION
 16 BY MR. DENMAN:
 17 **Q. Do you know whether Defendants' Exhibit 1 was**
 18 **executed on June 16th, 2014?**
 19 A. I've become confused today about whether it
 20 was, but I don't --
 21 **Q. Have you ever seen any other exclusive listing**
 22 **agreement that has a September date up at the top that**
 23 **would reflect the date that it was signed pursuant to**
 24 **the e-mails that we talked about during my direct**
 25 **examination?**

1 problem with all of us going out and grabbing a bite.
 2 You have my cell phone. If you hear from him, we'll
 3 come back. I think I will be short, much shorter with
 4 Brian. And I'll make an agreement that if we don't
 5 finish with him today, I'm not going to let this thing
 6 go late tonight. I know you have to drive down.
 7 THE WITNESS: He's willing to go late. He
 8 wants to finish. He said he would go late.
 9 MS. STUDLEY: And I think he'll be --
 10 MR. DENMAN: I'll try, but I also have some
 11 commitments after 5:00 today. So I'll try to get him
 12 done today; if not, I'll be here for the next three
 13 days. I think that we'll be able to make up some time,
 14 but I have commitments after 5:00. I can't do tonight.
 15 MS. STUDLEY: And we just want to take a
 16 little lunch break. I have the sense that he's going to
 17 be back around 2:30 or so.
 18 MR. DENMAN: Just text me, and I can get it
 19 done -- I mean, I don't think I have as much with Brian.
 20 MS. STUDLEY: Okay. We'll try to get it done.
 21 THE REPORTER: Ms. Studley, do you want a copy
 22 of the record if this is ordered?
 23 MS. STUDLEY: Yes. Thank you.
 24 THE REPORTER: Thank you very much.
 25 Ms. Schultz, do you want a copy of the record?

Page 179

Page 181

1 MS. STUDLEY: Form.
 2 A. I mean, the best I can remember -- this is the
 3 exclusive right to sell agreement with Mr. Lieberman's
 4 firm, Eastern Consolidated, looked like. Now, are there
 5 two? I don't know. I would be guessing, but I wouldn't
 6 think so. I don't know.
 7 I just don't know, but I can probably go back
 8 to my records and determine whether or not this one with
 9 the June 16th, 2014, date was the one that was signed by
 10 Mr. Kelly in September of 2014.
 11 MR. DENMAN: Off the record.
 12 (Recess taken).
 13 MR. DENMAN: I'm done.
 14 MS. STUDLEY: Okay. Wendy?
 15 MS. STEIN: I have no questions.
 16 THE REPORTER: Read or waive?
 17 THE WITNESS: I'll read.
 18 THE REPORTER: Thank you very much.
 19 MR. HECHTMAN: On the record real quick.
 20 Brian, due to scheduling exigencies, with this
 21 case and other cases he has, was here in the morning.
 22 We didn't get to him in the morning; as soon as he's
 23 done with his other conflicts, he will return and we
 24 will resume his deposition.
 25 MR. DENMAN: Since it's 1:49 p.m., I have no

1 MS. SCHULTZ: Yes.
 2 MR. DENMAN: I want a copy, please.
 3 THE REPORTER: Okay. Do you want it regular
 4 time, sir?
 5 MR. DENMAN: Yes. That's fine.
 6 THE REPORTER: Ms. Stein, this is the
 7 reporter. Do you want a copy of the record, also?
 8 MS. STEIN: I do not want a copy.
 9 THE REPORTER: Okay. Thank you.
 10 (Deposition concluded and signature reserved).
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