

JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
BRIAN M. O'CONNELL, 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: BRIAN M. O'CONNELL, ESQUIRE
DATE: MONDAY, JANUARY 9TH, 2017
TIME: 3:10 P.M. - 5:45 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



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A P P E A R A N C E S

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23
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25 Also Present: Ashley Crispin Ackal, Esquire

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P R O C E E D I N G S

1
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 BRIAN M. O'CONNELL, 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, please.
12 A. Brian McKenna O'Connell.
13 Q. And where are you employed?
14 A. At Ciklin Lubitz & O'Connell.
15 Q. Are you the O'Connell of Ciklin Lubitz &
16 O'Connell?
17 A. It's between my cousin and I; we both are
18 claiming it. It's friendly, of course.
19 Q. You're a partner at the firm?
20 A. Yes.
21 Q. How long have you been a partner?
22 A. Since 1988.
23 Q. And what is your area of specialty?
24 A. Wills, trusts and estates.
25 Q. Is that in administrative or litigation?

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15	EXHIBIT INDEX	
16	(None marked)	
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20	S T I P U L A T I O N S	
21	It is hereby stipulated and agreed	
22	by and between the counsel for the respective parties	
23	and the deponent that the reading and signing of the	
24	deposition transcript was reserved.	
25		

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1 A. Both.
2 Q. Do you do any other type of litigation besides
3 wills, trusts and estates?
4 A. A small amount of commercial litigation.
5 Q. Any other areas, any other small amount areas?
6 A. No, they would all spin off of the wills,
7 trusts and estates primarily; as you indicated,
8 administration and litigation that relate to those
9 areas.
10 Q. How long have you known Curtis Rogers?
11 A. For four or five years at this point,
12 approximately.
13 Q. How did you first meet him?
14 A. I think we met -- I recall first meeting him
15 in connection with the Bivins guardianship.
16 Q. Have you had any other matters that you worked
17 with him on besides Bivins?
18 A. I believe there have been one or two.
19 Q. Where you represent, your firm represents him
20 as a guardian?
21 A. Yes.
22 Q. How long have you known Stephen Kelly?
23 A. Probably approximately ten years.
24 Q. And how many matters -- in how many matters
25 has your firm represented Stephen Kelly?



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1 A. In approximately two to three.
 2 **Q. In which he has been the guardian?**
 3 A. Yes.
 4 **Q. Were those two or three matters prior to the**
 5 **Bivins matter?**
 6 A. Yes.
 7 **Q. What about Ronda Gluck, how long have you**
 8 **known Ronda?**
 9 A. Approximately ten years.
 10 **Q. And how many matters have you been co-counsel**
 11 **with her?**
 12 A. Up through the current date?
 13 **Q. Yes.**
 14 A. In approximately eight to ten.
 15 **Q. Do you and Ronda Gluck have a referral where**
 16 **you're refer cases back and forth to each other?**
 17 A. Nothing formalized like that. There are
 18 matters where we'll be brought in as litigation counsel
 19 because her firm does not do litigation.
 20 **Q. Are there times when your firm will refer to**
 21 **her administrative matters?**
 22 A. I think we have done so. I don't remember how
 23 many times.
 24 **Q. Prior to the underlying matter involving**
 25 **Oliver Bivins, Sr., have you ever worked with Lipa**

1 **Q. And did you hire Stein to assist you in that**
 2 **case?**
 3 A. No. No, he actually was involved in it on the
 4 New York end.
 5 **Q. And then he hired you on the Florida end?**
 6 A. No, it was probably the other way around, in a
 7 sense. We were involved in the Florida litigation, and
 8 then I met him separately. The client had engaged him
 9 to do some real estate matters in New York.
 10 **Q. Ms. Crispin has advised us that she's an**
 11 **associate who reports to you, and then she explained the**
 12 **three other associates that report to him.**
 13 A. Her.
 14 **Q. I'm sorry, to her.**
 15 **Do all four of these associates report to you?**
 16 A. Well, ultimately. I guess if you're kind of
 17 painting the chain of command, that would be correct.
 18 That really, on a day-to-day basis, she certainly is
 19 there, I guess, the responsible party in terms of
 20 getting directions, completing tasks and so forth, but
 21 ultimately the buck stops here in a sense.
 22 But she would be sort of the rung below mine,
 23 and then you have the other folks.
 24 **Q. Are there any other attorneys that work under**
 25 **you on a different rung?**

1 **Lieberman?**
 2 A. No.
 3 **Q. Have you ever worked with him since this case?**
 4 A. No.
 5 **Q. What about Keith Stein?**
 6 A. Keith Stein, before this case, yes, I had
 7 handled a matter with him.
 8 **Q. And when was that?**
 9 A. That might have been seven or eight years ago.
 10 Again, I'm approximating all of these time frames.
 11 **Q. Was that a litigation matter or a real estate**
 12 **matter?**
 13 A. It was a litigation matter.
 14 **Q. And did he do the litigation, or did someone**
 15 **else from his firm handle it?**
 16 A. We did the litigation in Florida. There was
 17 a bankruptcy matter that was involved with it, but the
 18 litigation primarily, at least of course, what I was
 19 doing was Florida.
 20 **Q. Were you representing a guardian in that case?**
 21 A. No. No, I represented an individual. It was
 22 a contest -- to summarize it quickly: There was a
 23 contest over a trust where there were competing
 24 arguments as to the validity of a trust and amendments
 25 and so forth.

1 A. No.
 2 **Q. Do you know how much money your firm has**
 3 **billed and received in connection with claims in**
 4 **connection with the underlying matters involving Oliver**
 5 **Bivins, Sr.?**
 6 MS. STUDLEY: Form.
 7 A. I don't.
 8 **Q. Do you know whether it's more than a million**
 9 **dollars?**
 10 A. I don't know. The only way I guess to answer
 11 that accurately is: I would have to go through the
 12 various petitions and also probably, more importantly,
 13 the various orders that would have appropriated certain
 14 amounts towards fees and costs.
 15 **Q. Do you know how much the current petitions are**
 16 **in seeking fees for your firm that are still pending?**
 17 A. I don't recall. Again, I would have to look
 18 at the actual petitions themselves to give you an
 19 accurate answer.
 20 **Q. Well, do you know that matter to be more than**
 21 **400,000?**
 22 A. I would be guessing, and I know you don't want
 23 me to guess.
 24 **Q. You don't get in your firm on a monthly basis**
 25 **some type of ledger that tells you, in your cases,**



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1 **what's either been paid or what's still outstanding,**
2 **outstanding receivables, things of that nature?**
3 A. We get certain items of reporting, but it
4 depends, sometimes if they have been billed, or not
5 billed, or if it's unbilled time. So it sort of depends
6 on what category it is. That's why I'm not sure, and I
7 don't want to give you a wrong answer as to amounts.
8 But I'm happy to look at bills or petitions if
9 that would assist you.
10 **Q. But you do have documents that you receive in**
11 **your firm that tell you what has been billed and, I**
12 **guess, petitions filed and what is pending to have**
13 **petitions filed?**
14 MS. STUDLEY: Form.
15 A. It's not that precise. I think it's a similar
16 billing package to a lot of law firms where we track on
17 files. You have unbilled amount of time on X file. You
18 have billed time; and if it's been billed and not paid,
19 it tracks it by 30, 60, 90, 120 days.
20 There's reporting of that nature.
21 **Q. So, for example, you have a work-in-progress,**
22 **what hasn't been billed?**
23 A. Uh-hum.
24 **Q. If more than -- let's assume that three months**
25 **go by. That you have work in progress before it's**

1 **actually put into a petition and filed with the Court.**
2 **Would all of that time be considered work in progress,**
3 **or is work in progress on month to month?**
4 MS. STUDLEY: Form.
5 A. To me, not being an accountant, I look at it
6 that if there's time that's accrued, you know, in our
7 system, that's what I will probably call work in process
8 [sic].
9 **Q. And once it's been in process -- once it's**
10 **actually been put into a petition and sent to the Court**
11 **to have an ultimate determination, that's where it**
12 **starts to accrue from a time frame of, let's say, 30,**
13 **60, 90, or no?**
14 A. If it's billed, if it's internally billed,
15 I should say, sometimes that process occurs, and
16 sometimes it doesn't where there's a court petition
17 involved as opposed to a bill that might go to a third
18 party.
19 **Q. Right now, from my side of the table, I can**
20 **easily see the orders that have been entered showing how**
21 **much your firm has been paid. I can only see the**
22 **petitions that are currently pending that have not been**
23 **heard by the Court. But what I can't see, and do you**
24 **have any idea, of how much time exists that is still**
25 **waiting to be put into a petition for fees and filed**

1 **with the Court in the underlying matters?**
2 A. I don't.
3 **Q. Do you know if it's more than a couple hundred**
4 **dollars?**
5 A. I'm not sure. Again, I would be speculating.
6 **Q. Do you know whether there's a separate matter**
7 **-- let me strike that.**
8 **I've learned through the underlying matter**
9 **that your firm -- in underlying matters that your firm**
10 **uses a different number for various matters; is that**
11 **right?**
12 A. Correct.
13 **Q. Is there a separate matter number for your**
14 **firm in connection with your firm's representation of**
15 **Stephen Kelly in this federal action?**
16 A. I'm not sure. I understand your question.
17 I'm just not sure if that's been culled out in that
18 fashion. I would have to look at -- if I can look at
19 the accounting records because we do have a matter list
20 that we call it which would say Stephen Kelly. And then
21 underneath that it would have five files or six files or
22 seven files. That's how I can determine that.
23 **Q. Right.**
24 **Who identifies when a new matter should be**
25 **opened? Is that something that you will do and approve**

1 **and sign and tell accounting, okay, open this new matter**
2 **for Stephen Kelly, for example?**
3 A. That's pretty much the process after a
4 conflict check, of course, and after some form of
5 review. And usually Ms. Crispin and I will get together
6 and review a matter to see if it is appropriate or not
7 and decide the manner of billing and so forth, but then
8 from the accounting standpoint internally what you said
9 is accurate.
10 **Q. So, for example, if you're working on a**
11 **guardianship matter for Stephen Kelly for Oliver Bivins,**
12 **Sr., and a matter goes to appeal, you'll open a new**
13 **matter number for that specific appeal, correct?**
14 A. Most of the time.
15 **Q. And if there's a new matter open, that's**
16 **something that you would file, sign the form to**
17 **authorize, right?**
18 A. In that instance there wouldn't be -- if we
19 have an existing -- to give you an example, to use this
20 case to say, well, we have Stephen Kelly as an existing
21 client, on an existing matter, then there's a subsidiary
22 matter. We wouldn't go through the process, at least
23 internally, as a law firm of having a signoff or some
24 other paperwork that's done.
25 It's really a matter of memo. We go to the



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1 accounting department and say please open a matter for
 2 Stephen Kelly as guardian called appeal of such and such
 3 an order.
 4 **Q. And the accounting department will send it**
 5 **back and say, okay, the new matter number is under the**
 6 **Steve Kelly file?**
 7 A. That's right because the client has a unique
 8 number. So let's say Steve Kelly is maybe 123.
 9 **Q. Right.**
 10 A. And then the matter numbers, it just goes
 11 sequentially, you know. So we might get to 10,000, then
 12 11,000, 12,000, etc.
 13 **Q. In this case do you know whether you did a**
 14 **memo to accounting asking them to open a separate**
 15 **matter, like a new sequential matter, under Steve Kelly**
 16 **for the time that your firm spent defending him in this**
 17 **federal action?**
 18 A. I'm not sure. I don't know.
 19 **Q. Okay. Do you know whether your firm has kept**
 20 **track of -- let me strike that.**
 21 **Do you know whether your firm has represented**
 22 **Curtis Rogers in connection with this federal action?**
 23 A. I'm not sure.
 24 **Q. If your firm was representing Curtis Rogers**
 25 **in this federal action in which your firm would seek**

1 deceased at this point in time.
 2 **Q. Do you know whether your firm ever filed a**
 3 **final accounting for Stephen Kelly in connection with**
 4 **his services as the ETG for Oliver Bivins, Sr.?**
 5 A. I'm not sure. We filed various sundry
 6 accountings of the various guardians, but to give you
 7 that hundred percent answer, I would want to look at a
 8 docket.
 9 **Q. Once Curtis Rogers became the successor**
 10 **guardian, then the normal process would be that a**
 11 **petition for discharge will be filed as to Stephen Kelly**
 12 **as the ETG, correct?**
 13 MS. STUDLEY: Form.
 14 A. I guess if we can call anything ordinary or
 15 normal that a guardian would, at some point, if they
 16 have been removed, if they have resigned, what have you,
 17 the ward has passed away, there are certain items under
 18 the statute that, yes, there's a petition for -- on the
 19 property side; on the personal side the statute is that
 20 if you're the guardian and the ward dies, of course,
 21 you're discharged just as a matter of course.
 22 So the only open ends would be someone who's
 23 a guardian of a property and a ward dies, etcetera, yes,
 24 there would be a petition for a discharge, and a final
 25 accounting would typically be the process that you would

1 **reimbursement fees from the guardianship court, would**
 2 **that be a situation where your firm would at least get**
 3 **another subsequential matter number?**
 4 MS. STUDLEY: Form.
 5 A. Typically, we would.
 6 **Q. Do you know whether that was done?**
 7 A. I don't recall whether it's been done.
 8 **Q. When your firm first again representing**
 9 **Stephen Kelly as the ETG for Oliver Bivins, Sr., you**
 10 **were aware that he was also serving as the ETG for the**
 11 **guardianship of Lorna Bivins, correct?**
 12 A. I'm not sure of the sequence of events in
 13 terms of -- I know that Lorna Bivins died several months
 14 after the ETG was started. And I thought that our
 15 representation of Stephen Kelly started after her death.
 16 That's, again, something, to be a hundred
 17 percent positive, we probably would need to pull, at
 18 least the docket, to be able to say, okay, here's the
 19 date of our notice of appearance. And she was, again, I
 20 believe deceased at that point in time. But that's what
 21 I would need to be a hundred percent sure for you.
 22 I know that Steve has not been -- I know we
 23 covered this this morning. Steve has not been
 24 discharged as the ETG basically due to his accounting
 25 needed to be approved, but certainly the ward was

1 follow at that point.
 2 **Q. Do you know whether -- at any point during the**
 3 **time Curtis Rogers was the successor guardian -- there**
 4 **was a petition for discharge ever filed with respect to**
 5 **Stephen Kelly pertaining to Oliver Bivins, Sr.?**
 6 A. I'm not a hundred percent sure and, again, I
 7 could give you the infamous educated guess, but I would
 8 rather give you the certainty, which the certainty would
 9 be within the docket itself as to whether such a
 10 petition is there for discharge, and that we can
 11 determine by looking at the docket.
 12 **Q. Right.**
 13 **And the process would be that if your firm**
 14 **filed a petition for discharge of Stephen Kelly as the**
 15 **ETG, then interested parties would have an opportunity**
 16 **to object within a certain period of time, correct?**
 17 A. By statute, of course, it's gets into the
 18 definition of what's an interested person and --
 19 **Q. Whoever may be the interested person, I won't**
 20 **get into that definition right now, but my point is that**
 21 **there's an objection time period from the time that a**
 22 **petition for discharge is filed, correct?**
 23 A. Right, by statute and rule. Correct.
 24 **Q. And without getting into who is an interested**
 25 **party or not, but if no objections are made within a**

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1 certain period of time, then they are deemed to be
 2 waived, correct?
 3 A. That's true, by statute and rule.
 4 Q. And if the objections are deemed to be waived
 5 because nobody has made an objection on behalf of anyone
 6 in connection with Oliver Bivins, Sr., for the services
 7 of Steve Kelly as the ETG for Oliver Bivins, Sr., then
 8 it would be a matter of going before the judge and
 9 asking him to approve an order of discharge, correct?
 10 A. I guess I -- let me make sure that I got your
 11 hypothetical right. There's a petition for discharge.
 12 There's a final accounting filed and served on all
 13 interested persons, but no timely objections to that.
 14 Q. Exactly.
 15 A. Then the guardian could get discharged if
 16 there's no objections.
 17 Q. And that would be a matter of simply filing a
 18 request to the Court to discharge him and identifying
 19 that the final accounting has been filed; no objections,
 20 please discharge?
 21 A. Well, it would be matter of --
 22 MS. STUDLEY: Form.
 23 A. -- you file your petition for discharge, the
 24 time would run. It would depend on the nature of the
 25 case. You might have to notice it for hearing to bring

1 auditor reviews it, what could be a typical time
 2 frame --
 3 Q. Yes.
 4 A. -- for that?
 5 It could be months, a few months, if it's, you
 6 know, again, ordinary. There's nothing unusual in the
 7 accounting. No one is objecting, items of that nature.
 8 I'm not speaking for the court system exactly, but
 9 that's how things typically move, in my experience.
 10 Q. If there is -- can you think of any reason in
 11 this particular case of why Stephen Kelly would not have
 12 -- why there would not have been a petition to discharge
 13 Stephen Kelly as the ETG under the scenario that we have
 14 laid out?
 15 A. I would have to look at the docket to see if
 16 there was or wasn't such a petition; and if there were
 17 objections, for example, I know Ms. Levine had various
 18 objections to some of Stephen Kelly's actions. I'm just
 19 going from memory, which, again, I would have to piece
 20 together with the docket to say what was done or not,
 21 his compensation, for example.
 22 Q. Do you know whether she filed those objections
 23 in this case or in the Lorna Bivins guardianship case?
 24 MS. STUDLEY: Form.
 25 A. Well, Lorna Bivins, definitely.

1 it to the Court's attention because the auditor may be
 2 looking at it, and not complete with their work.
 3 So I just wanted to make sure that I'm not
 4 saying it's automatic.
 5 Q. I'm not trying overlook any of those little
 6 technical procedures. But the point is: Once you
 7 file -- if you filed a petition for discharge and
 8 there's no objections, then the next aspect would just
 9 essentially be technical and procedural to get him
 10 discharged?
 11 A. Other than the Court auditor also would have
 12 to approve it, examine and approve the accounting.
 13 Q. And if the Court auditor examined the
 14 accounting and didn't approve it, they would give their
 15 recommendations, and it would be your obligation to get
 16 with the guardian and do whatever is necessary to
 17 rectify that?
 18 MS. STUDLEY: Form.
 19 A. Correct.
 20 Q. But that's something that would be weeks, not
 21 years?
 22 MS. STUDLEY: Form. Speculation.
 23 A. I guess I'm just trying to reconstruct this.
 24 If you're saying from filing of the petition for
 25 discharge, a final accounting, no objections, the

1 Q. Right.
 2 So if she filed it in Lorna Bivins, that would
 3 hold up Lorna Bivins, but that would have no impact on
 4 getting the discharge for Oliver, Sr., correct?
 5 MS. STUDLEY: Form.
 6 A. I'm sorry. I'm looking at both Bivins'
 7 matters.
 8 Q. Right. I'm separating it.
 9 I'm just talking about our Oliver, Sr., matter
 10 irrespective of the objection files over there, you
 11 could still get a discharge over here?
 12 A. It could be possible, but, again, I would have
 13 to look and go through that mechanical drill of what was
 14 filed, when the objection times passed, go through those
 15 steps.
 16 Q. But as far as going through those steps of
 17 filing a petition for discharge, making sure that the
 18 accounting is done, making sure to diary whether the
 19 objections are served, making sure that the auditor --
 20 if they have any issues, that those are corrected.
 21 Those are all items that would be within the attorneys'
 22 review and responsibility.
 23 That's not something independent that the
 24 guardian would be overseeing. That's something that you
 25 would be overseeing as their attorney, right?



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1 MS. STUDLEY: Form.
 2 A. You're probably talking about a mixed bag from
 3 the standpoint -- of course, a guardian would have
 4 records as to them filing a petition for discharge and
 5 their accounting. But then we do the -- when we're
 6 representing a professional guardian, we would do the
 7 court filings and so forth. So we're both involved.
 8 That's what I was trying to sketch out for you.
 9 **Q. But from the standpoint that your firm would**
 10 **file the petition for discharge, correct?**
 11 A. Oh, in our hypothetical?
 12 **Q. Yes.**
 13 A. All right.
 14 **Q. Your firm would then notify who you believe**
 15 **would be interested persons to see whether they object,**
 16 **correct?**
 17 MS. STUDLEY: Form.
 18 A. Yes.
 19 **Q. And then your firm would diary when those**
 20 **objections would have to be filed by any interested**
 21 **person, correct?**
 22 A. Yes.
 23 **Q. And if there were no objections within that**
 24 **deadline, then your firm would move forward with the**
 25 **next step, I guess, to determine whether the auditor had**

1 **any issues with the accounting, correct?**
 2 MS. STUDLEY: Form.
 3 A. Well, actually, there's another little step
 4 here to mention. When the auditor goes through their
 5 review, when they approve it, of course, they then do an
 6 approval of it. The judge ultimately then would enter
 7 an order approving the accounting. So that's just a
 8 part. Again, I'm just explaining the internal process
 9 of how sort of a closeout of a guardianship would
 10 typically go.
 11 So there's things that the attorney does.
 12 There's things that the Clerk's Office is doing, just so
 13 you have the totality of this.
 14 **Q. And that's where I'm going with this.**
 15 **If, for example, the auditor had an issue with**
 16 **the accounting, I assume that's something that you would**
 17 **get back with the guardian to rectify any issues there?**
 18 A. Yes, usually there's a report that will come
 19 back.
 20 **Q. Right.**
 21 **So if the auditor had no issues with the**
 22 **accounting and the audit was okay with it, as you said,**
 23 **the next thing would be ministerial, going to the clerk,**
 24 **taking that approval to the judge and the judge**
 25 **approving the final accounting, correct?**

1 A. Right --
 2 MS. STUDLEY: Form.
 3 A. -- or some sort of contact with the Court. We
 4 might send a letter with a proposed order of discharge
 5 if all the boxes are checked off.
 6 **Q. But that's something that the attorney for the**
 7 **guardian would do. The only thing the guardian would**
 8 **get involved with is if there was an objection to the**
 9 **accounting, they would have to go back through -- not an**
 10 **objection to the accounting. I'm sorry. If the auditor**
 11 **had an issue with the accounting, then you would get**
 12 **with the guardian to go through the numbers, right?**
 13 MS. STUDLEY: Form.
 14 A. Oh, we definitely would.
 15 **Q. If there was no issue with the auditor --**
 16 **again, going through what the attorney would do is: It**
 17 **would be within the attorney's job to do these,**
 18 **essentially, ministerial functions of putting it through**
 19 **the system. You wouldn't expect a guardian to do that,**
 20 **right?**
 21 MS. STUDLEY: Form.
 22 A. Well, again, it's sort shared with the
 23 guardian. We're working with the guardian. We're
 24 representing the guardian, but the guardian, of course,
 25 is the fiduciary that gives the information to do the

1 accounting, do the petition for discharge. So they were
 2 both involved. I know you're trying to break it down
 3 in terms of sort of who's doing what at what point in
 4 time.
 5 **Q. I'm saying after you've done the petition,**
 6 **after you've got the information, I'm really talking**
 7 **about after you got it, you file the petition. Once you**
 8 **file the petition, it's now in your hands to make sure**
 9 **and go through it, do the diarying, seeing when the**
 10 **objections, if any, were filed; and, if not, moving it**
 11 **through the system with the courts to get the final**
 12 **discharge.**
 13 **You wouldn't expect a guardian to come forward**
 14 **and say, hey, I see that no objections have been filed**
 15 **within a certain number of days. So now let's set this**
 16 **for hearing before the judge. That's something that you**
 17 **would expect to do, right?**
 18 MS. STUDLEY: Form. Asked and answered.
 19 A. Again, we would do -- there's certainly a lot
 20 of those components that we would do with a guardian, at
 21 least professional guardians typically keep track of the
 22 status of their cases.
 23 I hope I'm answering your question with enough
 24 detail. I think you're trying to say to me, well, who's
 25 involved at this leg of the process. Is it just the

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1 lawyers, or is it the guardian that's supposed to do
2 something.

3 **Q. I guess what I'm trying to find out is: If**
4 **there's no discharge of Steve Kelly as the ETG, is this**
5 **something that Steve Kelly should have made sure was**
6 **done, or is this something that Ciklin Lubitz should**
7 **have made sure was done?**

8 A. I don't know. I would have to start with the
9 premise that I don't know if it's discharged or not.

10 MS. STUDLEY: Objection to the predicate.

11 **Q. Assuming he hasn't been discharged as the ETG,**
12 **and he ended his ETG way back in May of 2011, that we**
13 **can look to Stephen Kelly and say why didn't you do**
14 **this, or is it something that Ciklin Lubitz should have**
15 **made sure that he was discharged?**

16 MS. STUDLEY: Objection. Predicate.
17 Speculation.

18 A. Again, I would have to go back through and
19 look at what was filed when, who was it served on, what
20 did the Court approve as accounting. I would have to
21 look at those items to give you a total answer.

22 **Q. As the attorney for the guardian for the ward,**
23 **Oliver Bivins, Sr., do you believe that you have a**
24 **responsibility to Oliver Bivins, Sr., to make sure that**
25 **once the ETG's run is over, that he is discharged from**

1 thing. Of course, when you're talking about discharge,
2 and you're using the word "responsibility," if you
3 peruse the statute, there really isn't a statute or rule
4 that says someone serving as guardian must be discharged
5 within a certain period of time.

6 So there isn't -- if you're searching for a
7 legal responsibility on those lines, there's isn't one
8 that I'm aware of that a discharge must occur by "X"
9 amount of days or something of that nature, if that's
10 helpful.

11 **Q. Well, I'm asking you for, you know, an**
12 **attorney-client relationship. You are the attorney for**
13 **Stephen Kelly, and Oliver Bivins, Sr., is the intended**
14 **beneficiary of that attorney/client relationship,**
15 **correct?**

16 A. Not necessarily. The standard here would be
17 we, as attorneys, render services either for the benefit
18 of the ward or to the guardian on behalf of the ward.
19 That's what attorneys do in a guardianship setting.

20 **Q. And you seek to have the ward pay for**
21 **everything?**

22 MS. STUDLEY: Form.

23 A. Not necessarily for everything. We seek to
24 have -- we do petitions for fees, or we attach our bills
25 to accountings that the Court then reviews to determine

1 his services?

2 MS. STUDLEY: Form.

3 A. I don't believe there's -- you're talking
4 about a fiduciary duty now?

5 **Q. Yes.**

6 A. All right. Well, that's the subject of a
7 Fourth DCA opinion that I know you're well familiar
8 with, but exactly how that applies, when that applies,
9 the extent that it applies, we don't really have a lot
10 of guidance on that. We have the holding in the case
11 that a lot of us versed in the guardianship world have
12 read, but how that gets interpreted in specific
13 situations is really open ended right now.

14 **Q. Between you and the guardian, whose**
15 **responsibility is it to make sure that he is discharged?**

16 MS. STUDLEY: Form.

17 A. Probably both.

18 **Q. So in the sense of Stephen Kelly, when he**
19 **stopped serving as the ETG because Curtis Rogers came**
20 **in, it was both your law firm's responsibility and**
21 **Stephen Kelly's responsibility to make sure they were --**
22 **that he was discharged as the ETG from the guardianship**
23 **of Oliver Bivins, Sr.?**

24 MS. STUDLEY: Form. Lack of predicate.

25 A. You need to back up a couple of steps, for one

1 if those fees are reasonable. So I wouldn't submit that
2 it's everything.

3 **Q. Well, from the two things you just identified**
4 **that you can either serve the guardian or serve the**
5 **Ward's interests, that you can do?**

6 A. It's the guardian on behalf of the ward.

7 **Q. So you can either serve their interests, but**
8 **when you're serving in those two capacities, you're**
9 **going to seek to have the ward pay for both capacities,**
10 **correct?**

11 MS. STUDLEY: Form.

12 A. Right, when there are appropriate fees to be
13 billed, and like here we filed a petition, you would
14 object. So they would be subject to the Court's review.

15 **Q. But you never filed -- you never sought to**
16 **have the guardians pay for any of your fees in**
17 **connection with any of the services that you rendered**
18 **pertaining to Oliver Bivins, Sr., from their own pocket,**
19 **correct?**

20 MS. STUDLEY: Form.

21 A. From the guardians?

22 **Q. Yes.**

23 A. No.

24 **Q. So if you're getting paid from -- you know**
25 **you're getting paid from Oliver, Sr.'s pot in connection**



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1 with the job that you're doing for the guardians, do you
 2 not agree that once the guardian has been removed, that,
 3 as the attorney, you should make sure and comply with
 4 getting them discharged?
 5 MS. STUDLEY: Form. Lack of predicate.
 6 A. Not necessarily because it depends on the
 7 facts and circumstances. Again, in my little example,
 8 if you had someone who was serving as an ETG of a
 9 person, for example, there's nothing to do.
 10 Q. What about if you entered into -- if you were
 11 a party who negotiated and sought approval from the
 12 Court for settlement that said that the guardian would
 13 be discharged within a certain amount of time after the
 14 settlement, is that something where you would feel like
 15 you owed a duty to Oliver Bivins, Sr., to make sure that
 16 Curtis Rogers was discharged?
 17 MS. STUDLEY: Form. Predicate.
 18 A. I would have to have more facts in terms of
 19 what's in the document. I guess it's a hypothetical, so
 20 what are the terms and conditions and so forth.
 21 Q. How many years passed from the time of the
 22 Texas settlement before your firm did a petition to
 23 discharge Curtis Rogers?
 24 MS. STUDLEY: Form.
 25 A. I don't know the amount of time. Again, I

1 Q. Okay. But that was one of the terms that was
 2 agreed to?
 3 MS. STUDLEY: Form.
 4 A. But not a time frame.
 5 Q. There was no time frame is your position?
 6 That Curtis Rogers could stay on forever, and that would
 7 be no problem under the terms -- under the intent of the
 8 agreement?
 9 MS. STUDLEY: Form. Lack of predicate.
 10 A. That's not what I'm saying.
 11 MS. STUDLEY: Wait.
 12 THE REPORTER: Wait. Wait.
 13 MS. STUDLEY: You have to let him finish.
 14 Q. Help me. Tell me what is --
 15 A. Sure.
 16 Q. Okay. What do you understand the time frame
 17 was to be?
 18 A. Well, I don't understand that there was a time
 19 frame, but the thing that we need to do that what we're
 20 not doing is look at the settlement agreement.
 21 Q. I want to know what -- you were involved in
 22 this intimately. What is your understanding of when
 23 Curtis Rogers was supposed to get off this case?
 24 MS. STUDLEY: Form. Predicate.
 25 A. I don't have such an understanding. I

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1 would have to look at the file.
 2 Q. But you know the idea of the Texas settlement
 3 was that Curtis Rogers was to get off the case as
 4 quickly as possible in exchange for Julian agreeing to
 5 the terms in Texas, correct?
 6 MS. STUDLEY: Form.
 7 A. No. I know what's in the settlement
 8 agreement. So if the --
 9 Q. The settlement agreement doesn't say that?
 10 MS. STUDLEY: You have to let him finish.
 11 A. I can't remember exactly what it says.
 12 Q. At the time of the Texas settlement, you know
 13 there was a pending petition to remove Curtis Rogers,
 14 correct?
 15 A. Yes.
 16 Q. And that that was being litigated and
 17 discovery was being done, correct?
 18 A. Correct.
 19 Q. And in return for dropping that petition to
 20 remove, one of the elements of consideration was that
 21 Curtis Rogers would get off the case so that Steve Kelly
 22 could come on, correct?
 23 A. We could look at the settlement agreement. I
 24 believe that was one of the terms of the settlement
 25 agreement, along with a number of other items.

1 remember there was a negotiated term that he would
 2 resign. Steve Kelly would come on, but the timing of
 3 that, whether it was surefire or rapid or slow, I don't
 4 recall. We would have to look at the agreement to
 5 determine it, if there was such a term.
 6 Q. So you don't think that -- as long as he
 7 resigned within 30 days, your position is: He could
 8 stay on as guardian as long as he wanted until the
 9 discharge took place?
 10 MS. STUDLEY: Form. Mischaracterization.
 11 A. I'm saying it's all governed by what's in the
 12 settlement agreement.
 13 Q. Do you believe that the settlement agreement
 14 had a time frame for Rogers to get off this case?
 15 MS. STUDLEY: Form. Asked and answered.
 16 A. And that's what I don't recall.
 17 Q. Okay. It was at least -- do you know how many
 18 years passed from the time of the Texas settlement to
 19 the time that your firm filed a petition to discharge
 20 Rogers?
 21 A. I don't. I don't know the time frame.
 22 THE WITNESS: Ron, when you're at a stopping
 23 point, can I grab a drink of water?
 24 MR. DENMAN: Sure. Sure. Go ahead.
 25 (Short pause).



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1 BY MR. DENMAN:

2 **Q. When is the last time you looked at the Texas**
3 **settlement?**

4 A. A while ago. I mean, it could be years.

5 **Q. Okay. Did your firm prepare the Texas Trust**
6 **Agreement?**

7 A. We worked -- I remember working on that
8 document, making revisions to it. I'm not exactly sure
9 who -- I think it was sort of a joint drafting effort,
10 is what I remember.

11 **Q. And did your firm seek to be compensated for**
12 **your work through the contingency portion that was**
13 **agreed to in exchange for the settlement?**

14 A. Could you rephrase that because I'm a little
15 -- I know we had a hybrid contingency fee agreement, but
16 that dealt with a different subject matter in Texas.

17 **Q. You know that the settlement of the -- that**
18 **the Texas settlement -- that the agreement was that the**
19 **Heinrich firm, who was working on the Texas settlement**
20 **for a contingency fee, would be paid \$1.5 million plus,**
21 **potentially, a portion of the Pioneer leases and that**
22 **was supposed to be the consideration to those attorneys**
23 **for completing the settlement, correct?**

24 MS. STUDLEY: Form.

25 A. I know there was an amount that was set forth

1 that his firm would be seeking separate fees outside of
2 a \$1.5-million contingency fee agreement to work on the
3 settlement that was part of the contingency fee
4 agreement.

5 MS. STUDLEY: Mischaracterization.

6 MS. STEIN: Objection.

7 MS. STUDLEY: Mischaracterization and invades
8 attorney-client.

9 MR. DENMAN: Okay. So you're telling him not
10 to answer?

11 MS. STUDLEY: Yes.

12 MR. DENMAN: Okay.

13 MS. STEIN: Join.

14 BY MR. DENMAN:

15 **Q. Did you ever notify Julian Bivins or his**
16 **counsel that you would be seeking fees outside of the**
17 **consideration that was paid to complete the Texas**
18 **settlement?**

19 A. We have been billing all along separate and
20 apart in whatever that contingency fee arrangement was
21 in Texas.

22 So certainly part and parcel of that custom
23 and practice that we had bills, we had fees, which I
24 remember discussing some of these issues with you. That
25 it was no surprise that we were billing and definitely

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1 for them, and there was some contingency for some
2 additional assets. I recall that general layout of it,
3 but the exact numbers, I'm not sure whether it was a
4 million three, four, five. I would have to look at it
5 to tell you.

6 **Q. But you understood that they were operating**
7 **under the contingency fee agreement, correct?**

8 A. It had been Court approved, yes.

9 **Q. And did they ask you to do the work on the**
10 **Texas Trust?**

11 A. I don't recall being asked necessarily by
12 them. I just recall being involved in the drafting or
13 redrafting with one of Julian's counsel on the other
14 end, and then eventually there was another -- I think he
15 was a tax expert that got involved.

16 So kind of who was representing who, but I
17 don't remember being specifically asked by someone. I
18 just remember doing the work that needed to be done to
19 sort of move the settlement forward.

20 **Q. Did you advise the guardian that you would be**
21 **seeking your fees outside of the contingency fee for the**
22 **work done on the settlement?**

23 MS. STUDLEY: I think that's privileged.

24 You're asking him would he advise the guardian?

25 MR. DENMAN: Yes. Did he advise the guardian

1 expected to be paid for work we were done on the
2 settlement because it had nothing, in my mind, to do
3 with the contingency fee that was paid to the Texas law
4 firm. That was for their role and their litigation as
5 part of the settlement.

6 **Q. Well, the Trust agreement and the settlement**
7 **agreement were part of the Texas settlement, correct?**

8 A. That wasn't the -- that was part of it, but
9 the so-called Texas settlement covered -- if I can see
10 it, I can probably give you a better answer, but the
11 Texas settlement wasn't just a one-issue resolution.

12 **Q. But the Trust agreement was set up to hold all**
13 **of the Texas royalties that were being fought about in**
14 **Texas, correct?**

15 MS. STUDLEY: Form.

16 A. That's part of the reason. I remember there
17 were tax reasons for creating it as well, the Trust.

18 **Q. But that was all Texas stuff. The Texas Trust**
19 **Agreement was funded completely by the assets in Texas**
20 **that were litigated over in Texas, correct?**

21 A. Which had a significant impact on the ward.

22 **Q. Right.**

23 **That's why the Court approved a contingency**
24 **fee agreement for the Texas attorneys to pursue the**
25 **action and completely resolve it --**



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1 MS. STUDLEY: Form.

2 **Q. -- correct?**

3 A. That's why they were awarded their fees, not

4 necessarily for the agreement in the Trust, but they

5 handled the litigation in Texas; maybe that's why we're

6 looking at it differently.

7 **Q. When a personal injury attorney enters into a**

8 **contingency fee agreement, goes to court, litigates and**

9 **then ends up doing a settlement over that personal**

10 **injury case, are you telling me that that attorney can**

11 **then require that the parties they represent hire**

12 **separate counsel and must pay that separate counsel**

13 **money to do the settlement agreement and release on that**

14 **personal injury action?**

15 MS. STUDLEY: Form. Predicate. Speculation.

16 A. I wouldn't use the word "require," but I can

17 tell you in my practice that I often have, over the

18 years, helped personal injury firms structure various

19 documents, create trusts, determine if an annuity is an

20 appropriate resolution.

21 And that's billed separate and apart from the

22 contingency fee that, say, Lytal Reiter or Searcy Denney

23 or whoever might be collecting.

24 **Q. And they would come to you and say -- and you**

25 **would enter a retainer agreement with the client or with**

1 A. Again, all of this was part and parcel of a

2 settlement of a case that involved more issues. I think

3 this is where we're differing than just what had

4 occurred in Texas with regard to the oral royalties and

5 so forth.

6 **Q. Do you know why the Texas Trust attorneys**

7 **weren't retained to do the Texas Trust in Texas?**

8 MS. STUDLEY: Form.

9 A. Everyone agreed this was -- including Julian's

10 counsel, yourself, everyone knew this was the structure

11 that was being followed in terms of the negotiations of

12 the terms of the Trust. Our involvement on the Trust --

13 let's limit it to that -- being essentially because what

14 went into Trust, the terms and conditions of how it

15 could be disbursed was extremely important for the ward.

16 **Q. Are you saying that there was communication to**

17 **me and to my client letting him know that your firm**

18 **would be billing separately outside of the \$1.5 million,**

19 **and that we approved your firm to proceed to draft trust**

20 **and settlement documents to be compensated outside the**

21 **\$1.5 million settlement amount to the Heinrich firm?**

22 MS. STUDLEY: Form. Predicate. Compound.

23 A. I don't recall sending you a letter that had

24 all of that content in it. What I recall, what I'm

25 trying to recite to you, is the fact that it was a known

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1 **the law firm?**

2 A. I have done both, oral and written.

3 **Q. And if it's with the client, the client pays**

4 **you, correct?**

5 MS. STUDLEY: Form.

6 A. Ultimately.

7 **Q. If it's with the law firm, the law firm pays**

8 **you, correct?**

9 A. And usually charges it at cost to the client;

10 they don't absorb it. I might have an agreement with

11 them, but it shows up as a cost when you get down to a

12 closing statement to resolve a case.

13 **Q. Well, that's between the attorney that hired**

14 **you as part of their contingency fee agreement whether**

15 **they can enter into a separate agreement with the client**

16 **to absorb that cost, right?**

17 MS. STUDLEY: Form.

18 A. We enter -- they enter into it with the

19 client.

20 **Q. Here, did you enter into a separate agreement**

21 **where the client knew that you would be responsible --**

22 **excuse me, the client would be responsible for paying to**

23 **create the agreement documents that were part of the**

24 **Texas settlement?**

25 MS. STUDLEY: Form and predicate.

1 quantity of what we were doing. I think why we were

2 doing it was pretty self-evident as well, and it was

3 something that -- I'll call them the Texas lawyers, like

4 you are, weren't doing.

5 So we did it, which is entirely appropriate

6 because it relates back to the ward, and the ward would

7 be the one that would be charged for those services.

8 **Q. Which is why the Texas attorneys got**

9 **\$1.5 million to finish up the case --**

10 A. No.

11 MS. STUDLEY: Wait. There was no question.

12 I'm sorry.

13 **Q. -- right?**

14 MS. STUDLEY: Form. Predicate.

15 I'm sorry.

16 THE WITNESS: That's all right.

17 A. No. The settlement agreement, again, speaks

18 for itself. What happened after the settlement

19 agreement speaks for itself as well in terms of who did

20 what and why.

21 **Q. Did the Heinrich firm ever request your firm**

22 **to do the trust and settlement documents?**

23 A. We started off with that, and I said I don't

24 recall someone formally requesting us to do them. I

25 just recall being involved necessarily in that process.



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1 I think we were helpful in that process in producing a
 2 better product with regard to the Trust by applying our
 3 expertise to that.
 4 **Q. Why didn't you seek reimbursement from the**
 5 **1.5 paid to the Texas attorneys for the work that you**
 6 **performed to help them close out their case in Texas?**
 7 MS. STUDLEY: Form.
 8 A. Apple and orange. That's why.
 9 **Q. So you're saying it's an apple and an orange.**
 10 **So you're saying that --**
 11 A. They are two separate things.
 12 MS. STUDLEY: You have to let him finish.
 13 THE REPORTER: Hold it. Hold it.
 14 **Q. Your work on the settlement agreement and the**
 15 **Trust agreement, they were part of the Texas settlement**
 16 **and contemplated by the Texas settlement, you're saying**
 17 **is apple and orange?**
 18 A. Right, in terms of -- that's my analogy. They
 19 are two separate things. They are two separate
 20 functions.
 21 **Q. Did you ever advise of that to any of the**
 22 **other parties to that agreement?**
 23 A. Well, absolutely; we petitioned for fees to
 24 which you objected --
 25 **Q. Well, that was months later.**

1 **party to the settlement that you would be seeking**
 2 **compensation outside of the \$1.5 million that the other**
 3 **party agreed to pay to buy the piece in connection with**
 4 **this litigation?**
 5 MS. STUDLEY: Objection. Asked and answered.
 6 I'll let you go one more time.
 7 THE WITNESS: Okay.
 8 A. Again, the 1.5 was compensation paid to --
 9 we'll call them the Texas law firm -- Brian Heinrich and
 10 Mr. Hayes. That was not compensation, and you know that
 11 was paid to us. That was compensation that went to them
 12 as part of a settlement having litigation in which they
 13 claimed fees. What we did and for what we sought
 14 compensation, or were awarded compensation, was a
 15 different matter, a different representation, different
 16 work.
 17 **Q. But, Mr. O'Connell, the settlement in Texas**
 18 **included, as part of the settlement, there would be a**
 19 **mutual release and a Trust agreement that was part of**
 20 **the actual settlement negotiated in Texas under the**
 21 **Texas litigation which was brought by the Heinrich firm,**
 22 **correct?**
 23 MS. STUDLEY: Form. Predicate.
 24 A. Again, the settlement agreement would speak
 25 for itself. So do I recall every term of that agreement

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1 A. -- that the firm --
 2 **Q. I'm sorry. That was months later.**
 3 **I'm talking about the time that you undertook**
 4 **to do this work that you intended to bill outside of the**
 5 **\$1.5 million, did you ever notify the other parties to**
 6 **the agreement that you intended to bill separately**
 7 **outside of the \$1.5 million for the time that you spent**
 8 **doing the settlement agreement and Trust agreement?**
 9 MS. STUDLEY: I'm just going to ask that you
 10 let him finish. You interrupted him several times.
 11 Please let him finish.
 12 **Q. You can answer.**
 13 A. I know we've been over this ground before, and
 14 the answer is going to be the same. If there was some
 15 -- if you're asking was there a formal letter that
 16 contained five or six items that you referenced, no, not
 17 that I recall.
 18 But was there a secret? Was it understood
 19 that we were going to continue to do and be compensated
 20 for the services we had been providing up to that date
 21 such as attending the mediation, negotiating the
 22 settlement agreement, no, that was known. There was no
 23 surprise there.
 24 **Q. So what documentation exists? You say it was**
 25 **known. What documentation exists to advise the other**

1 today? No, but we're happy to take a look at it and see
 2 what it says in that regard.
 3 (Phone interruption).
 4 THE WITNESS: Can we stop here?
 5 MR. DENMAN: Yes, we can.
 6 (Recess taken).
 7 BY MR. DENMAN:
 8 **Q. Were you involved at all in the accounting of**
 9 **the guardian that was approved on June 1st, 2012, May**
 10 **31st, 2013, and November 22nd, 2013?**
 11 MS. STUDLEY: Form.
 12 A. I'm not sure without seeing it.
 13 **Q. Let me strike that question.**
 14 **Were you involved in the guardianship**
 15 **accounting for the period of June 1st, 2012, through May**
 16 **31st, 2013, that was approved on November 22nd, 2013?**
 17 A. I'm not sure, Ron. I need to see the
 18 accounting.
 19 **Q. I'm just reading from your answer to the**
 20 **lawsuit. That was from page 23, paragraph 28.**
 21 MS. STUDLEY: Do you want to show it to him?
 22 MR. DENMAN: It says exactly what I said.
 23 **Q. The Court approved the final accounting. Here**
 24 **(handing document).**
 25 A. Oh, great. Okay. Where are you?

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1 Q. Not approve the final accounting. I'm sorry.
 2 The Court approved the guardianship accounting, page 23,
 3 paragraph 28.
 4 A. Okay. I see that.
 5 Q. So my question is: Did you have any
 6 involvement in the guardianship accounting that was
 7 addressed here?
 8 A. I'm not sure what involvement I had. I would
 9 have to see the accounting.
 10 Q. Do you know whether that accounting was ever
 11 provided to Julian Bivins or his counsel?
 12 A. I don't know. I would have to look at the
 13 accounting and probably some other documents to see who
 14 it was served on because I just don't know sitting here.
 15 MS. STUDLEY: May I see this (indicating)?
 16 THE WITNESS: Sure (handing document).
 17 Q. Did you know -- did you ever meet with Sonia
 18 Kobrin to discuss with her the petition to have Rogers
 19 appointed as permanent guardian?
 20 A. Not that I recall.
 21 Q. Did you ever meet with Sonia Kobrin to discuss
 22 with her anything about a petition for -- a petition to
 23 have an emergency temporary guardian appointed?
 24 A. I just don't recall that.
 25 Q. Did you ever request anyone perform an

1 broker's opinion and a formal appraisal, correct?
 2 A. Yes, in the way you and I are using it.
 3 Q. Right.
 4 Under your definition that you described a
 5 formal appraisal as opposed to a broker's opinion, which
 6 is an opinion provided by a broker based upon their
 7 opinion as to what's going on in the market, correct?
 8 A. Correct.
 9 Q. Did you ever request that anyone perform or
 10 provide a broker's opinion for any of the four
 11 properties that we've discussed? I can go into a better
 12 definition of those, Brian -- excuse me, Mr. O'Connell,
 13 if you have any questions, but I think we all know the
 14 four properties.
 15 MS. STUDLEY: Same objection and instructions.
 16 A. I know that, of course, there were broker
 17 opinions obtained on 330 and 808, and there might have
 18 been -- this is why I'm uncertain -- on 67th Street.
 19 Q. Do you have any idea what value of 67th Street
 20 was under any broker's opinion?
 21 MS. STUDLEY: Form. Predicate.
 22 A. I don't recall. I just recall that there was
 23 some workup done by Mr. Lieberman on that, but --
 24 Q. On 67th Street?
 25 A. On 67th; the amounts, I just don't recall them

1 appraisal on the 67th Street property?
 2 MS. STUDLEY: Objection. Form.
 3 To the extent it doesn't involve anything
 4 that's privileged, you can answer.
 5 A. Not that I recall.
 6 Q. Did you ever request anyone perform an
 7 appraisal on 808 Lexington?
 8 A. Not that I recall.
 9 Q. Did you ever request anyone perform an
 10 appraisal on the Portland Place property?
 11 A. Not that I recall.
 12 Q. Did you ever request anyone perform an
 13 appraisal on 330?
 14 A. Not that I recall.
 15 Q. Did you ever determine the cost of having an
 16 appraisal performed on any of the four properties that I
 17 just mentioned?
 18 A. I'm using the word "appraisal" as opposed to a
 19 broker's opinion. That's why I'm hesitating because I'm
 20 distinguishing -- a formal appraisal by an MAI
 21 appraiser?
 22 Q. Exactly.
 23 A. I don't recall making such a request, but I
 24 might have. I just don't recall doing so.
 25 Q. You understand the difference between a

1 at this point.
 2 Q. As we sit here today, do you have any -- do
 3 you know what the approximate value was by Mr. Lieberman
 4 and the broker's opinion for 808?
 5 A. I don't, to be certain. I want to be certain.
 6 I don't want to guess.
 7 Q. Do you know whether you were ever provided
 8 with any valuation, a broker's opinion, that put the net
 9 value of 67th Street and 808 to be similar?
 10 MS. STUDLEY: Form.
 11 A. I just don't recall numbers. I remember there
 12 being an analysis and discussion with Mr. Lieberman, but
 13 the exact amounts as were attributed to which property,
 14 I would have to look at some documents, look at the
 15 file.
 16 Q. Did you ever review anything in writing, or
 17 any documentation created by Mr. Lieberman, with respect
 18 to 67th Street?
 19 A. I do remember seeing the -- I believe it was
 20 from him, but it also came up as part of the New York
 21 settlement conference with all of the parties sort of
 22 in attendance talking about values of these various
 23 properties. I can't remember the amounts for you.
 24 I just remember that being the subject matter
 25 early on in the settlement conference that was sort of

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1 a rather intense discussion about what values should be
 2 used or attributed to those properties.
 3 **Q. So you believe that there was actually**
 4 **documentation that was presented during -- actual**
 5 **documentation that was provided to you by Mr. Lieberman**
 6 **with some degree of analysis as to an opinion about the**
 7 **value of 67th Street?**
 8 MS. STUDLEY: Objection.
 9 A. That's not what I'm sure about.
 10 MS. STUDLEY: Just give me a quick pause.
 11 THE WITNESS: Sure.
 12 MS. STUDLEY: That's okay.
 13 Objection. Mischaracterization.
 14 BY MR. DENMAN:
 15 **Q. Do you know whether you have in your files**
 16 **today any documentation from Mr. Lieberman pertaining to**
 17 **any type of valuation analysis of 67th Street at all?**
 18 A. I'm not sure.
 19 **Q. If you did, you would still have that?**
 20 A. Yes.
 21 MS. STUDLEY: Form.
 22 **Q. Do you recall ever reviewing the deposition**
 23 **testimony from Oliver, Jr., that he believed the value**
 24 **of the 67th Street property was between 10 and \$20**
 25 **million?**

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1 A. I don't recall that.
 2 **Q. Do you recall ever telling the Court that you**
 3 **believed that any opinion by Oliver Bivins, Jr., that**
 4 **the value of 67th Street being between 10 and \$20**
 5 **million was a pipe dream?**
 6 MS. STUDLEY: Form.
 7 A. I don't recall saying that. The best way to
 8 determine that would be to look at the transcript; if
 9 you have it, I'm happy to look at it.
 10 **Q. Do you recall the amount of the mortgage on**
 11 **the 67th Street property?**
 12 A. I don't recall this.
 13 **Q. Do you ever advise Curtis Rogers not to pay**
 14 **the Sovereign mortgage?**
 15 MS. STEIN: Objection.
 16 MS. STUDLEY: I'm going to object and direct
 17 you not to answer. Thank you.
 18 **Q. If a failure to pay the Sovereign mortgage**
 19 **would cause the mortgage to go into default, would that**
 20 **be in the best interests of the ward?**
 21 MS. STUDLEY: Form. Predicate.
 22 MS. STEIN: Objection.
 23 MS. STUDLEY: You can answer.
 24 THE WITNESS: I can answer, okay. She was
 25 making a privilege objection.

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1 I'm sorry. Can you read it back. I was
 2 paying too much attention to the objections.
 3 (Question read back).
 4 MS. STUDLEY: Form. Predicate.
 5 THE WITNESS: It would depend on the facts and
 6 circumstances. For example, if the ward was short of
 7 funds, as the ward was here, not paying that mortgage
 8 could well -- would well be in the Ward's best
 9 interests.
 10 BY MR. DENMAN:
 11 **Q. So it depends whether or not the ward had**
 12 **sufficient cash to pay the mortgage at the time; is that**
 13 **right?**
 14 MS. STUDLEY: Form. Predicate.
 15 A. That would be one factor, a significant
 16 factor.
 17 **Q. You would agree with me that refinancing the**
 18 **Beachtown mortgage was part of the settlement to have**
 19 **Beachtown paid in connection with the New York**
 20 **settlement?**
 21 MS. STUDLEY: Form.
 22 A. Again, I would have to look at the settlement
 23 itself. I can recall generally there was language about
 24 dealing with paying the Beachton mortgage, but to really
 25 drill down and be precise, I would want to look at the

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1 settlement agreement itself because that's as far as my
 2 recollection would go as this point.
 3 **Q. But you would agree with me it made commercial**
 4 **sense to pay off the mortgage for Beachton at the time**
 5 **that you were trying to get the New York settlement**
 6 **approved by the Court, correct?**
 7 MS. STUDLEY: Form. Predicate.
 8 MS. SCHULTZ: Form.
 9 A. No, because I'm back to sort of looking at the
 10 totality of the facts and circumstances of that moment,
 11 what was available in the way of financing or not, what
 12 the Ward's situation was at that point in time, how much
 13 of a loan should he obtained, what should it be used
 14 for. All of those issues would have to be analyzed.
 15 And sitting here now it just would be really
 16 tough for me to put that together without reviewing,
 17 I could if I reviewed different documents.
 18 **Q. But when you came into court on September 13th**
 19 **to seek approval of the New York settlement, you wanted**
 20 **the Court to approve the New York settlement, correct?**
 21 MS. STUDLEY: Form.
 22 MS. SCHULTZ: Form.
 23 A. The client, of course. It wasn't me
 24 personally because we were advocating on behalf of the
 25 guardian, and the guardian wanted the settlement



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1 approved as being in the best interests of the ward, in
 2 my opinion, if you're going to ask me that.
 3 **Q. Well, let's get to your opinion because you've**
 4 **now told me that the client, the guardian, wanted the**
 5 **settlement to be approved. You have communication from**
 6 **the --**
 7 A. The petition --
 8 **Q. Hold on.**
 9 **Do you have communication from the guardian**
 10 **to you that he wanted this settlement to be approved?**
 11 MS. STUDLEY: That's attorney-client.
 12 MR. DENMAN: Well, if he -- no. No. No. He
 13 just opened the door and said that the guardian wanted
 14 the settlement to be approved. You can't open the door
 15 on one hand and then close it on the other.
 16 THE WITNESS: Yeah. I can handle this when
 17 you're done with your discussion.
 18 BY MR. DENMAN:
 19 **Q. Okay. Please.**
 20 A. The client signed the petition to have the
 21 settlement approved.
 22 **Q. So other than besides the client signing the**
 23 **petition to have the settlement approved, there's no**
 24 **other communications from the client to you regarding**
 25 **the approval of the settlement; is that right?**

1 MS. STUDLEY: Form.
 2 A. Well, I guess my distinction, Ron, is the "we"
 3 part. We're representing the guardian. The guardian
 4 signed the petition to have the settlement approved, and
 5 we advocated the guardian's position.
 6 **Q. And insofar as advocating the guardian's**
 7 **position, you made representations to the Court,**
 8 **correct?**
 9 A. I don't recall what -- if I made
 10 representations; if I did show, them to me in a
 11 transcript and I'm happy to discuss them. But I just
 12 don't recall what representations I made, if I made any.
 13 **Q. Okay. If you made any, those would have been**
 14 **truthful, correct?**
 15 MS. STUDLEY: Form.
 16 A. To the best of my knowledge, sure, if I made
 17 any.
 18 **Q. Did you rely upon Keith Stein for evaluating**
 19 **-- for valuing the 808 and the 67th Street properties in**
 20 **any way?**
 21 MS. SCHULTZ: Form.
 22 MS. STUDLEY: I'm going to object. Work
 23 product.
 24 MR. DENMAN: Are you instructing him not to
 25 answer?

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1 A. That's privileged.
 2 MS. STUDLEY: That I'm going to direct him not
 3 to answer.
 4 **Q. So we only get a little picture of this?**
 5 A. You get a big picture because the client
 6 signed the petition to have the settlement approved.
 7 **Q. And the client signed the petition after**
 8 **receiving advice from you as his counsel, correct?**
 9 MS. STUDLEY: Now I'm going to direct him not
 10 to answer.
 11 MR. DENMAN: Why?
 12 MS. STUDLEY: You're asking him for attorney-
 13 client communications.
 14 MR. DENMAN: I didn't ask what the advice was
 15 of the communications. I'm saying that the client
 16 wanted to approve -- to sign the petition to approve the
 17 settlement after receiving advice from counsel.
 18 MS. STUDLEY: Yeah, but there's the
 19 implication. I'm not going to allow him to answer that.
 20 MR. DENMAN: Okay. I'm not going to argue
 21 with you because that's why we have courts.
 22 BY MR. DENMAN:
 23 **Q. And when came into court in September of 2013**
 24 **on behalf of the guardian, you sought to have the New**
 25 **York settlement approved by the Court; is that right?**

1 MS. STUDLEY: Yes, work-product communications
 2 between the attorneys.
 3 BY MR. DENMAN:
 4 **Q. If Keith Stein made a representation about the**
 5 **value of one of the properties in court while you were**
 6 **present, and you considered the value to be otherwise,**
 7 **would you have notified the Court?**
 8 MS. STUDLEY: Form. Speculation.
 9 MS. SCHULTZ: Form.
 10 A. I guess it depends. Give me an example. If
 11 it was a \$10 difference, a million dollars' difference,
 12 I would have to have a little more facts to know to be
 13 able to answer that.
 14 **Q. For example, in connection with the petition**
 15 **to approve the hearing on the petition to approve the**
 16 **New York settlement, if Keith Stein represented to the**
 17 **Court that the townhouse on 67th Street is probably**
 18 **equivalent to the 808 property, but you had broker**
 19 **opinions or other documents showing the values to be**
 20 **different, would you have advised the Court otherwise?**
 21 MS. STUDLEY: Form. Predicate.
 22 A. It would depend. Again, are we talking about
 23 net values? Are we talking about values, gross values,
 24 net values?
 25 **Q. So if he said the townhouse on 67th Street**



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1 is probably equivalent to the 808 property and did not
2 specify net values or gross values, is that something
3 you would have discussed with the Court of whether these
4 were net or gross to make sure that the Court did not
5 have a misunderstanding as to whether they were net or
6 gross?

7 MS. STUDLEY: Form. Predicate. Speculation.

8 MS. SCHULTZ: Form.

9 A. Again, it would go back to -- I would have to
10 look at the transcript and see what was submitted to the
11 Court. I know, for example, you submitted an appraisal
12 of 808. I would have to get that totality back in my
13 mind because it's been a few years. I just don't recall
14 who said what at a particular hearing on a particular
15 date.

16 Q. Well, the appraisal that we submitted was
17 several months later in connection with you seeking
18 attorneys' fees for 808, right?

19 MS. STUDLEY: Form.

20 A. It could have been. That's exactly what I
21 mean. That's why I can't give you definite, precise
22 answers without refreshing some recollection and looking
23 at a transcript, it sounds like, primarily.

24 Q. Were you aware that the 67th Street property
25 sold for over \$22 million after the New York settlement

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1 petition hearing, correct?

2 A. I know it was sold for \$20 million or more.
3 The price -- again, the exact amount, I don't know. I
4 realize it was afterwards; how much afterwards, again,
5 I don't know. But I could tell you those two points at
6 least.

7 Q. You know that the mortgage was no more than
8 two-and-a-half million on that property, right?

9 MS. STUDLEY: Form.

10 A. I don't know.

11 Q. If the mortgage was only two-and-a-half
12 million dollars and the property sold for 22-and-a-half
13 million dollars netting \$20 million for that property,
14 you would agree with me that it was considerably more
15 valuable than 808 Lexington, correct?

16 MS. STUDLEY: Form.

17 MS. STEIN: Form.

18 MS. SCHULTZ: Form.

19 A. More valuable than what?

20 Q. More valuable as a cash asset valuation --
21 dollars, cents, numerics, whatever quantification factor
22 you want to use.

23 A. Sure. What I'm talking about with you -- to
24 be clear -- value is a relative subject. Are we talking
25 about value with regard to an appraisal that was done at

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1 a certain point in time, or value in terms of sales
2 actually to a property? Of course, when it's sold to a
3 willing buyer and a willing seller, etc., that's
4 certainly going to set the value of it.

5 Especially with these types of New York
6 properties, appraisals are not a science. They are more
7 of an art because it was a fast-moving market at these
8 points in time. So that's why I wanted to be sure when
9 you use the word "value," that it's a little hard to
10 answer because value -- when something sells, that's its
11 value if it's a fair market sale.

12 MS. STUDLEY: Predicate on the last question.

13 Q. So, as we sit here today, it's your testimony
14 that you've never had -- as we sit here today, your
15 recollection is that you've never had an understanding
16 that the value of 67th Street was considerably -- the
17 net value of 67th Street was considerably greater than
18 808 Lexington --

19 MS. STUDLEY: Form.

20 MS. SCHULTZ: Form.

21 MS. STEIN: Form.

22 A. I mean, I know approximately what 808 sold
23 for. I know approximately what 67th Street sold for.
24 Now you're telling me what the mortgage was on 67th
25 Street, and there was a mortgage on 808. I don't recall

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1 all of the exact amounts, but I can do the math and tell
2 you based on sales prices one netted some amount more
3 than the other, exactly what it was.

4 But that's as far as I can go sitting here
5 today without going back and proving records and so
6 forth.

7 Q. Did you ever have an understanding that if the
8 808 property was sold as requested in the petition to
9 sell 808 Lexington, that the sale would net a mortgage
10 and fees somewhere around \$5 million to the ward?

11 MS. STUDLEY: Form.

12 A. Again, I don't recall what the net would be,
13 sitting here today. I would have to have the facts and
14 figures, look at the file, review, you know, the exact
15 amount of the mortgage, the sales expenses, those types
16 of things, to give you an accurate answer.

17 Q. At the time of the petition to sell -- the
18 hearing on the petition to sell the property, did you
19 have an opinion as to whether the billing had been
20 utterly mismanaged for a number of years?

21 MS. STUDLEY: Form.

22 MS. STEIN: Form.

23 MS. SCHULTZ: Form.

24 A. Again, I'm a little confused. When you say
25 "utterly mismanaged," by whom?



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1 Q. I don't know. I'm asking you.
 2 At the time of the petition to sell the
 3 property, did you have an opinion that the building was
 4 utterly mismanaged for a number of years?
 5 MS. STUDLEY: Form.
 6 A. I just don't recall.
 7 Q. If a representation was made that the building
 8 was utterly mismanaged for a number of years, do you
 9 know who would have been utterly mismanaging the
 10 property for a number of years?
 11 MS. STUDLEY: Form.
 12 MS. STEIN: Form.
 13 A. I don't know.
 14 Q. Did you have an opinion as to whether Curtis
 15 Rogers had utterly mismanaged the property prior to the
 16 petition to sell 808?
 17 MS. STUDLEY: Form.
 18 A. No.
 19 Q. Did you believe that he had properly managed
 20 the property prior to the petition to sell 808?
 21 MS. STUDLEY: Form.
 22 A. Yes.
 23 Q. Did you believe that Steve Kelly had properly
 24 managed 808 Lexington prior to the petition to sell 808?
 25 MS. STUDLEY: Form.

1 Q. And you wanted to sell 808 Lexington to pay
 2 your fees, correct?
 3 MS. STUDLEY: Form.
 4 A. No.
 5 Q. You never represented to the Court that you
 6 wanted to sell the building to pay fees?
 7 A. Not a sole reason, no.
 8 MS. STUDLEY: Objection to predicate.
 9 Q. On any reason?
 10 A. No. What representations, again, were made
 11 on the selling of 808, you would need to look at the
 12 transcript. You need to look at the petition for the
 13 sale. And that would be the reasons for seeking the
 14 sale, whether it was either argued at the hearing, or
 15 presented as evidence at the hearing, or it would be in
 16 a petition of sale.
 17 Q. You would agree that part of the reason for
 18 the petition to sell the property is because you wanted
 19 to pay fees?
 20 MS. STUDLEY: Form. Asked and answered.
 21 A. It would be -- the reason would be what was
 22 argued at the hearing, or represented at the hearing,
 23 evidence presented at the hearing, those would be the
 24 reasons.
 25 Q. Would you agree with the representation made

1 A. Yes.
 2 Q. You agree that Fig & Olive wanted to renew its
 3 lease at 808 Lexington at the time of the hearing on the
 4 petition to sell 808?
 5 MS. STUDLEY: Form. Predicate.
 6 A. I'm trying to recall, and this is where it
 7 gets difficult without a file to look at for
 8 orientation.
 9 At some point I know Fig & Olive had a lease.
 10 Of course, it was coming -- expiring in December. But
 11 in terms of when -- if they had a desire to renew and so
 12 forth, I have a general recollection of that but nothing
 13 specific.
 14 Q. Well, let me ask you this: Do you have any
 15 general recollection that they wanted to vacate the
 16 property at the expiration of their lease?
 17 A. I really don't recall that. I would recall
 18 more if I'm guessing here.
 19 MS. STUDLEY: No. Don't guess.
 20 A. I don't want to get punched for guessing.
 21 Q. Well, you can easily review your records and
 22 communications to determine whether Fig & Olive wanted
 23 to renew its lease or not, right?
 24 A. Right, that's where it would be. There were
 25 definitely communications from someone on that subject.

1 at the hearing on the petition to sell the property that
 2 Julian has no standing in any matters related to 808?
 3 MS. STUDLEY: Form.
 4 A. Again, I would have to go back and say what
 5 has he -- what was being petitioned for what had he
 6 filed at that point in time, and he filed a notice of
 7 appearance or a request for copies. I would have to
 8 look at the procedural posture of the case to determine
 9 whether he was an interested person or not at that
 10 moment.
 11 Q. If the only issue was that Julian was
 12 objecting to the sale of 808 at the hearing on the
 13 petition to sell 808, do you have an opinion as to
 14 whether Julian had a standing, had standing to object to
 15 the petition to sell 808?
 16 MS. STUDLEY: Form.
 17 A. Yeah. I would have to go back and refresh my
 18 recollection on what we filed on behalf of the guardian.
 19 Did he file something in response, what's the basis, I
 20 guess in what capacity was he claiming to object. Those
 21 are things that I just have to review to give you a
 22 precise answer because I don't recall.
 23 Q. Would you agree with the representation that
 24 there's no law that says Julian gains more control at
 25 the end of the Ward's life --



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1 MS. STUDLEY: Form. Predicate.

2 MS. SCHULTZ: Form.

3 **Q. -- made at the hearing by your folks in**
4 **connection with the petition to sell the property?**

5 A. Again, I don't recall that being said. So I
6 would have to have a transcript to give me some sense
7 of remembrance of it. Just sitting here right now -- I
8 don't know how many years ago that was, but I don't have
9 the benefit of that type of a memory.

10 **Q. As of the date of the petition to sell, had**
11 **the property been completely transferred but the estate**
12 **was not getting rents --**

13 MS. STUDLEY: Form.

14 **Q. -- the guardianship estate?**

15 A. Because that's what I was -- there was the
16 Lorna estate.

17 **Q. No. No. I'm talking about the guardianship**
18 **estate.**

19 A. When you say "had been transferred," that's
20 what's throwing me off.

21 **Q. Would you agree with me that Julian was not a**
22 **party to the New York settlement?**

23 MS. STUDLEY: Form.

24 MS. SCHULTZ: Form.

25 MS. STEIN: Form.

1 A. Again, I think we're debating the word, what
2 "party" means. He was a participant in the agreement
3 negotiations along with his counsel. And it's at that
4 point in time -- so this, again, gives you the time
5 frame. It's the settlement conference itself. My
6 understanding was that he was in agreement with it.

7 **Q. And when you made a representation on the**
8 **record during -- to the Court in September, on September**
9 **19th, 2014, in connection with the petition to sell the**
10 **property, that Julian wasn't a party to the New York**
11 **settlement, what did you mean by "party" there?**

12 MS. STUDLEY: I'm going to argue lack of
13 predicate.

14 A. Yes. Party would be -- and, again, I don't
15 recall making that comment, but if I did, I'll try to
16 answer your question.

17 That party, then, would be used in the classic
18 sense of someone who has a signature line as a party in
19 line numbers 1, 2, 3, 4, 5 to an agreement.

20 **Q. And if you don't explain what a party means**
21 **each time that you make the representation as to whether**
22 **someone is party or not, how are they supposed to**
23 **differentiate whether it's the classic, as you**
24 **described, or just a participant party, as you've**
25 **described before?**

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1 A. It depends on one's definition of "party."
2 Did he sign the so-called New York settlement document?
3 No. But he was present, had counsel, participated in
4 various sundry negotiations, was present at the end when
5 sort of the agreement was laid out and I understood was
6 consented to it.

7 **Q. What is it that you -- how is it that you**
8 **believe that he consented to it after giving about an**
9 **hour-long objection during the hearing to approve? What**
10 **about that made you believe that he consented to it?**

11 MS. STUDLEY: Move to strike counsel's
12 comments.

13 But you can answer.

14 **Q. You can answer.**

15 A. Again, I'm going back in time to the New York
16 settlement discussion itself where he was present. I
17 felt based that on his presence, comments he made or his
18 counsel made, that he had consented to the New York
19 settlement. I'm not talking about the hearing. I
20 understand when you represented him at the hearing that
21 he objected.

22 **Q. So you're saying that back in May of 2013**
23 **during the settlement conference that because Julian was**
24 **present, you believe that he participated and therefore**
25 **was a party to the New York settlement?**

1 MS. STUDLEY: Objection. Form. Predicate.
2 Argumentative.

3 A. Again, it would depend on the context that it
4 is being used in. That's why I'm explaining it to you
5 now.

6 **Q. And how is the Court supposed to understand**
7 **the difference if you just say the word "party" without**
8 **explaining the context of whether it was just a**
9 **participant or whether it was an actual signing party?**

10 MS. STUDLEY: Objection.

11 A. Again, it depends what's being -- this is
12 where it's difficult. It depends what's being argued
13 over it at that moment where I would have to see a
14 little bit more of the context of who's saying what, has
15 evidence been provided, is there a closing argument, an
16 opening argument.

17 That's where I would need more information.

18 **Q. Prior to the petition to sell the property,**
19 **you knew that Julian wanted to purchase the property,**
20 **correct?**

21 MS. STUDLEY: Form.

22 MS. SCHULTZ: Form.

23 A. I know at one point he had an interest in it
24 and, in fact, purchased a property, but when that
25 happened, I'm not sure sitting here now.



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1 Q. Well, you know that it was prior -- within
 2 months of the motion to sell the property, Julian had
 3 communicated to you that he wanted to purchase the
 4 property, correct?
 5 MS. STUDLEY: Form.
 6 A. That's what I'm not sure of because it would
 7 be a total guess.
 8 Q. If Julian purchased the property directly from
 9 the guardian prior to Lieberman signing the exclusive
 10 listing agreement, then Lieberman would not have been
 11 entitled to the six percent commission, correct?
 12 MS. STUDLEY: Objection. Predicate.
 13 MS. SCHULTZ: Form.
 14 A. Not necessarily because we have to analyze it
 15 there. I don't know the timing of his commission
 16 agreement. I don't know what conversations he may have
 17 had, Mr. Lieberman, with Steve Kelly, with Keith Stein.
 18 So you're familiar -- I know you do real estate on your
 19 own. So you're familiar with how brokerage law works in
 20 terms of when someone is entitled to a commission or not
 21 a commission.
 22 I can't give you an answer to that without
 23 knowing who sort of said what to whom, when, where.
 24 Q. Well, I mean, you've done procuring cause
 25 litigation, haven't you?

1 MS. STUDLEY: Form.
 2 A. I'm familiar with it, sure.
 3 Q. Okay. So if Lieberman was not the procuring
 4 cause of Julian Bivins seeking to purchase the property,
 5 then Lipa Lieberman would not be entitled to a six
 6 percent commission if there was no actual exclusive
 7 listing agreement, correct?
 8 MS. STUDLEY: Objection. Predicate.
 9 Speculation.
 10 MS. SCHULTZ: Form.
 11 A. Again, I need to know more facts and figures
 12 based on how expansive, as you know, the law is on
 13 procuring cause especially in Florida. And I don't know
 14 New York's.
 15 Q. Do you know why it was rushed to have
 16 Lieberman sign an exclusive listing agreement prior to
 17 the hearing on the petition to sell?
 18 MS. STUDLEY: Form. Predicate.
 19 MS. SCHULTZ: Form.
 20 A. I don't recall that there was a rush. I don't
 21 remember the exact sequence of what was signed when in
 22 relation to the hearing.
 23 Q. Do you recall the e-mails from Keith Stein to
 24 Lipa Lieberman that came out during Stein's fee hearing
 25 where he was upset that your firm was not moving quick

1 enough to get the exclusive listing agreement signed by
 2 Steve Kelly?
 3 MS. STUDLEY: Form.
 4 A. And I remember you asked Ms. Crispin that this
 5 morning, but I don't know the dates of those. But I
 6 heard you, of course, raise that. But I don't have the
 7 e-mails in front of me. I don't have the meat and
 8 potatoes to give a precise answer.
 9 Q. Lipa Lieberman performed a valuation for the
 10 purposes of your firm getting the contingency fee award
 11 in exchange for an expectation that you would help him
 12 become the listing agent for the property, correct?
 13 MS. STUDLEY: Form.
 14 MS. SCHULTZ: Form.
 15 MS. STUDLEY: Predicate. Mischaracterization.
 16 A. No, I don't recall that.
 17 Q. Did you ever read Lipa Lieberman's deposition
 18 transcript?
 19 A. At some point, but not recently.
 20 Q. And do you recall Lipa Lieberman saying that
 21 the only compensation he received for providing expert
 22 testimony before -- let me take away the word "expert";
 23 for providing testimony on valuation at the hearing for
 24 you to get a contingency fee was because he wanted to --
 25 or he expected to get the exclusive listing agreement

1 for the property?
 2 MS. STUDLEY: Form.
 3 MS. SCHULTZ: Form.
 4 A. Again, I would have to have his deposition in
 5 front of me, and I couldn't tell you what was in his
 6 mind either.
 7 Q. But your firm never -- you or the firm never
 8 told Lipa Lieberman that you would get him the listing
 9 agreement on 808 in exchange for him providing testimony
 10 on valuation for your contingency fee hearing?
 11 MS. STUDLEY: Form. Predicate.
 12 A. And I don't recall that. I don't recall that
 13 ever being said at all.
 14 Q. And if you had an e-mail communication with
 15 that, would you still have that today?
 16 A. If there was such a communication.
 17 Q. Do you recall ever obtaining an invoice from
 18 Lipa Lieberman in connection with any services that he
 19 provided at your request?
 20 MS. STUDLEY: Form. Predicate.
 21 A. Again, I know this from the morning session.
 22 I don't recall. It could have been an invoice for his
 23 travel expenses, his out-of-pocket expenses.
 24 Q. I apologize.
 25 Aside from out-of-pocket expenses, I mean, his



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1 actual work and the hours of time that he spent, even in
 2 his deposition testimony, did he ever submit an invoice
 3 to your firm for his time?
 4 A. Not that I recall.
 5 Q. Do you find that unusual?
 6 MS. STUDLEY: Form.
 7 A. No.
 8 Q. How many -- you get experts all the time that
 9 just provide free work for you?
 10 MS. STUDLEY: Form. Predicate.
 11 MS. SCHULTZ: Form.
 12 MS. STEIN: Form.
 13 A. Well, again, it depends --
 14 Q. I just want to know who you use so I can start
 15 talking to these guys.
 16 MS. STUDLEY: Form.
 17 A. It depends on what situation we're getting
 18 into, if it's even expert testimony, if it's trial --
 19 Q. So if it's not expert testimony, you then
 20 sometimes --
 21 MS. STUDLEY: You have to let him finish.
 22 MR. DENMAN: I'm sorry. I thought he was
 23 finished.
 24 Q. So the distinction is whether it's expert
 25 testimony or not?

1 A. Not that I recall.
 2 Q. Who asked him to do it?
 3 A. I don't know.
 4 Q. So would we have to ask the person who hired
 5 him to know whether he was paid?
 6 MS. STUDLEY: Form.
 7 MS. SCHULTZ: Form.
 8 A. Yes, or I would say talk to the person who had
 9 those conversations with him, which would be -- to
 10 narrow it down -- I think Mr. Stein or Ms. Crispin.
 11 Q. But you never had any discussions with
 12 Mr. Stein or Ms. Crispin about the retention agreement
 13 with -- or whatever the payment agreement was with
 14 Mr. Lieberman?
 15 MS. STUDLEY: Objection. That's work product.
 16 I'm going to direct him not to answer. You asked him
 17 what he talked to Ashley or Mr. Stein about?
 18 MR. DENMAN: About the expert that they used
 19 to testify in court?
 20 MS. STUDLEY: Yeah. Right. You can't --
 21 that's work product.
 22 MR. DENMAN: Seriously?
 23 MS. STUDLEY: Seriously. Well, am I'm going
 24 to ask you what you talk to your partners about?
 25 MR. DENMAN: About the particular subject of

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1 MS. STUDLEY: Form.
 2 A. Not necessarily; if you're talking about --
 3 well, you have tell me what you're talking about because
 4 I'm a little unclear.
 5 Q. I'm just wondering how it is that -- or what
 6 was the arrangement that you understood when you hired
 7 Lipa Lieberman to perform services that he was to be
 8 compensated?
 9 MS. STUDLEY: Form.
 10 A. I think that's presupposing that we hired him
 11 to perform any services.
 12 Q. So you didn't hire him to perform any
 13 services?
 14 MS. STUDLEY: Objection. Lack of predicate.
 15 A. Not that I recall.
 16 Q. So do you know how it was that he just
 17 happened to provide testimony for you in connection with
 18 the contingency fee hearing?
 19 MS. STUDLEY: Form.
 20 A. That he was familiar with the value of the
 21 property.
 22 Q. And when he went out to do this broker's
 23 opinion that you've talked about so far, was he hired to
 24 do that?
 25 MS. STUDLEY: Form. Predicate.

1 paying an expert to determine what the expert fee
 2 relationship was?
 3 MS. STUDLEY: Yeah.
 4 MR. DENMAN: That's okay. I'm not going to
 5 fight with you.
 6 BY MR. DENMAN:
 7 Q. Do you know whether any type of agreement
 8 existed regarding compensating Lipa Lieberman for the
 9 work that he performed in connection with any of the
 10 properties at issue?
 11 MS. STUDLEY: Form. Asked and answered.
 12 MS. SCHULTZ: Form.
 13 A. I don't know, the same answer.
 14 Q. If such an agreement existed, would that be
 15 within your files?
 16 MS. STUDLEY: Form.
 17 A. If there was a written agreement that was
 18 transmitted to us, yes.
 19 Q. What about if there was just an e-mail
 20 communication understanding what the compensation would
 21 be, would that be within your files?
 22 MS. STUDLEY: Form.
 23 A. I'm using the -- to me that's written even
 24 though it's electronic.
 25 Q. I guess I'm talking about sometimes there are



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1 agreements in e-mails to confirm understandings, and
2 other times there's written contracts such as the
3 exclusive agreement, listing agreement, that was entered
4 into prior to the sale.

5 You've told me that you're not aware of any
6 actual contract that existed?

7 A. Correct.

8 Q. Do you know whether there is any type of
9 e-mail communication regarding the understanding of
10 payment to Lipa Lieberman for his services performed?

11 A. I don't know.

12 Q. If there was any type of understanding
13 regarding a payment to Lipa Lieberman for the services
14 that he was to perform between either Ms. Crispin or
15 Mr. Stein in connection with the litigation ongoing,
16 is that something that you would expect to be copied to
17 you?

18 MS. STUDLEY: Calls for speculation.

19 A. Possibly.

20 Q. I mean, is that the procedure, the way things
21 work? Do you, as the partner overseeing everything,
22 expect to have those communications passed by you?

23 MS. STUDLEY: Same objection.

24 A. Typically.

25 Q. Do you know why a petition to compel Oliver,

1 A. I don't recall what, if any, representations
2 were made to the Court, and the best evidence of that
3 would be the transcript of the hearing.

4 Q. Do you have an understanding, as we sit here
5 today, whether you expected that a month after the
6 approval of the New York settlement, that all of the
7 proceeds from the rental income on 808 Lexington would
8 go to the guardian?

9 MS. STUDLEY: Form.

10 A. Again, without having the transcript and
11 reviewing the settlement, again, I couldn't answer that
12 definitively today.

13 MR. DENMAN: Let's go ahead and take a break.
14 (Recess taken).

15 BY MR. DENMAN:

16 Q. I will give you the amended complaint. Turn
17 to page 5 of the answer.

18 A. Okay. Yes.

19 Q. In paragraph 40 you answer: "Responding to
20 the 40th allegation denies as phrased because it was
21 ultimately determined that the divorce was fraudulently
22 procured by Julian Bivins."

23 Tell me what evidence you have to support the
24 statement that the divorce was -- that it was ultimately
25 determined that the divorce was fraudulently procured by

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1 Jr., to comply with the New York settlement was not
2 filed until 13 months after his noncompliance with the
3 settlement began?

4 MS. STUDLEY: Form.

5 A. I'm not sure, sitting here today, exactly why.
6 I know there were some discussions with Ms. Levine about
7 the agreement and his compliance, but that part I can
8 recall.

9 Q. Do you recall telling the Court, in connection
10 with getting the New York settlement approved, that the
11 guardian would receive double the rent the next month
12 after the settlement was approved?

13 MS. STUDLEY: Form.

14 A. I don't recall that without seeing the
15 transcript.

16 Q. Was that your understanding? That the rental
17 income, the full rental income on 808, was to begin the
18 month after the approval of the agreement?

19 A. I would have to look at the settlement
20 agreement.

21 Q. Do you dispute that your side represented to
22 the Court that rent receipts to Rogers would double the
23 next month during the hearing to seek approval of the
24 New York settlement?

25 MS. STUDLEY: Form.

1 Julian Bivins.

2 MS. STEIN: Form.

3 A. Yeah. Probably the best way to answer that
4 today would be to look at the -- which I don't have, to
5 look at the petition for court approval for us to seek
6 to set aside on full faith and credit grounds the
7 divorce. That would be probably the best document to go
8 to now for that information.

9 Q. You would agree with me there is no -- that
10 there's never been an evidentiary hearing on whether or
11 not the Texas divorce was fraudulently procured by
12 Julian Bivins?

13 MS. STUDLEY: Form.

14 A. Correct. There's never been a hearing on that
15 subject because the case ended up being settled as part
16 of the New York -- that claim ended up being settled as
17 part of the New York settlement.

18 Q. Are you aware of any factual findings by any
19 Court that the divorce of Oliver, Sr., and Lorna Bivins
20 was fraudulently procured by Julian Bivins?

21 A. I'm not aware of findings by a court in that
22 regard.

23 Q. Are you aware of any agreement or admission by
24 Julian Bivins that he fraudulently procured the divorce
25 of Oliver, Sr., and Lorna Bivins?



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1 MS. STUDLEY: Form.
 2 A. Again, on that score I would have to refer
 3 back and look at the petition that was filed with the
 4 court, and look at the files as to the evidence that has
 5 been gathered to that point to answer that.
 6 But do I recall, sitting here today, a classic
 7 admission and writing by Julian to that effect? No, but
 8 I'm not a hundred percent sure that there's no writing
 9 that might relate to that. That's why I'm being
 10 cautious.
 11 **Q. So then right now -- I'm just trying to find**
 12 **out what you based your statement on in paragraph 40 of**
 13 **your answer that it was ultimately determined that the**
 14 **divorce was fraudulently procured by Julian Bivins. And**
 15 **it sounds like the only thing you've told me -- correct**
 16 **me if I'm wrong -- is that if you extrapolate from the**
 17 **order awarding your firm a contingency fee in connection**
 18 **with the petition to determine beneficiaries, that it**
 19 **can be extrapolated that that is a determination that**
 20 **the divorce was fraudulently procured by Julian Bivins;**
 21 **is that right?**
 22 MS. STUDLEY: And nothing to do with any
 23 conversations with counsel.
 24 A. I mean, that would be one implication, but I
 25 think I'm reading this a little bit differently perhaps

1 **Q. And then we filed an objection as to**
 2 **constitutional law as to why we believe that the order**
 3 **should be given full faith and credit, correct?**
 4 A. I recall you filed an objection on what the
 5 bases were.
 6 **Q. A motion to dismiss on constitutional grounds,**
 7 **correct?**
 8 A. Could have. I just don't recall what pleading
 9 was filed.
 10 **Q. The Court did --**
 11 MS. STUDLEY: You have to let him finish.
 12 **Q. The Court did not rule on the merits, but**
 13 **instead said I'm not going to get to the merits. If the**
 14 **question is can they file this in the other court, I'm**
 15 **going to let them file and let the judge there rule on**
 16 **the merits.**
 17 MS. STUDLEY: Form. Asked and answered.
 18 A. And, again, I don't recall precisely what the
 19 Court ruled. That would be in the transcript and the
 20 Court's order. I just know, from recollection, this was
 21 a hearing, as many of these hearings in this case, that
 22 went deeper than the surface.
 23 They took a certain amount of time. There
 24 were various sundry arguments made. I just can't
 25 remember all of them today from three years ago or

1 than you are.
 2 **Q. Tell me how you're reading what you stated.**
 3 A. We got Court approval over objections from you
 4 and your client to proceed with that litigation. So
 5 there was somewhat of a mini trial, let's call it, on
 6 that, on being able to proceed to set aside the Texas
 7 divorce.
 8 **Q. Well, didn't the Court actually say this is**
 9 **not my jurisdiction as to the merits of your pleading.**
 10 **If it goes to are you asking me whether you can file it**
 11 **before the Lorna court's judge, you can file it, but I**
 12 **am not weighing in on the merits? Isn't that what**
 13 **occurred?**
 14 MS. STUDLEY: Form.
 15 A. Again, we would have to look at the whole
 16 transcript, but, if that's a remark that was made, there
 17 were other arguments or presentations to the Court that
 18 I think are relevant to what you're asking. And the
 19 petition itself would have laid out some of the grounds,
 20 but I don't have any of that here.
 21 **Q. Right.**
 22 **The petition laid out your grounds as to why**
 23 **you thought the order from Texas on the divorce should**
 24 **not be given full faith and credit, correct?**
 25 A. Correct.

1 whenever it was.
 2 **Q. But in that motion to dismiss, the Court**
 3 **didn't take evidence, correct?**
 4 MS. STUDLEY: Form. Asked and answered.
 5 A. Again, I don't recall because this ended up --
 6 the motion to dismiss, as I do recall, was part of the
 7 overall seeking approval to proceed with the case. So
 8 there might have been some evidence taken; for that
 9 part, I need my file. I need some documents to put that
 10 back together.
 11 **Q. Brian, I apologize. I feel like we're**
 12 **spinning in a circle here. I'm trying to find out:**
 13 **When you state as a fact in a pleading that it was**
 14 **ultimately determined that the divorce was fraudulently**
 15 **procured by Julian Bivins, I would like to know what is**
 16 **the evidentiary support or documentary support that you**
 17 **can make the statement that the divorce was fraudulently**
 18 **procured by Julian Bivins.**
 19 MS. STUDLEY: Just a minute. I'm going to
 20 object. Same objection as before.
 21 A. And you've already given the one of -- you
 22 mentioned one of them, the approval of the Court, but I
 23 think also the approval before the settlement. I think
 24 you also have to look at the approval of the Court of
 25 the ability to take the action to start with.



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1 Q. But where is it ever said in there that any
2 finding, any order, anything that says Julian Bivins
3 fraudulently procured that divorce?

4 MS. STUDLEY: Form.

5 A. And I'm not saying there's necessarily a
6 finding that says that, but we were allowed to proceed
7 forward with the action that ultimately sought to
8 overturn the divorce.

9 Q. Would you look at the amended complaint,
10 please.

11 A. Sure. Which paragraph?

12 Q. Paragraph 40.

13 A. Okay.

14 Q. In paragraph 40 it says: "Following the
15 divorce, Oliver, Sr., transferred to Julian interests
16 owned by Oliver, Sr., and several parcels of real
17 property, including the oil and mineral rights in
18 Amarillo, Texas, and a condominium in Amarillo, Texas,"
19 right? That's what the allegations in the complaint
20 say?

21 A. Yes, the amended -- okay. Let's make sure.
22 So the Amended Complaint and Affirmative
23 Defense. This the answer to the amended complaint.
24 That may be where there's a problem.

25 MS. STUDLEY: Let me see.

1 MS. STUDLEY: I'm going to object on
2 predicate.

3 A. And I would say, as we've been going around
4 and around, there have been court orders approving the
5 overall settlement, court orders allowing us to proceed;
6 how one couches them as to whether it's a finding, not a
7 finding, a generalized finding, I think is what you and
8 I are disputing it sounds like.

9 Q. Yeah. I'm just trying to find out: Even
10 whether you say there's a court order approving a
11 settlement, in what court order is there any statement
12 by any court approving a settlement that the divorce was
13 fraudulently procured by Julian Bivins?

14 MS. STUDLEY: I think it has been asked and
15 answered many times, but I will give you one more shot.

16 A. And I think you're struggling to find is there
17 some line that says that. I'm saying by implication I
18 see where one can reach that conclusion. So I differ
19 with you. You differ with me on that.

20 Q. Well, you didn't say in your answer that it
21 was that -- it has been implied by virtue of something.
22 You're saying it was ultimately determined. As a
23 lawyer, you know how orders are important.

24 You would agree with me that what's ultimately
25 determined is different than implication, correct?

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1 MR. DENMAN: That's what I thought.

2 MS. STUDLEY: Okay.

3 THE WITNESS: Go ahead. Sorry.

4 BY MR. DENMAN:

5 Q. Just for the record, I think it's clear that
6 this is the answer to that amended complaint, just so
7 we're clear.

8 A. I wanted to make sure.

9 Q. So you saw the allegation, and your answer to
10 that allegation is: "Denies as phrased because it was
11 ultimately determined that the divorce was fraudulently
12 procured by Julian Bivins"; is that right?

13 A. Yes. I mean, that's what it says, "denies as
14 phrased." And then if you look at paragraph 40, of
15 course, the litigation in Texas centered on the
16 fraudulent transfer, the improper transfer of those
17 mineral interests. So that was at the forefront of the
18 Texas litigation and ultimate settlements. Yes.

19 Q. I guess I'm asking you about just the sentence
20 that you made, which is the divorce was fraudulently
21 procured. Isn't it true that you have no evidence that
22 -- let me strike that.

23 That it has never been determined anywhere
24 that the divorce was fraudulently procured by Julian
25 Bivins?

1 MS. STUDLEY: Objection to form. Predicate.

2 A. Again, it depends on the facts and
3 circumstances of what's being ultimately determined.

4 THE WITNESS: Should I keep this (indicating)?

5 MS. STUDLEY: No, these are your copies, I
6 think, right?

7 THE WITNESS: Thank you.

8 MR. DENMAN: I'll take them, I need them.

9 MS. STUDLEY: I may have some.

10 BY MR. DENMAN:

11 Q. Were you involved at all in the petition to
12 enforce the New York settlement with regards to Oliver,
13 Jr.?

14 A. That was filed by our firm or by you because I
15 remember there being two.

16 Q. I filed a motion to compel compliance pursuant
17 to the terms of the settlement. So just for
18 clarification: I think your firm filed a petition. So
19 that's why I used the word "petition."

20 So, as far as the petition is concerned, were
21 you involved in that?

22 A. I would have had some involvement with it, but
23 exactly what it was, I would have to go back and look at
24 my billing records, the file, to be absolutely sure what
25 it was. I can remember the petition being filed.

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1 Q. Are you aware of anywhere in the petition that
2 was filed by your office where it was sought that, in
3 connection with that petition, that Steve Kelly would
4 get a full release from Julian Bivins and Oliver Bivins,
5 Jr.?

6 A. Without looking at it, I just don't have a
7 specific recollection about what it says. I would have
8 to look at it.

9 Q. Are you familiar with the petition to approve
10 the settlement in that case, the purported settlement
11 that was agreed to by between Ms. Crispin and Ms.
12 Levine, for approximately \$120,000?

13 A. Not specifically. Again, I would have to look
14 at if there's a pleading that says that, for example.

15 Q. Well, these pleadings are something -- like
16 that would have gone through you. You would have
17 reviewed these before they were filed, right?

18 A. Yes.

19 MS. STUDLEY: Form.

20 Q. Are you aware of any requests that a Court
21 approve any provision in that settlement that Steve
22 Kelly be released by Julian Bivins or by Oliver, Jr.?

23 MS. STUDLEY: Form.

24 A. I'm not sure without looking at it.

25 Q. Did you review the Trust document at or around

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1 the time of the petition to sell 808 to determine
2 whether the Trust was making monthly payments to all of
3 Oliver, Sr.'s providers?

4 A. Which Trust?

5 Q. The Bivins Management Trust.

6 A. I don't recall.

7 Q. Your firm got paid on the contingency fee with
8 regard to the net value of 808 after the mortgage was
9 deducted, correct?

10 MS. STUDLEY: Form.

11 A. Again, I would want to look at it to be --
12 that sounds correct, but I would want to look at the
13 Court's order to be a hundred percent sure. But I
14 believe the mortgage was -- if I'm doing the guessing
15 game, I would guess that it was deducted.

16 MS. STUDLEY: We don't want you to guess.

17 Q. What you sought was to be paid a percentage of
18 the proceeds of the sale -- or, excuse me, the value of
19 the property that you brought back into the estate less
20 the mortgage, correct?

21 MS. STUDLEY: Form.

22 Q. That's what you sought?

23 MS. STUDLEY: Form.

24 A. I guess we sought whatever was in the petition
25 seeking a payment of our fees.

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1 Q. And at the time that you sought fees, it was
2 based upon the mortgage value being set at 465 under the
3 New York settlement, right?

4 MS. STUDLEY: Form.

5 A. That's what I don't recall. I would have to
6 -- the numbers, I mean; the concept, yes, but not the
7 numbers.

8 Q. Well, you would agree with me that it would be
9 within your fiduciary duty to your client that if you
10 actually got paid for more than you should have been
11 under the valuation, that you should return that money
12 to the guardianship, correct?

13 MS. STUDLEY: Object to form. Speculation.
14 Predicate.

15 A. I'm not aware that we were overpaid for our
16 services; our experts say we were underpaid for our
17 services.

18 Q. Well, you know that the amount of the mortgage
19 that was actually paid to Beachton to satisfy the
20 Beachton mortgage was approximately 600,000, not 465,
21 correct?

22 MS. STUDLEY: Form.

23 A. Again, it depends on what the value of the
24 mortgage was, what date, what was paid on the closing
25 statement; those are things that I just don't know.

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1 Q. So if you got paid, based upon the mortgage
2 being only 465 as opposed to being 596, then you should
3 reimburse the guardianship for the overage, correct?

4 MS. STUDLEY: Form.

5 A. No.

6 Q. So if the order was that you should be -- you
7 should get paid net of the amount that the estate, the
8 guardianship estate, has to pay on the mortgage and you
9 got paid more than the net amount, wouldn't you agree
10 that you would owe reimbursement to the estate?

11 MS. STUDLEY: Form. Speculation.

12 A. Well, we would have to go back and look at
13 the order. We would have to look at the transcript of
14 the hearing, what was the evidence that was presented,
15 what was argued, what was the amount of the loan, should
16 it be deducted at some level as opposed to another.

17 We would have to have all of those facts and
18 circumstances before us.

19 Q. And the mortgage would have only been 465 had
20 the mortgage been refinanced within a period of time,
21 correct?

22 MS. STUDLEY: Form.

23 A. And, again, that gets to the numbers. That's
24 the part that I can go off on a wild speculation and
25 disappoint my counsel because I just don't know.



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1 **Q. Well, you know that there was an obligation,**
2 **or you know that you -- actually, let me strike that.**
3 **You know that you represented to the Court**
4 **that you would seek to refinance the Beachton mortgage**
5 **with Stein through the use of commercial financing?**
6 MS. STUDLEY: Form.
7 MS. SCHULTZ: Form.
8 MS. STUDLEY: Predicate.
9 A. And we covered this, I believe, before in
10 terms of what was represented and what was argued. We
11 need to look at the transcript as to who exactly said
12 what because I couldn't tell you today three years ago
13 that Mr. Stein said A, B, C.
14 **Q. So you have no recollection of you having an**
15 **understanding that the guardianship would seek**
16 **commercial lenders to refinance Beachton as soon as**
17 **possible after the New York settlement was entered into**
18 **to get rid of the default interest rate?**
19 MS. STUDLEY: Objection. Form.
20 MS. SCHULTZ: Objection. Form.
21 A. Again, I can't tell you that there was this
22 discussion on this date or this date, and I would want
23 to see what does the settlement read and the court order
24 approving it to be definitive.
25 **Q. You were the attorney responsible for filing**

1 **cause of action against Oliver, Jr., regarding**
2 **obligations under the New York settlement, do you know**
3 **why it took another four months for your law firm to**
4 **file that action against Oliver, Jr.?**
5 MS. STUDLEY: Form.
6 A. And in relation to this, I think we covered
7 this before, too; the timing of it, I'm not sure when it
8 was. I do know there were going settlement negotiations
9 with our office and Donna Levine about the enforcement
10 of the settlement agreement with Oliver, II.
11 THE REPORTER: Too or two?
12 THE WITNESS: Or the II, or Roman numeral 2,
13 or junior.
14 THE REPORTER: Okay. Thank you.
15 MR. DENMAN: Let's take a break for a minute.
16 (Recess taken).
17 MR. DENMAN: I have no further questions;
18 however, I reserve the right to resume this deposition
19 by providing copies of all of the transcripts that
20 Mr. O'Connell sought to review. But it's a quarter to
21 6:00, and I have plans this evening I must attend to.
22 We started about 3:15 p.m. I just reserve the
23 right to come back with the transcripts to get further
24 clarification of all those answers that Mr. O'Connell
25 said he could not answer without reviewing the

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1 **the initial verified guardianship report on September**
2 **14th, 2014, correct?**
3 A. I would need to see it for -- which guardian
4 -- Mr. Rogers at that point?
5 **Q. Stephen Kelly.**
6 A. Stephen Kelly. Yeah. That's why I would need
7 the report.
8 **Q. You signed the verified report on behalf of**
9 **Stephen Kelly in September of 2014 acknowledging that**
10 **causes of action existed as to Beachton related to its**
11 **status as a lender and to Oliver, Jr., regarding**
12 **obligations under the New York Settlement Agreement,**
13 **that you would have a duty for the ward to pursue those**
14 **actions?**
15 MS. STUDLEY: Form.
16 A. It depends on at that point in time what
17 causes of action exist, what were the merits behind it,
18 how much would they cost to prosecute. On an inventory
19 you certainly would want to list all possible causes of
20 action. But the answer to your question, which is
21 different than just listing on an inventory, you would
22 need a lot more facts.
23 **Q. On September 14th, 2014, if the initial**
24 **verified guardianship report by Stephen Kelly was signed**
25 **by you indicated that Oliver, Jr. -- that there was a**

1 transcripts to review them in context.
2 MS. STUDLEY: We're here and prepared to go.
3 We have the transcripts. We're ready to go. I don't
4 think that we object to that request. We're ready. We
5 can take the seven hours. Mr. O'Connell is here. He's
6 ready to testify. We don't agree that he's going to
7 come back and answer more questions because you didn't
8 provide him transcripts at the time of questioning.
9 MR. DENMAN: We started in --
10 MS. SCHULTZ: I also have a few questions, but
11 I'll be very fast.
12 MR. DENMAN: Go ahead.
13 CROSS-EXAMINATION
14 BY MS. SCHULTZ:
15 **Q. Who was ultimately responsible for the**
16 **decision to enter into the New York settlement?**
17 A. The guardian.
18 **Q. And who was ultimately responsible for the**
19 **decision to sell 808 Lexington?**
20 A. The guardian.
21 **Q. Are you aware that the foreclosure action was**
22 **instituted by Beachton for 808 Lexington?**
23 A. Yes. I'm aware there was a foreclosure action
24 that was filed. Yes.
25 **Q. And isn't it true that Keith Stein prevented**



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
BRIAN M. O'CONNELL, ESQUIRE

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1 that foreclosure action from preceding?
 2 MR. DENMAN: Objection to form.
 3 A. I know he filed -- I'm not sure what
 4 pleadings they were, but, I guess, in effect, the
 5 foreclosure didn't proceed, if that helps you.
 6 Q. Well, that was going to be my next question.
 7 Beachton never actually foreclosed on the
 8 property?
 9 A. Correct.
 10 Q. And funds from the sale of 808 Lexington were
 11 used to pay off the Beachton mortgage, correct?
 12 A. Yes.
 13 Q. And the mortgage on 808 Lexington ultimately
 14 was satisfied, correct?
 15 A. Correct.
 16 MS. SCHULTZ: That's all I have. Thank you.
 17 MR. HECHTMAN: Wendy?
 18 MS. STEIN: (No response).
 19 MS. STUDLEY: Do you have any questions,
 20 Wendy?
 21 MS. STEIN: I'm sorry. No questions.
 22 MS. STUDLEY: I'm sorry. I didn't hear you.
 23 THE WITNESS: Read if it's transcribed.
 24 MS. STUDLEY: Yeah. We'll read.
 25 THE REPORTER: Ms. Studley, do you want a copy

1 CERTIFICATE OF OATH
 2
 3
 4 STATE OF FLORIDA)
 5 COUNTY OF PALM BEACH)
 6
 7
 8 I, MARK RABINOWITZ, Notary Public, State
 9 of Florida, do hereby certify that BRIAN M. O'CONNELL,
 10 ESQUIRE, personally appeared before me and was duly
 11 sworn.
 12 Signed this 9th day of January, 2017.
 13
 14
 15
 16
 17

Mark Rabinowitz

MARK RABINOWITZ, RPR
 Notary Public, State of Florida
 My Commission No.: EE955621
 Expires: 03/01/20

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1 if it's ordered?
 2 MS. STUDLEY: Yes. Yes.
 3 MS. SCHULTZ: I want one as well, please.
 4 THE REPORTER: Thank you.
 5 MR. DENMAN: I want a copy regular time,
 6 please.
 7 THE REPORTER: Thank you, sir.
 8 MS. STEIN: No copy.
 9 THE REPORTER: Thank you.
 10 (Deposition concluded and signature reserved).
 11
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1 REPORTER'S CERTIFICATE
 2
 3
 4 STATE OF FLORIDA)
 5 COUNTY OF PALM BEACH)
 6
 7 I, MARK RABINOWITZ, Notary Public, State
 8 of Florida, certify that I was authorized to and did
 9 stenographically report the deposition of BRIAN M.
 10 O'CONNELL, ESQUIRE; that a review of the transcript was
 11 requested; and the foregoing transcript pages 4 through
 12 99 is a true and accurate record of my stenographic
 13 notes.
 14 I further certify I am not a relative,
 15 employee, or attorney, or counsel of any of the parties,
 16 nor am I a relative or employee of any of the parties'
 17 attorneys or counsel connected with the action, nor am
 18 I financially interested in the action.
 19 DATED this 19th day of January, 2017.
 20
 21
 22
 23
 24
 25

Mark Rabinowitz

MARK RABINOWITZ, RPR



JULIAN BIVINS vs. CURTIS CAHALLONER ROGERS, JR.
BRIAN M. O'CONNELL, ESQUIRE

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1 ERRATA SHEET
2 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES BELOW
3 IN RE: BIVINS VS. ROGERS
4 DATE: JANUARY 9TH, 2017
5 DEPONENT: BRIAN M. O'CONNELL, ESQUIRE

6 PAGE	7 LINE	8 CORRECTION/REASON
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22 "Under penalties of perjury, I declare I have read the
23 foregoing document and that the facts stated in it are
24 true."

25 DATE BRIAN M. O'CONNELL, ESQUIRE

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1 RACHEL STUDLEY, ESQUIRE
2 Wicker Smith O'Hara McCoy & Ford, P.A.
3 515 North Flagler Drive
4 West Palm Beach, Florida 33486

5 Dear Ms. Studley:

6 This letter is to advise the transcript for
7 the above-referenced deposition has been completed and
8 is available for review. Please contact our office at
9 (800)275-7991 to make arrangements to read and sign or
10 sign below to waive review of this transcript.

11 It's suggested the review of this transcript
12 be completed within 30 days of your receipt of this
13 letter, as considered reasonable under Federal Rules*;
14 however, there is no Florida Statute in this regard.

15 The original of this transcript has been
16 forwarded to the ordering party and your errata, once
17 received, will be forwarded to all ordering parties
18 for inclusion in the transcript.

19 Sincerely,

20 Mark Rabinowitz, RPR

21 cc: J. Ronald Denman, Esquire; Rachel Studley, Esquire;
22 Alexandra Schultz, Esquire; Wendy J. Stein, Esquire

23 Waiver:

24 I, _____, hereby waive the reading and
25 signing of my deposition transcript.

26 _____ Date

27 *Federal Civil Procedure Rule 30(e) and
28 Florida Civil Procedure Rule 1.310(e)



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800-275-7991