

Hearing

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STATE OF CONNECTICUT  
COURT OF PROBATE  
DISTRICT OF GREENWICH  
District No. 057

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ESTATE OF/IN THE MATTER OF \*

GEORGE ALLEN SMITH IV, deceased \* Case No. 05-0496

\* \* \* \* \*

Greenwich, CT

March 4, 2008

9:40 a.m.

**CONFIDENTIAL**

PROBATE HEARING VOL. I

Confidential and Closed to Public Per Court Order of  
May 18, 2007, and Subject to FBI Non-Disclosure Agreement  
Closed to Public

BEFORE: HONORABLE DAVID W. HOPPER

Reported by:  
Lynne Stein-Eisenberg, LSR  
Campano & Associates  
Court Reporting Services

Campano & Associates  
Court Reporting Services

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LAW OFFICES OF JOHN R. GULASH, JR.

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BY: EUGENE J. RICCIO, ESQ.

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20

Also Present: JENNIFER HAGEL-SMITH

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MAUREEN SMITH

22

GEORGE SMITH III

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JAMES M. WALKER, ESQ.

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1 (Prior to the commencement of the actual  
2 hearing, the following persons were present: John Hagel,  
3 Debbie Hagel, Jesse Langer, Esq., Hoa Nguyen of *The*  
4 *Greenwich Time*, Joan Lounds of *The Greenwich Post*, and  
5 Debra Alfarone of *News 12 Connecticut*.)

6  
7 THE COURT: Welcome, everyone. My name  
8 is David Hopper. I'm the Greenwich probate judge.

9 I think the first place we ought to start  
10 is with introductions of all the parties who are  
11 here, as well as individuals who may be here from  
12 the public.

13 Why don't we start with Ms. Nguyen and  
14 work our way around the room.

15 MS. NGUYEN: Hoa Nguyen. I'm from *The*  
16 *Greenwich Time*.

17 MS. LOUNDS: Joan Lounds, from *The*  
18 *Greenwich Post*.

19 MR. HAGEL: John Hagel.

20 MRS. HAGEL: Deborah Hagel.

21 MR. LANGER: Jesse Langer, Cohen & Wolf.

22 MS. TODGHAM: Melinda Todgham, Brody  
23 Wilkinson.

24 MS. ALFARONE: Debra Alfarone, News 12  
25 Connecticut.

1 MR. SMITH: George Smith.

2 MRS. SMITH: Maureen Smith.

3 THE COURT: Okay.

4 This is Cindy Stroili, my clerk.

5 MR. BROWN: Your Honor, Douglas Brown,  
6 the attorney for Jennifer Hagel-Smith, the  
7 administratrix.

8 MS. HAGEL-SMITH: Jennifer Hagel-Smith.

9 MR. WALKER: James Walker.

10 MS. BYRNE: Elizabeth Byrne.

11 MR. MARCHAND: Don Marchand.

12 MR. RICCIO: Gene Riccio.

13 MR. JONES: Michael Jones.

14 THE COURT: Thank you.

15 We're here on an application to  
16 compromise a claim.

17 As I think most of the attorneys know,  
18 the Probate Court is an informal court. We have  
19 informal hearings. We try to do that for numerous  
20 reasons. One of the main reasons, however, is the  
21 fact that whatever decision I make can be appealed  
22 to the Superior Court, and it's appealed de novo,  
23 so it would just basically start over. You don't  
24 have to find a problem with whatever I've done in  
25 order to appeal. Just if you decide you want to

1 appeal, as long as you have standing, you'll be  
2 heard in the Superior Court.

3 When it comes to the proceedings, and  
4 during the hearing, if any of the attorneys feel  
5 they wish to object to testimony or whatever the  
6 case may be, you can do it. But we try to keep it  
7 to a limit because we want to keep things moving.  
8 Again, since there's no appeal based on a mistake  
9 or an issue such as that, it's appealed de novo, we  
10 try to keep it as informal as possible and keep it  
11 moving. But if you feel it's necessary to object,  
12 you may do so.

13 You may find that I'm a little more  
14 relaxed when it comes to hearing particular  
15 testimony. I know the difference between hearsay  
16 and not hearsay, and so, you know, I'll certainly  
17 discount it if that is the case.

18 If you decide to appeal, just for those  
19 who may not know, the party that is appealing has  
20 30 days to do so from the date of the decree. You  
21 no longer need my approval, by the way. Under the  
22 old rules, last year, I guess it may have started  
23 October 1, you always had to get my approval, which  
24 was usually a rubber stamp anyway, but the  
25 legislature finally did something smart, which was

1 to just let you go to Superior Court, though you  
2 should send us a copy of the appeal so we know not  
3 to harass the fiduciary, asking for the estate to  
4 be wrapped up when in fact things are being  
5 appealed.

6 As many of you know, we had a hearing  
7 last year on whether to have this proceeding kept  
8 confidential. And it was decided that a portion  
9 could be open for those portions that deal with  
10 things that don't adversely impact the case,  
11 because, as I mentioned earlier, if this case is  
12 appealed to the Superior Court, it starts over  
13 fresh. And what we're going to be talking about  
14 here is maybe the strengths and weaknesses of a  
15 particular case against the cruise line, and if in  
16 fact it is appealed or if in fact I decide to rule  
17 against the settlement, we don't want to have that  
18 case adversely impacted.

19 So for those members of the press or the  
20 public who may be here, you may be a little  
21 disappointed because I have a feeling, and I'll let  
22 the attorneys tell me when the hearing has to go  
23 confidential, but I have a feeling a great deal of  
24 it will be confidential.

25 As a matter of fact, I think the only

1 parties during that time period that will be  
2 present other than the attorneys themselves will be  
3 the parties of interest, which are Jennifer  
4 Hagel-Smith, Mr. and Mrs. George Smith, and the  
5 attorneys, and probate staff, and the stenographer.

6 I suppose there's no objection with  
7 regards to the stenographer being here. Again,  
8 it's not --

9 MR. JONES: It's not on the record.

10 THE COURT: It's not on the record. This  
11 is solely for your own purposes.

12 MR. MARCHAND: We'll share a copy with  
13 the Court, and if Mr. Brown is willing to share the  
14 cost we'll share a copy with him.

15 THE COURT: I assume your clients are  
16 still objecting to the settlement?

17 MR. JONES: That's correct, your Honor.

18 THE COURT: I'll ask at this point if you  
19 would just give me a little background on what you  
20 plan on doing today.

21 Does anybody plan on giving an opening  
22 statement?

23 MR. JONES: No, your Honor.

24 MR. BROWN: Your Honor, based on the  
25 conference we had with the Court on Friday, no. I

1 think what we discussed is that we're going to  
2 start with the motion to approve the settlement  
3 agreement. I think that that will probably take a  
4 lot of the day. I think we're going to start there  
5 and then go possibly tomorrow as well.

6 I think, to do something else before the  
7 Court, I think the agreement was that we're going  
8 to hear everything at the same time.

9 THE COURT: Okay.

10 And as far as witnesses, how many  
11 witnesses do you plan on calling today?

12 MR. BROWN: Well, I plan on calling four  
13 witnesses.

14 THE COURT: Okay.

15 MR. BROWN: We're going to see how fast  
16 we go through them, and then if we have to -- I  
17 have Mr. Walker, who's up from Florida, but I  
18 have -- I've got somebody who I've told to come  
19 tomorrow, who's also coming from out of state. If  
20 we can fit that person in, and --

21 Because of the nature of this proceeding,  
22 I'm sure that we're going to be doing sort of  
23 direct, and when the person is seated, then when  
24 they're completed, then the other side gets to ask  
25 them whatever they want. We're not going to

1 distinguish between cross and direct. We're not  
2 going to have to call them back. They can ask them  
3 whatever they want to ask them. That's what I  
4 envision as what we're going to do.

5 THE COURT: I think that makes a lot of  
6 sense, to try to expedite things.

7 Attorney Jones?

8 MR. JONES: We anticipate calling three  
9 witnesses.

10 THE COURT: At the end of this, obviously  
11 I'll issue a decree. And in the normal  
12 circumstance I would write out the facts, explain  
13 how the facts work with the law. In light of the  
14 confidentiality of all this, it may -- I haven't  
15 decided exactly how I'm going to work this decree,  
16 but it may be a one-liner, simply because I want to  
17 make sure the estate is not impacted in any regard  
18 by going into a lot of issues and facts and things  
19 when it may turn out that somebody may appeal the  
20 decision. So don't be surprised. I may go into a  
21 little more detail, who knows? We'll see how  
22 things proceed.

23 MR. JONES: Your Honor, there is one  
24 other issue. We did receive yesterday a memorandum  
25 in support of the application. When we were on the



1 conference call on Friday there had been discussion  
2 that any memoranda or trial brief would be taken up  
3 today or tomorrow in terms of whether the parties  
4 wanted to submit such things, and then a memorandum  
5 was submitted. I would ask that the Court hold  
6 that memorandum in abeyance until there's further  
7 discussion, as we agreed Friday, as to what would  
8 happen with respect to briefing.

9 THE COURT: Again --

10 MR. BROWN: Your Honor, I would object  
11 simply that there was no agreement as to briefing.  
12 There was nothing prohibiting us from filing a  
13 brief in advance. There was simply discussion that  
14 we may want to file a brief afterwards as to what  
15 took place.

16 THE COURT: Quite honestly, it doesn't  
17 much matter. You're welcome to file your own brief  
18 and just let me know how much time you would like  
19 to --

20 MR. JONES: There may be an issue,  
21 though, with respect to some of the facts in  
22 evidence that were contained in the brief. I think  
23 we have to see whether or not -- there has to be a  
24 determination made as to whether those facts and  
25 evidence will actually come in during the hearing.

1 A problem could arise where certain facts are not  
2 introduced in the hearing but they are contained in  
3 the memo. I would then have to ask that those  
4 facts be excluded. So we still have an issue with  
5 respect to that pretrial memo.

6 My understanding was the issue of  
7 briefing was going to be discussed today. I took  
8 that to mean all briefs, pre and post.

9 THE COURT: I really didn't have any time  
10 to read it anyway.

11 MR. JONES: Okay.

12 THE COURT: So I'll hold off reading it  
13 until we have further discussion.

14 MR. JONES: Thank you, your Honor.

15 THE COURT: We'll certainly allow anyone  
16 to file their own brief.

17 MR. JONES: Thank you.

18 THE COURT: If you wish to modify it down  
19 the road, you can always pull it and modify it if  
20 you wish. But we'll deal with that as it comes.

21 Does anybody have any questions before we  
22 begin?

23 Obviously, if anybody needs to take a  
24 break, just give us a wave and we'll entertain it.

25 MR. BROWN: Your Honor, where are the

1 witnesses going to sit?

2 THE COURT: We can have them sit up here  
3 if they feel comfortable there. If the witnesses  
4 wish to remain at the table, I don't have a problem  
5 with that. We like to keep everyone comfortable  
6 and make sure they feel relaxed. You don't have to  
7 stand other than when you are sworn in. So I'll  
8 leave that up to you. If anyone wishes to --

9 If it will make life easier on you, for  
10 purposes -- it looks like you might have a  
11 microphone here. If you prefer -- do you think it  
12 would be more helpful to have them up front?

13 THE REPORTER: It depends on how loud  
14 their voices are. Some I can probably hear from a  
15 distance.

16 MR. BROWN: It might be better as far as  
17 us moving around.

18 THE COURT: We'll turn this around.  
19 There we go.

20 I guess the next question is  
21 confidentiality. At what point do the parties feel  
22 that we're going to start getting into information  
23 that needs to be kept confidential?

24 MR. JONES: Your Honor, part of it is  
25 going to be determined by who Mr. Brown is going to

1 call first.

2 THE COURT: Who do you plan on calling  
3 first?

4 MR. BROWN: I plan on calling Mr. Walker,  
5 and therefore I am going to be asking that this  
6 entire hearing go confidential and that everyone  
7 who is not one of the interested parties to the  
8 proceeding, being Ms. Hagel-Smith and her in-laws,  
9 be asked politely to leave the room. Except for  
10 Mr. Walker, of course.

11 THE COURT: I will -- is there any  
12 objection?

13 MR. JONES: I concur with that, your  
14 Honor.

15 THE COURT: I'll honor that request.

16 Obviously, at some point if it seems that  
17 we're on issues that can be open, I'll open that  
18 up.

19 But for those members of the press who  
20 may be here or representing Royal Caribbean or  
21 whatever the case may be, just from being involved  
22 with this case for over a year now, or more, I  
23 don't -- I wouldn't hold my breath out there. I  
24 have a feeling most of the information that will be  
25 coming in will be kept confidential.

1           So unless there's something else, then I  
2 would ask all the parties to leave the room --

3           MS. NGUYEN: Your Honor, I just wanted to  
4 ask, because I think this issue was left open last  
5 time, was the issue of who was going to be called,  
6 what witnesses, who was on the witness list. I  
7 know there was mention of how many. I would like,  
8 if your Honor would --

9           THE COURT: I don't think it invades any  
10 confidentiality by giving names of the witnesses  
11 you're planning on calling.

12           MR. BROWN: That's fine, your Honor.

13                   From our side, we plan on calling  
14 James M. Walker, who is the maritime attorney  
15 representing Ms. Hagel-Smith and the estate, who  
16 represented the estate and Ms. Hagel-Smith in the  
17 claims brought by the estate and settled with Royal  
18 Caribbean.

19                   Then Ms. Hagel-Smith will testify.

20                   Then her father, John Hagel, will testify  
21 as to some matters relevant to the proceeding.

22                   And then Curtis Mase, a highly respected  
23 maritime attorney in south Florida, who will be  
24 testifying on the specific area of dispute between  
25 the two sides with respect to a certain paragraph

1 of the settlement agreement.

2 THE COURT: Okay.

3 Attorney Jones, your witnesses?

4 MR. JONES: We'll have Maureen Smith,  
5 your Honor. We'll also have Brett Rivkind, who is  
6 a maritime attorney down in Florida who has  
7 represented the Smiths in connection with their  
8 claims. And we will also have Gary Crakes, who is  
9 an economist.

10 THE COURT: He's an economist?

11 How do you spell that?

12 MR. JONES: C-r-a-k-e-s.

13 THE COURT: I'll ask everyone to leave  
14 other than the attorneys and their respective  
15 clients. Thank you very much.

16 (Whereupon, there was a pause in the  
17 proceedings, at which time the following persons left the  
18 hearing room: John Hagel, Deborah Hagel, Jesse Langer,  
19 Esq., Hoa Nguyen of *The Greenwich Time*, Joan Lounds of  
20 *The Greenwich Post*, and Debra Alfarone of *News 12*  
21 *Connecticut*.)

22 THE COURT: I assume all the parties who  
23 are here, everyone's fine? Okay.

24 Just a reminder, all happenings here,  
25 whether you're one of the parties or court staff or

1 stenographer or witness, this is all to be kept  
2 confidential.

3 I'll swear in the witness, and, Attorney  
4 Brown, whenever you're ready.

5 Thereupon:

6 JAMES M. WALKER, being first duly sworn, was examined and  
7 testified as follows:

8 THE COURT: Would you please state your  
9 full name and address.

10 THE WITNESS: James Madison Walker, 9401  
11 Southwest 60th Court, Miami, Florida 33156.

12 THE COURT: Mr. Brown, whenever you're  
13 ready.

14 DIRECT EXAMINATION BY MR. BROWN:

15 Q Mr. Walker, good morning.

16 A Good morning.

17 Q I told everybody a minute ago what your  
18 relationship to the case was, but why are you here?  
19 What's your role?

20 A I was retained by Jennifer Hagel-Smith in  
21 November to represent her in evaluating and performing  
22 some investigation and trying of the lawsuit that was  
23 required against the cruise line, Royal Caribbean  
24 Cruises, based in Miami, Florida.

25 Cruise lines like Royal Caribbean require in

1 their passenger tickets that all lawsuits or disputes of  
2 any type be resolved in Miami-Dade County, which is a  
3 real burden on passengers who have mishaps. There's a  
4 United States Supreme Court decision, Shute versus  
5 Carnival, which upheld the right of cruise lines to put  
6 forum selection clauses in passenger tickets. So  
7 passengers from Connecticut and other states have to  
8 retain an attorney in Miami, Florida. And the Smith  
9 family interviewed me, and Jennifer also did, and she  
10 retained me to represent the interest of her in the  
11 capacity of the administratrix.

12 MR. JONES: Just to clarify, it was  
13 November of 2005.

14 A 2005. What did I say?

15 Q You said November.

16 A All right. It's been a couple of years. I  
17 agree.

18 Q Let's just go over what your background and --  
19 can you please tell the Court what you do for a living  
20 and what kind of cases you work on.

21 A Okay. I -- it might be better perhaps just to  
22 give you my educational background and then just go  
23 chronologically.

24 I'm from Eldorado, Arkansas. I lived  
25 overseas. I came back to the United States in 1974. I



1 went to a prep school in Connecticut, Kent School. I  
2 went down to Duke, graduated in 1980. I went to Tulane  
3 University School of Law and graduated 1983.

4 I had a particular interest at that time in  
5 maritime law for a couple of reasons. For the summers  
6 leading up to that I worked in the gas industry, Gulf of  
7 Mexico. We did typical type of seaman type roustabout  
8 work. There were a lot of injuries, there were deaths in  
9 that context. Tulane had, at the time, the only maritime  
10 curriculum, and I took all the maritime courses starting  
11 back in 1980, Maritime 1, Maritime 2, personal injury,  
12 wrongful death, course called Death On The High Seas Act.  
13 I studied maritime law.

14 I passed the Louisiana bar in 1983 and I  
15 practiced in a defense firm, a large defense firm. We  
16 defended lawsuits of this type, quite frankly. We  
17 represented shipping companies. We had a lot of  
18 litigation in the Gulf of Mexico, wrongful death  
19 litigation. We were heavily involved in a number of  
20 cases involving deaths of both passengers and seamen at  
21 that time. We were involved in a case where 73 crewmen,  
22 off-shore workers, died on an Ocean Ranger disaster. We  
23 were heavily involved in those types of cases.

24 So pretty much after I got out of law school I  
25 was involved in evaluating wrongful death cases. And the

1 first 10, 15 years of my practice, we would give our  
2 evaluations to corporations to have them be able to  
3 properly evaluate their exposure to lawsuits of this  
4 type, to assert whatever legal defenses were appropriate,  
5 to give them a range of damages that could be entered by  
6 a jury or, in death cases, which are governed by this  
7 Death On The High Seas Act, by judges.

8 So I did that until 1987. 1987 I moved to  
9 Miami, Florida, to marry my wife, who is my law partner.  
10 I joined a firm, a very highly respected firm, called  
11 Fowler White, and it was one of the leading maritime  
12 firms in Florida. The Smiths' counsel, Mr. Rivkind, was  
13 at that firm at a period of time.

14 I did two types of work, essentially. I did  
15 the maritime defense work, where we represented cruise  
16 lines, and then I began doing more aviation defense work.  
17 We represented Lockheed and major airlines, Piper Cessna.  
18 We had a lot -- quite a number of death cases. And I  
19 spent a good portion of my time there taking depositions.  
20 I've probably taken depositions of family members who  
21 have lost their loved ones literally hundreds of times.  
22 We've tried aviation suits.

23 In 1994, I went to a comparable type of firm  
24 called Blackwell & Walker, no relation, which at one time  
25 was the largest firm in Florida, and I began doing only

1 maritime defense work. I represented a couple of cruise  
2 lines. I tried lawsuits, passengers and crew member  
3 cases.

4 And then that firm folded after 60 years, in  
5 1996, and I created my own law firm. And then about 1998  
6 I switched completely to the plaintiffs side, and I made  
7 a decision about ten years ago not to ever represent  
8 corporations, for a number of different reasons I won't  
9 go into. And we began handling personal injury and  
10 wrongful death cases. And the nature being in Miami,  
11 with the forum selection clause which I mentioned,  
12 everyone literally in the world that's injured on a  
13 cruise ship, Carnival, Royal Caribbean, Celebrity,  
14 Norwegian Cruise Lines, has to go to Miami and look for  
15 an attorney. So we have been very busy with that type of  
16 litigation. We tried cases against all the major cruise  
17 lines. Tried a case a couple of months ago against Costa  
18 Cruise Lines, tried cases against Carnival, Norwegian  
19 Cruise Lines. We have had somewhere around 500 cases  
20 against cruise lines in the past ten years. For some  
21 reason it seems like we have more cases against Royal  
22 Caribbean than any other cruise line. We probably  
23 handled at least 250 or 300 cases against that particular  
24 cruise line.

25 Q Of all those cases, how many of them have you

1 actually tried before a judge or jury?

2 A Approximately -- you know, I think the  
3 maritime attorneys in Dade County say that about 96  
4 percent of the cases settle. I'll be interested to see  
5 what Mr. Rivkind says tomorrow. But we've tried about 25  
6 cases. The vast majority of the cases do settle. Some  
7 settle before filing suit, some settle after filing suit,  
8 some settle several years later. We've tried cases and  
9 have them mistried; we've tried cases and had cases  
10 appealed and then settled the cases. But the majority of  
11 the cases do settle.

12 Q After you -- let's go now to sort of what  
13 you did after -- what you and your client,  
14 Ms. Hagel-Smith, did after you were retained.

15 A Okay. Jennifer retained me in, I think, the  
16 middle part of November, and I had -- and there's kind  
17 of -- it's a little bit ironic, I suppose. I had  
18 originally been contacted by the Smith family. Mr. Smith  
19 had called me, called my office in July, and left a  
20 message on the answering machine very late at night. I  
21 did not call him back really out of respect. Some people  
22 call late at night, they're upset. My approach is if  
23 they want to call back during working days, I'll be happy  
24 to talk to them.

25 Bree Smith had called me in August when I was

1 on vacation. We talked about the case. We talked about  
2 some of the issues I'm going to talk about here today.  
3 There's so much media about it, of course, and everyone  
4 was following it. We were particularly interested  
5 because we've had so many cases with Royal Caribbean.

6 And I should digress just for a second. In  
7 the past ten years we've handled right at 50 cases where  
8 passengers were victims of crimes on cruise ships, and  
9 that, I think, is a very significant number and shows  
10 what our feeling is, is that there are things that happen  
11 on these cruise ships that the cruise lines don't want  
12 people to know about.

13 Jennifer then met with me, and we talked  
14 again. She retained me in the middle part of November.  
15 And then she was subsequently appointed by your Honor as  
16 administratrix. And at the time Jennifer had a lot of  
17 ideas about what she wanted to accomplish in the case.  
18 And I came up to Connecticut and I met with her. I met  
19 with her parents. And one of the first things that she  
20 wanted to do was to do an investigation, of course, to  
21 find out what was happening.

22 At this time, which would -- be July, August,  
23 September, October, we're four months, five months into,  
24 you know, into the end of the year after George's death.  
25 There were a lot of just basic questions about what was

1 happening, and the cruise line at this time had not  
2 revealed, as far as I'm aware, any information of any  
3 type to anyone. The Smith family had made a decision not  
4 to communicate with them. Bree Smith didn't feel it  
5 appropriate or felt there was a conflict of interest, and  
6 they weren't communicating with anyone else. There were  
7 just a lot of questions to be answered.

8 Really the only information I felt that the  
9 cruise line was actually revealing was the most negative  
10 selective type of information that they could possibly  
11 release to try to embarrass George Smith, to try to put  
12 Jennifer in a bad light. So they were kind of  
13 selectively outmanipulating the press, but not giving  
14 Mr. or Mrs. Smith or Jennifer any answers. She wanted  
15 someone to go on the ship and to do an investigation,  
16 and -- which is -- you know, cruise lines don't let  
17 investigators on their ships. They just simply don't do  
18 that. They put their own attorneys on, they have their  
19 own investigators, but they keep everyone off the ship.

20 So we decided to retain Dr. Henry Lee. We  
21 retained Dr. Lee, I think, within the first week in  
22 December. We, at the same time, were requesting, along  
23 with the Smith counsel's attorney -- the Smiths'  
24 attorney, Mr. Rivkind, information from the cruise line,  
25 which in a couple of weeks they did provide some

1 information, they provided some answers. I don't know if  
2 that's going to be a part of this proceeding. But they  
3 sent the families --

4 Q Let me stop you for a second.

5 I don't know how formal --

6 MR. BROWN: I don't know how formal --

7 Your Honor, this is exhibits to the  
8 Memorandum of Law In Support of the Motion for  
9 Settlement Agreement. It was delivered to  
10 Mr. Jones yesterday. I was going to say that  
11 letter that he's referencing is Exhibit 4. I don't  
12 think he has to go through it, but . . . .

13 A In the middle part of December the cruise line  
14 had sent photographs from the ship taken by -- I think  
15 there were 13 photographs taken by the cruise ship's  
16 officers who went into the cabin and took photographs of  
17 the cabin and also the balcony and the canopy below.  
18 Then the cruise line's lawyers had a photographer that  
19 went into the cabin a couple of days later and took, I  
20 think, 75 photographs or so, and all those photographs  
21 were provided.

22 So essentially what we did was we took the  
23 information that we already had -- Jennifer had already  
24 received certain reports, certain statements, taken by  
25 the Turkish police, of some of the men on the cruise ship

1 last seen with George Smith, not all of them. The  
2 captain's statement was taken. Jennifer's statement was  
3 taken. They did a forensic type of report.

4 All that information we sent to Dr. Lee.  
5 There were some other things we sent to him. And then  
6 Jennifer and her father, if I remember correctly, and I  
7 then met with Dr. Lee, and we basically said, you know,  
8 "This is the information we have so far. You know, help  
9 us out and lead us in the right direction."

10 You know, one of the issues that I need  
11 perhaps just to interject at this point is our  
12 experience -- you know, I think all the families may have  
13 different views of this, but our experience has been, in  
14 the 50 cases that we've handled, that the FBI simply  
15 never -- is never successful with their investigations.  
16 And I came from a law and order family. I couldn't call  
17 a -- we called police officers police officers, we didn't  
18 call them cops. I've learned over the years that the FBI  
19 is simply not what I had hoped it would be in a cruise  
20 line context. They simply have the worst imaginable  
21 record in actually performing investigations that lead  
22 to, one, trials, and, two, convictions. Of the 50 cases  
23 we've had -- and, you know, we screen our cases. We  
24 don't take cases unless we think there's a reasonable  
25 basis to proceed. Of the 50 cases we've had, there have



1 | been only two successful prosecutions. One was of a  
2 | rapist on a cruise ship who was literally caught with his  
3 | pants down, and another one was a little girl that was  
4 | molested. It's been like any other case we've had, but  
5 | the FBI was successful with that case. Only those two  
6 | cases did anyone ever serve time in jail.

7 |           So, you know, my approach to this case from  
8 | day one, really from the first time I walked into the  
9 | Smith family's house, which I think was in September, was  
10 | to say, "Listen, the FBI is not going to give us the  
11 | answers." And that's met at different times with  
12 | different reactions, you know. And some families simply  
13 | don't want to hear that. They want to hold on to the  
14 | belief that the FBI is the FBI, which is the best  
15 | investigatory agency in the world, and they have pretty  
16 | much unlimited resources in the United States, and, by  
17 | golly, they're going to find the answer for us.

18 |           When it doesn't work that way, and, quite  
19 | frankly, I think that the FBI doesn't ever say, "Listen,  
20 | we haven't ever solved one of these crimes before, so,  
21 | you know, take that into consideration and act  
22 | accordingly." They kind of lead people along in a way  
23 | and then at the end of the day they don't provide the  
24 | information. You can make a FOIA request 'til you're  
25 | blue in the face. At best you'll get a heavily redacted

1 version of only documents that pertain to the person  
2 requesting. If Jennifer is making a request, all she's  
3 going to get eventually are things that involve her  
4 directly, with large portions blacked out.

5 Q Having said that, given your knowledge of  
6 what's happened in this matter, has the FBI acted  
7 differently than they have in other cases?

8 A They have. With due respect to the agents up  
9 here, I don't mean to be personal in my criticism of  
10 them, I think they have -- and I commented on this -- I  
11 think that they've acted -- I mean, if you ask them now,  
12 they'll say that it's an open investigation. I think one  
13 of the reporters here had a news article which she quoted  
14 them saying "it's active and ongoing." Well, I hope it  
15 is active and ongoing, and I hope that they'll find  
16 something. But it's simply been our experience you  
17 shouldn't hold your breath waiting for them to respond.  
18 You can send them HIPAA compliant forms, FOIA requests,  
19 serve them with subpoenas, give court orders, and  
20 nothing's really going to be forthcoming.

21 The reason I went into this digression is that  
22 I felt it was very important to have Dr. Lee involved and  
23 to see what he could find and to do essentially our own  
24 investigation, hopefully with the cooperation of the  
25 Smiths, to get our own answers.

1 Q What was the response of the Smith family and  
2 their attorney?

3 A Well, in December of 2005, the conclusion I  
4 reached, based on a couple of things, communications  
5 between Mrs. Smith and Jennifer and from Mr. Rivkind, was  
6 that they wanted to go their own way. There's actually  
7 e-mails that I think Jennifer will identify later where  
8 she said Mrs. Smith said, "We have our counsel, you have  
9 your counsel, we're going to do our own thing."

10 I know that the Smiths did retain an  
11 investigator about a year after their son's  
12 disappearance. We were hoping to get the families  
13 together, quite frankly, in December, and get everyone on  
14 the same page, kind of proceed in a unified manner.

15 One of the initial accomplishments that we had  
16 is that we got Dr. Lee on the cruise ship as of the end  
17 of January. And the cruise line initially said to us in  
18 the letter, "Oh, sure, you can have someone come aboard,"  
19 that type of response.

20 You say, "Okay, we have Dr. Henry Lee and a  
21 team of investigators, and we have a videographer and a  
22 photographer and two detectives and a police sergeant,  
23 our team wants to come on."

24 Then it was "Wait a second. We'll give you  
25 two hours. Use your time judiciously, but that's all we

1 want."

2 So Jennifer got involved and we did a number  
3 of things, and we were able to get on the ship.

4 Q Is that unusual?

5 A Well, I've -- you know, when you want to get  
6 on a ship, even after you file suit, you have to go to  
7 the Court and petition the Court and you have to argue  
8 and wrangle. I've never been on a cruise ship with  
9 investigators before filing suit, so it was an unusual  
10 set of circumstances. You have to remember, to --

11 Q What do you attribute to that?

12 A I attribute that to a couple of things. One,  
13 we had all decided that we had to protect ourselves in  
14 the media, because the cruise line had been totally  
15 controlling the media. And the Smiths and their counsel  
16 and Jennifer and I and Dr. Lee went into the media. We  
17 went on television shows and we were saying, "If you have  
18 information, contact the families." Dr. Lee was actually  
19 on Court TV and on some of the other programs. We were  
20 complaining about not having access to the ship, not  
21 having enough time to conduct an investigation.

22 So I think it was really the work of everyone,  
23 including the Smiths being public about their son's loss  
24 and bringing attention to this, and turning the story  
25 around, really, you know, more appropriate manner.

1 Q Could you continue with what you did.

2 A There were a number of things that we did.  
3 Jennifer had decided that she wanted to bring as much  
4 information in to the attorneys as possible, and my plan  
5 in November and December was to go to the Smith family  
6 and -- you know, we were at a situation which, quite  
7 frankly, I'll always regret, that the Smiths were no  
8 longer talking with Jennifer as of, I don't know, the  
9 middle to the end of December.

10 MR. JONES: Can we have years on this?

11 THE WITNESS: I'm sorry. 2005. This is  
12 all 2005.

13 A So really it was a situation where the  
14 communication -- the only communications that were taking  
15 place were between their counsel, Mr. Rivkind, and I. My  
16 plan was to say, listen, the Smiths lost their son, for  
17 goodness sake, Jennifer lost her husband. We're  
18 absolutely in the same boat. The cruise line is trying  
19 to tar and feather everyone. We've got to stay together  
20 and unified. If we get divided, they're going to try to  
21 tear us apart and they're going to try to beat us down.

22 My plan was let's have one -- you know, a lot  
23 of things were symbolic. One thing I wanted to do was  
24 have one Web site. The first thing I did was register  
25 *hagelsmith.com* or *smithhagel.com*, so we could have one

1 Web site of the whole family. We could have a photograph  
2 of the family members together, Mrs. Smith sitting next  
3 to Jennifer, Mr. Smith over Jennifer, Bree Smith  
4 together, the four of them together, holding a picture of  
5 George, touching one another. And if we got something  
6 out like that into the media, I think it would have shown  
7 that the family was really strong and united.

8 And that -- visually, that's what was missing  
9 from day one. You know, the cruise line was putting  
10 these pictures of George and Jennifer frolicking on the  
11 cruise ship. That was the image that people saw. I knew  
12 we had to change that image, and I wanted these four  
13 family members united visually in front of the public.

14 They wouldn't agree to anything like that.  
15 They wouldn't agree to a common Web site. They created  
16 their own Web site, which was a good idea, *Justice for*  
17 *George*. It's not a Web site; it's an e-mail address. So  
18 they were getting information into them at  
19 *justiceforgeorge@aol.com*.

20 We had a tip line, *tipsathagelsmith.com*, with  
21 the Web site. Jennifer decided to post a reward of a  
22 hundred thousand dollars. You know, there was an issue,  
23 should we have gotten the approval of the Probate Court  
24 to have a hundred thousand dollars award. I told  
25 Jennifer, "We'll just split it, I'll pay half of it, you

1 pay half of it. Let's just get it out there, let's get  
2 it done."

3 We wanted to have a unified plan of appearing  
4 in the public, which I felt was really important for  
5 these reasons. I wanted no press statement without it  
6 being a joint one of all families. I wanted no  
7 appearances in the public forum, on television or what  
8 have you, or in Congress, without all of us being  
9 together -- not us, but the families being together.  
10 That was the important thing.

11 And one day, 7:30 in the morning, every phone  
12 in my house, every cell phone I had, started ringing.  
13 People said the Smiths are on TV and Jennifer is not  
14 there and they're saying ugly things about Jennifer.

15 That's when I felt, well, this was going to be  
16 more difficult than I had hoped. We're not on the same  
17 page. They're out in the press. If they're out in the  
18 press, people are wanting to know, where is Jennifer?  
19 She's the person who had -- who was unconscious at the  
20 time of her husband's death. Everyone was saying,  
21 speculating, did she do it, what does she know, so forth.  
22 So now the Smiths are on national television and I know  
23 that they were trying to divide the issue.

24 I'm not saying they intentionally went on to  
25 do anything. That's never been my assessment of the

1 initial dealings. They were hurting, grieving, they  
2 wanted to go their own way. But by going out into the  
3 media, people were going to say, where's your  
4 daughter-in-law, where is she, what's happening, do you  
5 think she's withholding information. Their answer was  
6 going to be, yeah, I think she's withholding information.

7 What happened, things got worse initially when  
8 the attorneys got involved. I think Jennifer's  
9 assessment of that was suddenly things started almost  
10 becoming more acrimonious between the families,  
11 unfortunately.

12 Q I want you to stay away from things you and  
13 Jennifer would have talked about.

14 Going back, you said at this point all your  
15 communication was just with Attorney Rivkind. What was  
16 Attorney Rivkind's responses? Were you reaching out to  
17 Attorney Rivkind with information?

18 A I was -- you know, Fred Rivkind and I, we do  
19 exactly the same type of work. When I was a defense  
20 attorney defending cruise lines, he would have cases  
21 against me. So we know each other. You know, my  
22 comments to him were essentially, what are you doing,  
23 what's going on here, this is not a good thing.

24 This is -- this was the path the Smiths wanted  
25 to go on. I think he was trying -- I think he saw the



1 benefit of trying to do something in a joint manner, but  
2 he knew it simply wasn't going to take place, quite  
3 frankly. He's an excellent attorney, he's a skilled  
4 attorney. He sees the big picture. But I think he was  
5 under the mandate of his own clients, they wanted to do  
6 their own things. That's kind of what we were dealing  
7 with, quite frankly.

8 We made a decision -- let me add this, and  
9 Jennifer made this clear to me, that we were to -- like  
10 when Dr. Lee went on the ship, Mr. Rivkind was going to  
11 be invited, make sure Mr. Rivkind was there. So we  
12 invited him to everything. I felt it important -- for  
13 two reasons. One, George Smith is Mr. and Mrs. Smith's  
14 beloved son. I wanted them to know we were trying to  
15 find information out. I wanted their attorney to be able  
16 to communicate with them. So Mr. Rivkind came to  
17 meetings. We had meetings before we went on the ship,  
18 where we talked about strategy, we talked about different  
19 theories. I had a number of different theories of the  
20 case. There were lots of questions that I wanted  
21 answered. We brought Mr. Rivkind into that, we brought  
22 him on the ship.

23 Q How often would you say you met with Attorney  
24 Rivkind --

25 A I would say --

1 Q -- either phone or in person or e-mail?

2 A At the beginning it was every day. Then it  
3 was once a week. Because you have to remember, back in  
4 the fall of 2005 going into the beginning of 2006, this  
5 case was on the news every single day. So we -- I say  
6 we; Jennifer initially appeared on television, and then  
7 didn't appear. I stopped appearing on TV. Mr. Rivkind  
8 continued to appear on TV. So we were constantly talking  
9 about the case. I mean, you know, we would say, "Brett,  
10 you went on, you know, Greta van Susteren's show. What's  
11 going on? What are you hearing? What's happening? What  
12 are your thoughts about the case?"

13 We talked about really all the weaknesses and  
14 strengths of the case that we're going to talk about  
15 here. We talked about the issue of George drinking. We  
16 talked about -- one of the initial issues in this case is  
17 the Athens Convention, which is kind of like the Warsaw  
18 Convention with aviation cases, whether it applied, and  
19 if so what the limitations were. We debated that, and I  
20 know he did some things to inquire into it; so did I. We  
21 talked about the law. We talked all the time.

22 Q Let's go back. It's actually for my education  
23 as much as the Court. How much were you talking to him,  
24 communicating -- forget about the substance of it. I  
25 understand you were talking about everything in the case.

1 How often were you communicating with him? At the  
2 beginning you said almost every day. Then what?

3 A At the beginning almost every day. Then we  
4 would talk at least at a minimum of once a week. You  
5 know, I've got a stack of e-mails this high (indicating)  
6 that I printed out. Quite frankly, I didn't have time to  
7 read through them. But we were, you know, we were  
8 communicating on a regular basis.

9 Q All the way up until the time of the  
10 settlement?

11 A Up to the time of the settlement.

12 Q Okay. Could you continue discussing what you  
13 did after the -- what else did you do other than the Web  
14 sites and Dr. Lee?

15 A There were a number of things that we did.

16 We -- my practice, as I said, also involves  
17 representing crew members, so there were crew members  
18 actually working on the Brilliance of the Seas that we  
19 knew. We made contact with people, quite frankly, behind  
20 the scenes, talked about things that they knew or  
21 requests for information that we had. There are some  
22 security officers working for the company and that  
23 previously worked for the company that we talked to. We  
24 spoke with a crew member who actually overheard one of  
25 the four men talking about George Smith in a manner which

1 I felt, quite frankly, incriminated him.

2 We also had -- you know, our tip line produced  
3 some leads, not as many as I had hoped. One of the leads  
4 that came in to our office was [REDACTED]

5 [REDACTED]  
6 [REDACTED] talking about  
7 being responsible for George Smith's death. And I found  
8 it to be shocking information, quite frankly.

9 Q Did you communicate that to Attorney Rivkind?

10 A I communicated it to Mr. Rivkind. I called  
11 Mr. Rivkind.

12 I sent a letter to the FBI. Of course we  
13 called the FBI. We called Sean O'Malley right away, told  
14 him about it. We sent Sean O'Malley three or four  
15 letters about it. Sent Mr. Rivkind e-mails about that.

16 Q Who is Sean O'Malley?

17 A Sean O'Malley is, I believe, the primary FBI  
18 agent responsible for this particular case.

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED] We got

1 that telephone number, we sent it to the FBI. We  
2 determined where the call was coming from. And when that  
3 person called back, we recorded the phone call and then  
4 we sent that -- the FBI came, picked it up, signed a  
5 chain of custody receipt. We know that they contacted  
6 them, followed them up.

7 We had an investigator --

8 Q All this information was communicated with  
9 Attorney Rivkind?

10 A I don't know if I told him that we recorded it  
11 or not, those types of details. But I definitely told  
12 him about it. And my -- you know, our office is  
13 admittedly a small office. It's my wife and I. We have  
14 two attorneys that work. I try to do just these types of  
15 cases. I try to stay away from the orthopedic, slip and  
16 fall cases, let other people handle those cases.


17 So when this information came in, we of course  
18 notified Mr. Rivkind. My wife, my partner, has been  
19 working on this case, and her comment to me was, "As soon  
20 as the Smith family finds this out, I know Bree Smith is  
21 going to call me. I know the Smith family is going to  
22 call us, Jim. This is something that we can -- maybe  
23 this now will get us back together."

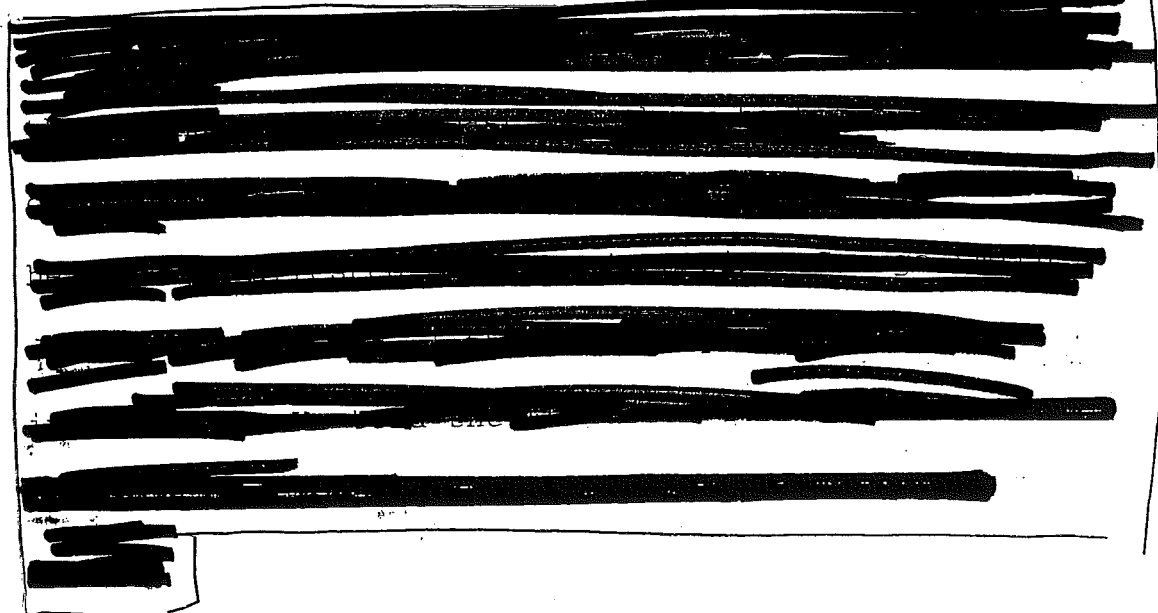
24 Because I know they would want to talk. My  
25 wife talks to me, talks to Mr. Rivkind, he talks to the

1 Smith family. I felt like they should be communicating  
2 with Lisa, my wife. I was always looking for an  
3 opportunity for all of us to come back, and for all of us  
4 to be on one page.

5 Q Did that happen?

6 A It didn't happen.

7 We had an investigator look into this one  
8 passenger, Greg Rosenberg, who I've always personally had  
9 my own suspicions about. You know, I'll be the first to  
10 admit, though, Judge Hopper, I consider myself to be the  
11 most biased against these cruise lines. I'm not going to  
12 give them the benefit of the doubt. And in a case,  
13 perhaps, as you can figure out, my inclination is to  
14 think that something's there, that there are  
15 coincidences, and we need to look into this. 

16 

24 Some of the other things that we did, we  
25 printed probably a thousand fliers. A lot of clients

1 that I have are crew members who, after they retire, they  
2 work at the ports, work at the Port of Miami, Port  
3 Everglades, Port Canaveral, they work at San Pedro. And  
4 they have little shops where they sell food, have  
5 Internet cafes. We had made sure we had posters put up  
6 in all those types of areas, picture of George. We  
7 created a 1-800 number to call in to give information.  
8 We actually had the posters on the ships itself,  
9 including in one of the staff captain's offices. I'm not  
10 sure how we ever did that. Sometimes the crew members  
11 would call us. We learned about a prior crew member who  
12 had been thrown off the ship before George Smith, in  
13 October of 2004. We interviewed some of those people.  
14 We tried to find out --

15 MR. JONES: Excuse me. A passenger, you  
16 mean?

17 THE WITNESS: A crew member.

18 MR. JONES: A cruise line employee?

19 THE WITNESS: Yes, Royal Caribbean cruise  
20 line employee who had been, I believe, thrown over  
21 a balcony, and the cruise line said it was an  
22 accident.

23 A So we were trying to -- you know, the way we  
24 try to build cases is we try to find out prior  
25 substantially similar information to show how they

1 respond to any particular situation, which is important  
2 to prove notice and foreseeability and corporate pattern  
3 of conduct.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] The FBI won't tell us that. This gets into  
10 this type of area, and I know this sounds a little  
11 negative. But, hey, FBI, we gave you this information.  
12 We don't know what you're doing. I know you're doing  
13 something. But how about giving us a name back; for  
14 goodness sake. Because we may want to contact this  
15 person directly and get a statement from him. Could be a  
16 key witness perhaps. The Smith family is entitled to  
17 know that information.

18 They won't give us that information. They  
19 instruct us, don't you dare make contact with that type  
20 of person because you're going to screw up our whole  
21 investigation.

22 So some of the other things we did was we met  
23 again with Dr. Lee --

24 Q What exactly did Dr. Lee do on the ship?

25 A Dr. Lee went on the ship with seven or eight



1 other people as part of our team. He first went into  
2 George and Jennifer's -- first we met on the ship, and he  
3 asked William Wright, he was a captain and vice president  
4 of operations, basic questions. He wanted to know  
5 details about the canopy, he wanted to know the canopy's  
6 slope. He wanted to have a diagram of the ship. Wanted  
7 to know where Greg Rosenberg's cabin was. He wanted to  
8 know where the other Rosenbergs -- these are these four  
9 men. He wanted to know where Rusty Kaufman, who was one  
10 of the four men, where his cabin was. He wanted to know  
11 where Josh Askin's cabin was. The cruise line wouldn't  
12 tell us this. We wanted to know where Jennifer was  
13 found.

14 If you remember this case, Jennifer leaves the  
15 disco --

16 Q We'll get into that.

17 A Okay.

18 Q Just go with what he did.

19 A He went on the ship. He inspected George and  
20 Jennifer's cabin. They took measurements. They took  
21 photographs. They had very sophisticated video  
22 photography. They made estimates down to the canopy.  
23 They closed the room so it was dark and used -- I forget  
24 the type of chemical they spray. They sprayed the  
25 whole -- every bit of the cabin, and then used like a

1 fluorazine scanner -- I don't think these terms are  
2 correct -- to look for foreign bodily fluid or serum or  
3 what have you.

4           They did this testing out on the -- outside  
5 balcony itself. And showed us photographs later, showed  
6 Mr. Rivkind and I -- Dr. Lee came down. I paid for him  
7 to come down and we met with him and his wife, who's also  
8 a forensic scientist. They showed us the results of the  
9 testing that they did. There was a photograph of balcony  
10 partition; partitions divide each exterior balcony. And  
11 we were trying to figure out where George Smith actually  
12 went over the railing, and we were making calculations,  
13 and some of the photographs that show the blood stains  
14 down on the canopy are very misleading, because you would  
15 have thought if this was the balcony, you would have  
16 thought perhaps he went right over the middle of the  
17 balcony. He didn't. He went over this far right-hand  
18 corner. So that corner to me was always of particular  
19 interest. Dr. Lee doesn't tell me everything he's  
20 saying. But on that particular partition was -- he had a  
21 photograph of testing that was -- that tested  
22 presumptively positive for some type of blood or serum,  
23 which I thought was significant. I'm a bit biased,  
24 though. That information was provided to the FBI.

25           We did not do or really have the capability of

1 doing DNA analysis to determine whether that was George's  
2 or whether it was someone else's. And we of course asked  
3 the FBI that. They would not answer that. I'd like to  
4 know. I mean, if it's not George's, then they should say  
5 it's not his.

6 Q Was Attorney Rivkind present for all of this?

7 A Mr. Rivkind was there.

8 Q Invited by you?

9 A He was invited by me. We went up together.

10 He looked at the photographs. We talked with  
11 him. I had a sheet of questions, we'd go through the  
12 questions. We'd talk about things. We'd say, where do  
13 we go from here, what do we do. He has other people in  
14 his office, a police sergeant and others, who were doing  
15 other things. We were trying to put all this together.

16 You know, it's the type of thing where the FBI  
17 won't share information with him. He'll share his  
18 information with the FBI. There's this rivalry that I've  
19 learned that goes on between the FBI and Dr. Lee. I  
20 don't think the FBI particularly cares for Dr. Lee. I  
21 think Dr. Lee thinks the FBI is kind of a bunch of  
22 bureaucrats. So it's like we're trying to put the pieces  
23 together, but you can't quite do it. So we're getting  
24 little bits and pieces.

25 Some of the things that he saw maybe have

1 nothing to do with George Smith. And sometimes I think  
2 to myself -- I'm a bit hesitant to even bring this up  
3 because it sounds like perhaps he was bleeding before he  
4 went over, bleeding on that partition. That would have  
5 been the logical inference I drew. But if it's not his,  
6 then tell us that so we can make appropriate decisions.

7 So we're kind of in the dark and I don't think  
8 the FBI will ever give us that basic information.

9 I haven't been at the last two FBI meetings  
10 because I'm not going to ever sign a nondisclosure  
11 agreement with the FBI, so I don't know, quite frankly,  
12 if any of these attorneys or Jennifer can comment on  
13 whether they answered those questions. But I certainly  
14 would like to know.

15 Q I'd like you to go on with what you guys do.

16 A Sorry.

17 THE WITNESS: If I get off the point,  
18 Judge, just push me back in the right direction.

19 A We met with Dr. Lee. We did those types of  
20 things. We were, you know, researching some of the legal  
21 issues. We were discussing with Mr. Rivkind his opinions  
22 about some of the legal issues. And perhaps you'd like  
23 me to address some of those types of issues.

24 Q I will. But do you feel -- we may be at that  
25 point.

1           Before I forget, is there something notable  
2 about your track record against Royal Caribbean?

3           A       Well, yeah, I think so. I mean, I -- we --  
4 our approach to these cases is -- you know, we've had --  
5 for example, putting this case aside, we've had five  
6 clients who have testified before the U.S. Congress. So  
7 when we get involved in these cases, we try to approach  
8 it in a broad manner, in which we're saying to our  
9 clients, hey, you're going to have some problems, you're  
10 going to have problems with the FBI, you're going to be  
11 frustrated with them, you're going to be frustrated  
12 because there's not going to be a conviction with your  
13 case. You need to broaden your approach. You need to  
14 get involved with state legislators, you need to get  
15 involved with the U.S. Congress. You need to walk into  
16 congressmen and women's offices with your materials and  
17 tell them what's going on.

18           That's led to some of our clients testifying  
19 before Congress. There's going to be legislation, a bill  
20 coming out, a bill in California last week. We pushed  
21 them towards an organization that the Smith family was  
22 instrumental in creating, the International Cruise  
23 Victims Organization, which they cofounded with Ken  
24 Carver, who lost his daughter on a cruise ship. We try  
25 to get them active in those organizations, approach

1 things on a broad scale.

2 As far as recoveries against Royal Caribbean,  
3 we've had the largest passenger damage recovery in their  
4 40 year history. Our approach to cases --

5 Q Hold on. The highest recovery against Royal  
6 Caribbean in its history?

7 A In a passenger case.

8 Q Go ahead.

9 A You know, what we've done in a lot of cases is  
10 we have uncovered a lot of internal documents, and been  
11 the first to do that. There's been -- there's a security  
12 company called Sheridan Swailes, who did this internal  
13 secret analysis of this cruise line's security department  
14 and crimes and found that crimes occurred frequently,  
15 when they were in the public saying they rarely occurred.  
16 We found that information out, we sent it to Congress, we  
17 sent it to every attorney in Miami, Florida.

18 There's another report, called the Kay Krohn  
19 (phonetic) report, another secret report from -- Kay  
20 Krohn is a person in the U.S. Navy, a gender sexual  
21 harassment person. They did a secret analysis whether  
22 women were being sexually harassed and so forth, and  
23 claimed that it doesn't occur. Things of that sort.

24 We've uncovered different types of incident  
25 reports that showed Congress lied. The Smith family has

1 a Web site, *justiceforgeorgesmith.com*, which they  
2 actually talk about some of these things that we've  
3 uncovered and have been reported in the press.

4 Q Okay.

5 A We like to give this cruise line a really hard  
6 time. And I enjoy doing it, quite frankly. I know it  
7 might sound a little bit petty, I don't know, or  
8 vindictive. But I like proving them wrong. It's  
9 something I enjoy. It's what gets me out of bed; I'm  
10 passionate about it. I really enjoy it.

11 Q Let's now go to evaluate -- how do you  
12 evaluate a case? First off, what factors are involved?  
13 And then we'll move to this case.

14 A Okay. Well, in general, and I think it's the  
15 same if you're evaluating it for a large corporation or  
16 for a personal client, is you make -- you know, if you've  
17 handled 4- or 500 of these, sometimes you get sort of a  
18 snapshot of the case. You kind of get a feel for the  
19 case very quickly.

20 In general terms, we evaluate whether there's  
21 a legal basis whether to hold the cruise line liable.  
22 When you are thinking of suing a cruise line, you have to  
23 prove that they were negligent. You have to prove that  
24 they failed to use reasonable care. You do not have the  
25 same standard of a common carrier that, in many states --

1 I don't know what the situation is in Connecticut. In  
2 some states common carriers owe the highest duty of care.  
3 Cruise lines do not hold the highest duty of care. They  
4 hold the duty of ordinary care. So you have to prove  
5 that they did something wrong. And you have to prove  
6 that they were on notice of the situation, that is, they  
7 actually knew there was a danger or they should have  
8 known of a danger, constructive knowledge. And then they  
9 failed to take appropriate remedial steps to reduce or  
10 eliminate the danger, or if they can't reduce or  
11 eliminate the danger, they have to warn of the danger.

12 I always think proving negligence against a  
13 cruise line like Royal Caribbean is rather easy, in all  
14 candor, because I don't think they have enough security  
15 guards. We've uncovered lots of information that  
16 sometimes they only use two security guards on a ship  
17 with 3,000 people and they don't have the ability or  
18 interest to patrol. They don't have adequate  
19 closed-circuit TV.

20 So there's lot of things we have studied. We  
21 have lots of transcripts that we think we can use to show  
22 cruise lines in general are negligent.

23 The next issue, though, is you have to  
24 evaluate whether the negligence was the proximate cause  
25 of the passenger's injury or death. This is general tort



1 law that perhaps I take for granted, because it's all I  
2 do. You have to prove a duty, a duty owed to the  
3 passengers. Breach of that duty is negligence. You have  
4 to prove that that breach of duty and negligence is the  
5 direct legal cause of a person's injury. So we looked  
6 into those types of factors.

7 This is a case which involves clearly heavy  
8 consumption of alcohol, and -- perhaps I should just talk  
9 about this case rather than evaluating cases in general.

10 Q Go ahead.

11 A And it's not unusual, Judge, to have  
12 passengers who consumed alcohol on cruise ships. Every  
13 time you turn around the waiter is hitting you with his  
14 tray trying to give you a margarita. Lots of people  
15 drink on cruise ships. We've had lots of victims who  
16 consumed alcohol. So we're used to that.

17 There's an important case, I think we cited in  
18 our brief, called Hall versus Royal Caribbean Cruises.  
19 The defense attorney was Mr. Peltz, who we all know,  
20 who's a bulldog defense attorney for Royal Caribbean.  
21 And he convinced a judge that because the passenger had  
22 been drinking, his case should be thrown out. And that  
23 particular case dealt with a passenger on a Royal  
24 Caribbean cruise ship, probably the Viking Crown Lounge,  
25 who the bartender served, the case states, up to the

1 point of clear intoxication, and then continued to serve  
2 him alcohol past the point of clear intoxication. And he  
3 left the lounge and proceeded to fall down a flight of  
4 stairs and was injured. And the trial court threw the  
5 case out.

6 On appeal, our appellate court, Third District  
7 Court of Appeal, reversed that and said, hey, you have  
8 the duty to use reasonable care even when you serve  
9 alcohol, and particularly when your own company serves  
10 the alcohol to the point of past the point of  
11 intoxication. You have a duty to passengers,  
12 notwithstanding their -- something the Court called their  
13 self -- something like self-induced disabilities. But  
14 the Court then quickly added, however, comparative  
15 negligence is still a defense in maritime law, so let the  
16 jury decide the extent to which the passenger should be  
17 comparatively negligent, should it be 90 percent, 50  
18 percent, 60 percent. And then that case, after that  
19 ruling, was subsequently settled. I know the attorney,  
20 Mike Harrison, very well. It was settled for, quite  
21 frankly, a rather nominal sum of money in light of the  
22 fact that the passenger drank himself into a state of  
23 oblivion. But there was a small recovery in that  
24 particular case.

25 Q How would those factors play out in this case,

1 based on your involvement?

2 A In this case -- I'll just tell you frankly  
3 what my evaluation was of the case. I felt, based on the  
4 information I had, and we reasonably can prove --

5 Q Hold on. Before you do that, let's step back.  
6 Let's go to the key legal -- what legal -- what laws  
7 applied to these cases, before you go into how you  
8 evaluate this one. What is the Athens Convention?

9 A Let me back up a bit further.  
10 In cases like this, which involve an injury or  
11 death on high seas, the general maritime law applies.  
12 There's no question about that. And the general maritime  
13 law applies based on two factors --

14 MR. BROWN: Your Honor, this is all in  
15 the brief, by the way, all of this.

16 A You want me to go on?

17 Q Yes, keep going.

18 A One, where the incident occurs on navigable  
19 waters, location. And two, when the activity is of a  
20 type that involves a traditional maritime activity,  
21 shipping, cruising.

22 Q Fair enough.

23 A So there's no question that the general  
24 maritime law applies. That's very significant, because  
25 the general maritime law is no friend of suffering

1 people. Let me tell you that. I learned that very early  
2 in my personal experiences and in law school.

3 Just a minute. I'm sorry.

4 You know, we had many cases that I observed as  
5 a young lawyer where you have a young man on a work boat  
6 who disappeared in international waters. When they  
7 disappear in international waters, or they die, the  
8 general maritime law applies, and the recovery for the  
9 family members who are suffering is virtually  
10 nonexistent. It's limited only to pecuniary damages.

11 But if you die or disappear just a smidgeon  
12 within the state territorial waters, your widow,  
13 sometimes your mother, father, all your kids, can fully  
14 recover for pain, suffering, grief, bereavement, mental  
15 anguish, the full range of damages. So there's always  
16 been this very arbitrary part of the law that if you die  
17 in state territorial waters your family can be adequately  
18 compensated. If you move on out a little bit, everyone  
19 is going to be not compensated.

20 And we would literally see cases early in my  
21 practice where the defendants -- the body would be in  
22 state territorial waters, and the defendants would get,  
23 you know, people with experience, experts and experience  
24 in tides, like that, sure, he died out in international  
25 waters and then his body floated into state territorial

1 waters. That's what a big difference it made.

2 In this case, there are a couple of things  
3 unique about the maritime law which really created some  
4 obstacles.

5 Q Which law applied in this case? Did that  
6 general maritime law?

7 A Yeah. The Death On The High Seas Act applied,  
8 applies, under the general maritime law.

9 Let me start with the Athens Convention.

10 Q Sure.

11 A The Athens Convention is an international  
12 treaty formed in 1974 that was passed largely by shipping  
13 companies to limit their liability. It has no real other  
14 purpose. The shipping companies, in a protocol, which is  
15 an amendment to the Athens Convention, in 1976,  
16 established a limit of 46,666 Special Drawing Rights.  
17 Special Drawing Rights are an international monetary  
18 amount. You can look in the Wall Street Journal and get  
19 the conversion rate. The conversion rate today of 46,666  
20 is \$75,000.

21 So what the shipping companies did, which is  
22 ironically the same as the Warsaw Convention, they  
23 decided when people die they wanted to have their  
24 liability limited. It's particularly important to big  
25 shipping companies if the whole ship went down. Because

1 if you limit one person's life to 75,000 and 3,000 people  
2 die, it is literally a difference of billions of dollars.

3 So one of the problems in this case was the  
4 application of the Athens Convention. Now, one of the  
5 exhibits, hasn't been introduced yet -- I think actually  
6 it's been filed --

7 MR. BROWN: We're doing this, obviously,  
8 in a much more modified version.

9 Your Honor, it's Exhibit 1 to the  
10 memorandum.

11 THE COURT: The ticket?

12 A No. Actually, I was going to refer to an  
13 e-mail between Jennifer and Bree, which is Exhibit 4 to  
14 the Memorandum In Opposition And Motion To Remove the  
15 Fiduciary. And it was a -- October 28.

16 Jennifer is e-mailing Bree and they're all --  
17 Bree's a lawyer, of course. Bree's probably a lot  
18 smarter than me. Jennifer and Bree are talking about  
19 these cases and so forth. This is before she retains me.  
20 Jennifer says, "The Athens Convention is a concern of  
21 mine." She goes on to talk about things.

22 So when a case like this -- you hear about the  
23 case, you're watching it. When we first heard about this  
24 case, where personal injury lawyers may say, wow, this is  
25 going to be a big case, you know, maritime attorneys say,

1 Athens Convention, and these people don't even know it  
2 yet, Death On The High Seas. One of the first issues,  
3 before we even get into an analysis of the facts, who's  
4 negligent, so forth, destruction of evidence, is whether  
5 the Athens Convention applies.

6 Mr. Jones took Jennifer's deposition --  
7 actually, it wasn't Mr. Jones. It was another attorney.  
8 John Q. Kelly. He said, "Has any lawyer told you  
9 definitely whether the Athens Convention applied or not?"  
10 I remember thinking, give me a break. No lawyer is going  
11 to say I guarantee it doesn't and no lawyer is going to  
12 say I guarantee it does apply. Because you're only going  
13 to find that out when you go before a judge, like your  
14 Honor, and you lay all the cases out and make your  
15 arguments, and you decide.

16 There are judges who are no friends of  
17 plaintiffs. John Gordon, who dismissed the Smith  
18 family's case with the stamp of the Athens Convention on  
19 this case as soon as it walked in his courtroom.

20 So we looked in the Athens Convention. There  
21 are cases that have applied the Athens Convention without  
22 any real discussion.

23 There is a U.S. federal statute which I need  
24 to bring to your Honor's attention, which is 46 USC  
25 Section 183, which prohibits, in the maritime context,

1 shipping companies, cruise lines, from limiting -- from  
2 attempting to limit their exposure for suffering and so  
3 forth. So the Athens Convention is not -- cannot apply  
4 by virtue of 46 USC 183 when a ship calls on a U.S. port.  
5 Matter of jurisdiction.

6 But when you have a foreign flag ship owned by  
7 a foreign corporation, which is the elements that we have  
8 here, sailing from a foreign port -- and George and  
9 Jennifer's cruise started in Barcelona and they returned  
10 to Barcelona, not calling on a U.S. port. On its face,  
11 the Athens Convention and the 1976 Protocols apply.

12 The issue then is can we wiggle out of that  
13 and can we get clever and can we come up with an argument  
14 to make the Athens Convention not apply.

15 Mr. Jones provided your Honor earlier in this  
16 case with a copy of a case called Wallis, W-a-l-l-i-s --

17 MR. BROWN: It's all in the brief, your  
18 Honor. It's all in the brief.

19 A -- versus Princess Cruises. That is a case  
20 where Mr. and Mrs. Wallis went on a European cruise.  
21 Mr. Wallis goes to the casino, wins some money,  
22 disappears. His widow was treated poorly, they don't  
23 provide her with a counselor, they're rude to her.

24 Q Can you talk up.

25 A The captain comes to her and says, "He



1 probably is dead because he hit the water. If not, he  
2 would have been sucked under the ship and tore up by the  
3 propellers. You're never going to see him again."

4 She sued for intentional infliction of severe  
5 emotional distress and sued for wrongful death. The  
6 cruise line asserted the Athens Convention. The 9th  
7 Circuit Court of Appeal, federal court, very liberal  
8 jurisdiction, great place to be doing what I'm doing,  
9 really scrutinized the ticket and said, "Well, they refer  
10 to the 1974 Athens Convention, they refer to the 1976  
11 Protocols. But you don't, Mr. Cruise Line, mention the  
12 46,666 Special Drawing Rights. And how on earth -- you  
13 wouldn't expect people to read it and go look in the  
14 library and find that amount, and what does the amount  
15 mean and go find a conversion table, it's impossible.  
16 We're not going to enforce it." The Court said the terms  
17 are not reasonably communicated to the passenger.

18 So that was going to be our argument. Why  
19 not? And what we did is, post the Wallis decision, which  
20 is a 2002 case, I pulled every passenger ticket of every  
21 cruise line, and we looked through the language of every  
22 single ticket, including Royal Caribbean. What Princess  
23 Cruise Line did is they changed their ticket to say  
24 specifically 46,666 SDRs applies, and for your  
25 information, that is approximately, and then they provide

1 a conversion rate. If you go online and look on  
2 *princess.com*, you'll see they actually put that and they  
3 say it's approximately \$70,000. It's now 75,000.

4 Royal Caribbean did not do that. I think we  
5 could have made, I felt, a compelling argument to try to  
6 convince an equity-minded judge who was willing to read  
7 the Wallis decision -- I felt we had the better part of  
8 that argument, quite frankly. That's the way I felt.  
9 Now, I'll be candid. I've had lots of clever arguments  
10 that courts haven't found very clever. They just said,  
11 well, that's a great argument, but you know what,  
12 shipping companies should be able to apply limitations,  
13 aircraft companies should be able to limit their  
14 liability.

15 When you read all these cases -- and we tried  
16 to give your Honor as many as we can. I have a couple of  
17 extra ones.

18 One, post Wallis, went with Wallis; one post  
19 Wallis case didn't go with Wallis.

20 Q What's your jurisdiction like as compared to  
21 the 9th Circuit?

22 A We are -- I don't want to get into politics.  
23 But we're many years into Jebb Bush, who is a Republican,  
24 who has appointed many very conservative  
25 corporate-oriented companies' [sic], and our 3rd District

1 is becoming increasingly more conservative. Mr. Rivkind,  
2 the Smiths' counsel, tried a case in the 3rd District,  
3 reversed it just in the past month or two, and I don't  
4 think it should have been reversed. I don't think any  
5 other court would have reversed it. It was a big  
6 multimillion dollar verdict that he obtained.

7 So the initial concern is who is the judge  
8 that's going to see the case. And if we filed our  
9 case -- you know, I know Mike Jones is going to say, why  
10 didn't you just go find out, why didn't you file suit and  
11 see who it was. Well, if we filed suit and it was Judge  
12 Gordon or any of his contemporaries, what would we do?  
13 We're going to be there. The case is going to be limited  
14 by the Athens Convention.

15 Q What happened in Wallis?

16 A Well, this is a similar case involving a  
17 missing passenger. And at the end of the day, in the  
18 Wallis decision, the intentional infliction of severe  
19 emotional distress count was dismissed on the basis that  
20 those facts aren't outrageous enough. When you look at  
21 intentional infliction of emotional distress cases, which  
22 is the tort of outrage, it's where you intend to act in a  
23 manner with the purpose of causing someone severe  
24 emotional distress. A lot of the courts don't really  
25 recognize that cause of action. They didn't recognize it

1 in Mr. and Mrs. Wallis's case. They also got around the  
2 Athens Convention, but ended up, in their case, owing  
3 more in attorney fees to their lawyers than the  
4 settlement value of the case. So it was kind of a  
5 Pyrrhic victory, so to speak. You can win the little  
6 battle, but still lose the war.

7 Our case has a couple of unique points --

8 Q About the Athens Convention? Are you talking  
9 about that?

10 A Yeah, about the Athens Convention.

11 Royal Caribbean does something rather clever.  
12 In their -- if I can just, so the record is clear -- this  
13 is the passenger ticket that we've marked as Exhibit 1 to  
14 the brief. Cruise Ticket Tour Ticket Contract.

15 MR. BROWN: Your Honor should have a  
16 copy.

17 THE COURT: 1?

18 MR. BROWN: Exhibit 1, your Honor.

19 A On page 18, they invite the passenger to sign  
20 the ticket under Cruise Ticket Contract. It is important  
21 that you read all the terms of the cruise ticket  
22 contract. And Jennifer and George, as being responsible,  
23 compliant people, signed it.

24 We tell our clients don't sign anything. This  
25 isn't a lottery ticket. You're not going to sign

1 anything ever given to you by a corporation that's going  
2 to entitle you to anything. They're just going to use it  
3 against you. There's a line of cases that say when you  
4 sign a contract you're presumed to have read it. The  
5 ticket goes on to say we're going to enforce this whether  
6 you read it or not. But they sign it and there's a  
7 presumption that they read it, and the ticket, on  
8 paragraph, I think, 18, refers directly to the Athens  
9 Convention and the Protocol.

10 So my concern would be if you get into this  
11 Wallis versus Princess Cruise Line analysis that's  
12 dealing with whether the terms are reasonably  
13 communicated to the passenger, that kind of was premised  
14 on, hey, let's be fair, people don't really know what all  
15 this is and they're not going to read it.

16 But if you have someone acknowledging the  
17 terms, here we are, 2005, if your Honor wanted to learn  
18 about the Athens Convention and what these SDRs are, you  
19 could do a Google search and you could find it out just  
20 like that and you can see that you're limited.

21 So I felt in balance, that even though I  
22 thought we perhaps had a clever argument, these cases  
23 would help us, that, you know, the defense attorney,  
24 Mr. Peltz, would say, "They signed this, come on now,  
25 they should be presumed to have understood it." So I

1 felt that was a real gamble.

2 Now, you know, what -- before we get to the  
3 other issues, Jennifer was faced with a situation where  
4 they come and put a million-75,000 --

5 Q Let's not go there yet.

6 A Okay.

7 Q I want to go -- what's the next big legal  
8 hurdle to the case? You talked about Death On The High  
9 Seas Act. Would you please tell the Court about the  
10 Death On The High Seas Act and what remedies are  
11 available under it.

12 A The Death On The High Seas Act is a statute,  
13 1920 statute, which has been characterized as an outdated  
14 law that was created to make it easier for widows of  
15 seamen to recover damages. And I think we all agree on  
16 that. I don't think the Smiths dispute that. The Smiths  
17 have a Web site, *justiceforgeorgesmith.com* --

18 Q Hold on a second.

19 MR. BROWN: I might as well pull it out  
20 for everybody. It's the Web site (handing).

21 A And it says -- if I could turn to --

22 I believe this was written by Bree, as a  
23 lawyer. And she says it's an outdated law that was  
24 created in 1920 to make it easier for widows.

25 MR. RICCIO: Can you just identify where

1           you're reading?

2                         THE WITNESS:   It's the fifth page.

3           A           In the case of a missing or deceased  
4           passenger, the Death On The High Seas, DOHSA, may be  
5           applicable -- they go on to acknowledge, one, it's really  
6           for widows, and, two, bars family members from collecting  
7           damages if they didn't rely on the deceased for income.  
8           I'm paraphrasing.

9                         You get economic losses only.   It's absolutely  
10           right.

11                        MR. MARCHAND:   Can you speak louder.

12                        THE WITNESS:   I'm sorry.

13           A           I believe that they're right with that  
14           assessment of the law.

15                        Then they go on to mention the family of  
16           Richard Liffridge and the Richard Liffridge Foundation,  
17           which is trying to reform DOHSA.   Mr. Liffridge and his  
18           family are my clients.   They lost Mr. Liffridge -- he  
19           died on a cruise ship.   He burned to death on a cruise  
20           ship.   The widow does not obtain anything for her grief  
21           and bereavement, and neither do any of the children.  
22           This is a case where I think everyone should agree DOHSA  
23           applies, and we should try to do something in order to  
24           get it reformed and revised.

25           Q           I understand that's off the Web site of the

1 Smith family and not Jennifer.

2 Could you please go through Death On The High  
3 Seas Act remedies and how they get considered by a Court.

4 First off, are they considered by a Court or a  
5 jury?

6 A Yes. The Death On The High Seas Act cases are  
7 not tried to a jury, they're tried only to a judge. And  
8 the judge awards only those damages which are specified  
9 in the Death On The High Seas Act. What The Death On The  
10 High Seas Act requires is a personal representative or  
11 administrator or administratrix to be appointed, and then  
12 the personal representative brings an action, not on  
13 behalf of the estate, and I know we're in a probate  
14 estate -- I hear the word "estate" constantly, and that's  
15 fine. But it doesn't state that an estate claim is  
16 brought. It states that the personal representative  
17 brings a claim for the benefit of those individuals who  
18 are entitled to recover by virtue of DOHSA.

19 So Jennifer is, as the personal  
20 representative, the named administratrix, would bring a  
21 claim on her behalf, on Mr. Smith's behalf, and on  
22 Mrs. Smith's behalf for claims unique to all three of  
23 those individuals.

24 The permitted damages are support. Support --  
25 and again, the damages are pecuniary, meaning financial.



1 You're not entitled to grief, bereavement, and suffering  
2 and so forth. The support is defined, through the cases  
3 we cited, is not simply totaling up what George Smith  
4 would have earned over the next 40 years of his life.  
5 It's not just future earnings. It is calculated by  
6 determining reasonably, one, how long he would have  
7 worked; two, what his predeath wages were; and then  
8 making a projection, reasonably, of how those wages would  
9 have increased; then reducing it, that number,  
10 substantially by taking only his wages after-tax dollars,  
11 after reducing the amount by consumption, his  
12 consumption, and where applicable his children -- if he  
13 had children --

14 Q When you say consumption, what do you mean?

15 A Consumption is the monies that he would  
16 consume, that he would spend in doing what we do all day  
17 long, eating, buying clothes, having a car, so forth and  
18 so on. You know, economists can project different  
19 consumption factors.

20 And then you have to further reduce that  
21 amount of money to present day value. So if you take the  
22 most simplest estimate that he was making 50,000 -- he  
23 was making about 53 or so thousand dollars a year -- and  
24 you say he would have worked for another 40 years, that's  
25 \$2 million. Some people think, well, I'm entitled to

1       \$2 million. But what you have to do, of course, is you  
2       have to back out the taxes. You also have to back out  
3       the monies that he would have spent, and sometimes the  
4       monies his children would have spent. And then you also  
5       have to reduce that amount to present day value. That's  
6       essentially how you project the loss of support.

7                       MR. BROWN: Your Honor, this is all in  
8                       the brief.

9               A       I don't think that the Smiths had any basis  
10              for loss of support because they were not financially  
11              dependent.

12             Q       Let's still just talk about the Death On The  
13             High Seas Act. Go on to the next factor, loss of  
14             services and loss of inheritance.

15             A       Loss of services are the services that, in  
16             this case, George would have provided to either his mom  
17             and dad or to Jennifer for what, I suppose, we're  
18             supposed to do as men around the house, you know, fix the  
19             cars, mow the grass, you know, all which could be  
20             debatable depending upon what the person does.

21                     MR. MARCHAND: Could you speak louder?

22             Q       Let me go back to loss of support for a  
23             second. Who would benefit by the loss of support? Who  
24             would you look at on the loss of support damages and who  
25             would it cover?

1           A           Jennifer would be the only person who would  
2 recover for loss of support. She was partially dependent  
3 upon George, and, you know, it is -- as the cases state,  
4 it's really the widow that's envisioned to recover  
5 because she's financially dependent upon the decedent.  
6 The parents, in this case, would not be entitled to loss  
7 of support.

8                       So that's essentially the way those types of  
9 cases go. And, you know, as far as whether George  
10 provided services around the house for Mr. and  
11 Mrs. Smith, you know, we talked about that when I was in  
12 their home. My conclusion was that it would be a rather  
13 nominal amount. You know, I don't provide any services  
14 for my parents. I don't -- as far as cutting their grass  
15 or doing things. Perhaps I should be doing that or  
16 arranging for it, now that I think of it, but I don't.  
17 Unless you are doing that, they're not going to be  
18 entitled to recover..

19           Q           What's loss of inheritance?

20           A           Loss of inheritance is typically envisioned  
21 when you have a child. You can have some circumstances  
22 where a widow can benefit from a loss of inheritance, at  
23 least the monies that aren't consumed or aren't allocated  
24 for -- otherwise allocated for loss of support.  
25 Typically it's a much smaller amount than loss of

1 support. But the parents clearly would not be entitled  
2 to loss of inheritance under these circumstances.

3 Q How did you analyze, in this case, with  
4 respect to Death On The High Seas Act?

5 A Well, I felt in this case that -- you know, I  
6 had had discussions with Jennifer very, very early on,  
7 where she was saying, you know --

8 Q Let's --

9 A I'm not going to talk about -- fair enough.

10 Q Let's not talk about attorney-client  
11 privilege.

12 A I don't want to waive attorney-client  
13 privilege.

14 Q I want to talk about how did you analyze it  
15 with respect to this matter.

16 A We've had enough cases that when someone says  
17 they're a \$50,000 wage earner, you have, like I said, a  
18 snapshot of what that case, more or less, in the  
19 ballpark, is going to be.

20 It's going to be less than the total amount of  
21 his predeath wages in the last year times his work-life  
22 expectancy, which would be 2 million. It's going to be a  
23 figure less than that. Our experience is you can get an  
24 economist -- perhaps you can really push them, if you  
25 really want to be aggressive; you know, really get -- you

1 know, it's garbage in, garbage out. If you really push  
2 the numbers in, you can get an unreasonable number at the  
3 other side. Usually it's going to be 65 to 75 percent of  
4 that type of figure.

5 Jennifer was presented with an economic  
6 projection by the --

7 MR. BROWN: Let me just . . . .

8 MR. JONES: Your Honor, at this point I  
9 think I'm going to have to object if they're going  
10 to get into the introduction of these economist  
11 reports. We don't have the opportunity to  
12 cross-examine the economist. There's no intention  
13 to call these economists --

14 MR. BROWN: This goes into why this  
15 settlement took place. The client and her attorney  
16 knew of these reports. This goes to their state of  
17 mind for why they settled and for what amount.

18 I'm dealing with litigators who feel like  
19 they have to have the person here to talk as an  
20 economist, and that's fine, I understand that. But  
21 these go to state of mind, at least. We have  
22 reports from Royal Caribbean and from an economist  
23 working for Mr. Walker. How can we not talk about  
24 those as far as state of mind for why you would  
25 settle?

1 MR. JONES: I think that's a shorthand  
2 way of saying we're going to get the economist's  
3 reports in without the economist. We've already  
4 let Mr. Walker go and talk about what economists  
5 would do. Now they're actually going to try to  
6 submit reports prepared by economists that come to  
7 certain conclusions that certainly would affect --  
8 we have no opportunity -- in fact, we only got this  
9 at 4:30 yesterday. We had no opportunity --

10 MR. BROWN: I'm not even getting the  
11 economist -- anything with respect to who you  
12 prepped for your discussion of what you think this  
13 case is worth. At least I gave you, here's the  
14 state of mind for the settlement. How can I have  
15 Ms. Hagel-Smith talk about why she settled and not  
16 talk about the fact she knew there were these  
17 economist reports, one done by the defense and one  
18 by her own attorney. How can she talk about the  
19 settlement without talking about those reports?  
20 They're totally relevant to why you would decide to  
21 settle a case for a million dollars.

22 MR. JONES: Your Honor, I think you  
23 understand my objection.

24 THE COURT: I'm going to allow it just  
25 for state of mind purposes only.

1 MR. JONES: We would have to have a  
2 general objection, though, in terms of if  
3 Mr. Walker starts to talk about what's in the  
4 economist's mind or how the economist arrived at  
5 these numbers.

6 THE COURT: I would agree with that.

7 MR. BROWN: Therefore I'm just going to  
8 say they're Exhibits 2 and 3 to the Memorandum of  
9 Law In Support of Motion To Approve Settlement  
10 Agreement.

11 A The only thing I would add, without commenting  
12 on the way they went about this, is when Jennifer  
13 received the report of Royal Caribbean, I thought it was  
14 a low-balled report. I thought --

15 MR. JONES: I didn't hear you.

16 A I thought it was a low-balled report, a  
17 low-balled number. So when you look at that report,  
18 you'll see that they stopped his work expectancy at age  
19 59. They cut off the last 6 years, and it reduces the  
20 number. They also put in consumption by the children,  
21 which decreases the number. And I think it's speculative  
22 to put children into an economic analysis. We didn't do  
23 that. And we also ran the numbers to 67 to make it  
24 higher. You know how it works.

25 Q What was the number -- what was the number on

1 the Royal Caribbean?

2 A It was about \$525,000.

3 Q What was the number for your expert?

4 A At 65 -- he didn't project it to 65, he  
5 projected to 63 and 67. It's a little over 1.5.

6 MR. RICCIO: You're asking a question  
7 about what's in the report? Can we just have  
8 testimony about what year we're talking about in  
9 the report? You're now creating your own number or  
10 it's in his thing?

11 THE WITNESS: He ran the numbers.

12 MR. RICCIO: The testimony is as to what  
13 year, so I understand it?

14 MR. BROWN: I dropped off a package.

15 MR. JONES: You're asking him to testify  
16 about the report. Give him the report.

17 A He ran two numbers. It's a one-page report,  
18 one-page tally. It's in Exhibit 3.

19 MR. MARCHAND: It's got no date on it.

20 THE WITNESS: It does not have a date.

21 A You can see the base -- the past future date  
22 was calculated as of March 15. Just so you understand,  
23 we got this report, I think, in April or May, and he had  
24 run the numbers --

25 Q April or May of what year?



1           A       Of 2006.

2                   And we used the same March 15 date.  It's  
3           1,476,153 at age 63, working to age 63; 1,570,660 at age  
4           67.

5                   This does not calculate loss of services.  
6           This is only support.

7                   One of the issues in this case is the fact  
8           that Mr. Smith had a, I believe, a successful store,  
9           liquor store, which I believe he's still operating.

10          Q       Mr. Smith meaning?

11          A       George Smith the Third.

12                   There's all kinds of talk, there's newspaper  
13          articles, that George was going to take the business  
14          over.

15                   Jennifer gave a deposition where she talked  
16          about those issues.  And when you read the deposition,  
17          there's an issue whether --

18          Q       Well --

19          A       Well, simply --

20          Q       Just talk about the fact --

21          A       There is an issue whether any economist can  
22          factor in business earnings of a decedent's father when  
23          the decedent doesn't own the business, to make a long  
24          story short.  Mr. Smith the Third is still running and  
25          profiting from that business:  Nothing goes to Jennifer,

1 nothing goes to the estate. And we would -- we think it  
2 would be entirely speculative to run his numbers through  
3 an economist for evaluating his son's losses, because if  
4 you did that what would happen, particularly by virtue of  
5 this Connecticut probate statute which gives Mr. Smith  
6 and his wife 25 percent of anything over a hundred  
7 thousand dollars, they were saying that's been lost, but  
8 they're still benefiting from it. Then you run the loss  
9 through an economist's projections and they would receive  
10 an amount of money based upon the lost business that he  
11 is still operating. So I don't believe there's any  
12 way -- certainly we would try to do it, but I don't  
13 believe there would be any way to get that in. I think  
14 it would be speculative. And I'm just -- Jennifer  
15 commented in her deposition about that, whether he was  
16 really going to do that, whether he was going to go with  
17 the family business; if so, when he would try to buy in.  
18 There was talk about a \$500,000 buy in provision, which  
19 he could pay back over 10 or 12 years. She said maybe by  
20 age 40 it would take place or we could buy in. But  
21 there's too many variables, I think, to base it on that  
22 calculation.

23 Q Okay. Let's talk about comparative  
24 negligence.

25 A Comparative negligence of a decedent is a

1 defense to a DOHSA claim.

2 Cases of alcohol, we find are hotspot issues  
3 for any individual deciding a case, particularly true  
4 with a jury we're not going to have, but I believe with a  
5 judge. Some people have different views of consumption  
6 about alcohol. Some people believe that the issue of  
7 personal responsibility, if you are an adult and you're  
8 consuming alcohol and your conduct leads to an injury,  
9 then you should be entirely liable or at least  
10 substantially liable. The argument that would be made by  
11 the defendant in this case is that George Smith drank  
12 copious amount of alcohol, and in addition to drinking  
13 the alcohol served on the ship, he drank other alcohol  
14 that he smuggled aboard. It's a major problem in the  
15 case.

16 Q I'm sorry. He smuggled it aboard?

17 A Right. He brought two bottles of vodka aboard  
18 the ship. And the passenger ticket -- well, I don't  
19 think the passenger ticket does that. There's a written  
20 policy of the cruise line that's provided to the guest,  
21 called the guest vacation policy. You're not supposed to  
22 smuggle alcohol on board. People know that, that's why  
23 they hide it.

24 Q Did he bring anything else on board that he  
25 wasn't supposed to?

1           A       He -- later in the trip, one of the  
2 passengers, Josh Askin, a young man from California,  
3 bought a bottle of absinthe. And I can't remember the  
4 port where it was purchased. But I do know that  
5 George -- well, based upon information, that George  
6 actually smuggled the bottle aboard for Josh Askin. He  
7 put it either in front of his pants or in back of his  
8 pants and went through the screening, past security and  
9 brought it on the ship.

10                 Now, these -- and lots of people smuggle  
11 alcohol on ships. And, you know, I'm not trying to  
12 certainly attack his character at all. The point of this  
13 is simply the case Hall versus Royal Caribbean dealt with  
14 a bartender overserving a passenger. And cruise lines  
15 make big monies pushing alcohol. If this was a case  
16 where George's death was related to the overserving and  
17 profiting by the cruise line that led to his death,  
18 that's one thing. But when you have him bringing this  
19 alcohol on illegally, it raises a lot of red flags.

20                 In addition to the absinthe and the vodka, his  
21 conduct during that week was an issue. A couple of days  
22 before the cruise he and Jennifer went ashore again with  
23 the Askin family. The Askin family, Mr. Askin is a  
24 doctor, his son was on the ship, and he had --

25           Q       You said before the cruise?

1           A       Before the incident, during the cruise.

2           Q       You don't have to get into that. Jennifer has  
3 firsthand knowledge of everything. I'm just saying you  
4 just need to talk about general issues, the facts.

5           A       Fine. All of that was something that would  
6 affect the issue of comparative negligence and his  
7 conduct would have been scrutinized. The cruise line  
8 would have attempted to make this case just about his  
9 conduct. We would have attempted to raise all types of  
10 things dating back years of other passengers and crime  
11 rates.

12                   The Court would have focused in on whether he  
13 was acting reasonably, and that's what this case is  
14 about. If this case does not involve foul play but  
15 simply the intoxication of a passenger on a cruise ship,  
16 it is a weak case. He was not injured in a public  
17 hallway, he didn't fall down a flight of stairs. If he  
18 fell off the ship because of his intoxication -- and  
19 there are pundits and newspaper articles that suggest he  
20 was sitting on the balcony smoking a cigar. I don't  
21 believe it. But that's what people are going to be  
22 arguing. If something like that happened, comparative  
23 negligence would be very high and the prospects of  
24 proving a case against the cruise line very low.

25           Q       Was there something else that he was taking

1 other than alcohol or -- I should say ingesting or  
2 imbibing other than alcohol that might be a factor?

3 A Well, we know that he went to a psychiatrist a  
4 couple of months before going on the cruise because he  
5 wanted to be proactive in treating what he felt was an  
6 issue with anxiety. And the doctor prescribed two  
7 medications. He prescribed, I think, Zoloft, which is  
8 not a particularly powerful antianxiety medicine, quite  
9 frankly, but it is a prescription medicine. It's also  
10 used for treatment of depression. And Clozipan --  
11 Klonopin; Clozipan is the brand name -- which is a very  
12 powerful -- some people call it a tranquilizer, but it's  
13 used for treatment of people who are about to have a  
14 panic attack. It is clearly contraindicated when  
15 drinking alcohol. It enhances the effects of the alcohol  
16 substantially.

17 And that -- that's an issue that, you know,  
18 the judge would certainly know about. We could make  
19 arguments, well, Judge, there's no evidence he actually  
20 took it. No one actually saw him put it in his mouth.  
21 It's speculative that he ever did that. There's no  
22 evidence that he actually drank the alcohol he smuggled  
23 aboard. The alcohol was all provided by the cruise line.

24 We know how to argue these cases. We know  
25 what we want to get in and what we don't want to get in.

1 Was the judge going to do that? I don't see this as a  
2 case where the judge was going to say, no, there's no  
3 comparative negligence. That would mean someone who  
4 didn't smuggle or drink alcohol to excess would be in the  
5 same situation compared to his conduct, which an argument  
6 could be made it was not reasonable.

7 Remember, in considering comparative  
8 negligence, you don't -- and if this was a murder, if  
9 this was -- these four men, or some of the men or one of  
10 the men, having a plan to get George, plan to attack him,  
11 plan to rob him, plan to attack Jennifer, that went awry  
12 and this is what happens, whatever the scenario is, and,  
13 you see, no one knows what that scenario was, but the  
14 Court would not judge George's conduct relative to a  
15 murderer's conduct. The case is against the cruise line.  
16 The Court would look at George's conduct as compared to  
17 the cruise's conduct with respect to comparative  
18 negligence. If this is a case of negligence with failing  
19 to supply adequate security to George Smith -- that would  
20 have been the theme of our case, the cruise line didn't  
21 have enough guards, didn't fulfill their obligation, they  
22 didn't protect him. If that's the case and something  
23 happens in a closed room, then you're going to get into  
24 the issues, how did he get into that room with these men,  
25 why was he acting in this manner that led him not to be

1 with Jennifer but to be with all these other men.

2 Someone could say that wasn't being reasonable and those  
3 circumstances led to his death.

4 One of the other major problems that I saw in  
5 the case is, when you have a negligent security case, it  
6 predisposes that you can prove the underlying crime that  
7 gave rise to the civil liability of the property owner  
8 for not protecting the crime victim. In Miami we have  
9 these poor tourists from Germany who come in, get off the  
10 first exit and go to McDonald's, which is an incredible  
11 high crime rate, and they don't have fences, adequate  
12 lighting, security, and they go in there, come back to  
13 their car. If someone is shot and kills them and runs  
14 off into the bushes, you're still going to prove that a  
15 crime occurred. You might not know who did it, you might  
16 not ever have that person arrested or held accountable,  
17 but the underlying crime is a given, and then you proceed  
18 into proving how the property owner should have protected  
19 the victim.

20 Here we've got to prove an underlying crime  
21 occurred. It is our burden. It would have been my  
22 burden to prove it. I would have had to submit evidence  
23 where the judge found an underlying crime occurred.  
24 That's going to be a difficult thing to do, because you  
25 can't, in Miami, I think most jurisdictions, you can't



1 stack an inference on an inference on an inference; you  
2 should have had more guards, and if you would have had  
3 more guards you would have prevented the men being with  
4 George and you would have prevented him from going back  
5 with them to the cabin, and also, if you would have  
6 responded earlier to the noise complaints, found out what  
7 was going on, that definitely would have prevented a  
8 crime, if you can't prove that a crime occurred.

9 I don't think you want me to go into the facts  
10 as we understand them.

11 Q No.

12 A But there's a legitimate issue.

13 My belief, I think that there was foul play.  
14 I've always thought that. And as I go through this case,  
15 I'm concerned that there's foul play. I don't believe in  
16 coincidences. Now, there's a difference between what I  
17 think intuitively and in my heart with what Jennifer --  
18 and what we're going to go prove in a court of law. It's  
19 an issue, and I was concerned about proving that  
20 underlying crime.

21 Q Is there an issue with sanctions?

22 A Right. There is an issue in this particular  
23 case with -- well, a couple of things. One, we have a  
24 procedure in Florida called a proposal for settlement or  
25 a statutory offer of judgment. There's a rule of civil

1 procedure, 1.442.

2 MR. BROWN: It's all in the brief.

3 A It's all in the brief.

4 And there's a statute which permits a  
5 defendant to serve a plaintiff with a settlement offer.  
6 And it's done in a formal -- you know, with a heading.  
7 You serve it on the other side, and you say defendant  
8 submits to settle this case for X amount. And the other  
9 side has 30 days to accept that, or if they don't respond  
10 in 30 days it's deemed rejected. If it is deemed  
11 rejected and the plaintiff then goes to court and gets a  
12 verdict, or judgment rather, 75 percent -- or rather 25  
13 percent less than that amount -- so let's say  
14 hypothetically the cruise line says Jennifer Hagel-Smith,  
15 here's a million dollar settlement offer. If she does  
16 not get \$750,000 at least, if she gets any amount under  
17 \$750,000, then the Court could award the cruise line all  
18 of their attorney fees, all of their costs incurred since  
19 the date that that offer was served on the plaintiff.  
20 Okay? So there's a million scenarios you can think of.  
21 You get a million dollar verdict. You get George 50  
22 percent comparatively negligent; run the numbers however  
23 you want. You get a verdict of \$500,000. Guess what?  
24 If they serve this proposal for settlement, we owe Bob  
25 Peltz and all these lawyers all their litigation expenses

1 right off the top. They're going to have \$500,000 in  
2 fees and expenses before the case is over, unfortunately.  
3 And then if there's anything left, the attorney fees are  
4 supposed to be applied. Our attorney fees are supposed  
5 to be applied on the balance.

6 So there's a gamble in these types of cases  
7 where you have a good faith settlement offer. You better  
8 think about it, because some bad things can happen if you  
9 just say, ahh, it's not enough, let's proceed. It could  
10 be a disaster.

11 Now, I argued that those proposals for  
12 settlements don't apply in maritime cases. I've been  
13 telling you about how maritime law restricts punitive  
14 damages and nonpecuniary damages. I don't believe you  
15 should ever be sanctioned for attorney fees in a maritime  
16 law case. One of our -- one of the appellate courts in  
17 our jurisdiction, though, disagreed and said, yes, you  
18 can impose those sanctions in maritime cases, at least  
19 involving crew members. It's an open issue whether you  
20 can do that against a passenger. So it's something out  
21 there that we would need to consider.

22 You know, one of the points I'd just like to  
23 make, and I've probably taken more time than I should  
24 have, is Jennifer has an offer of a million-75,000  
25 dollars. And you can visualize it, here's a

1 million-75,000 dollars, plus access to information,  
2 information which would be otherwise privileged. This  
3 is, at the end of the day, what the cruise line put on  
4 the table.

5 Jennifer would have to make a decision  
6 based -- let's just take the very first issue, the Athens  
7 Convention. Am I going to lose on the Athens Convention  
8 or not? You know, it's like a -- not to use a poker  
9 analogy, but if the next card says you lose on the Athens  
10 Convention, we're applying it, the million-75,000  
11 dollars, access to the information, goes off the table,  
12 and we're left arguably with the \$75,000 cap on the  
13 Athens Convention.

14 If these facts had been a little bit  
15 different, and Jennifer had made that gamble and said I'm  
16 going to go for it, I bet I could get more money, and I  
17 want to go have a trial, because I want to take sworn  
18 testimony of people, the Royal Caribbean people, you  
19 could have in-laws saying, That was irresponsible. How  
20 could you do that? You just gave away a million dollars,  
21 literally a million dollars, and you destroyed our  
22 ability to get to the information. And now look at the  
23 situation we're in. We could have a situation where  
24 in-laws are criticizing her if she had gone and made the  
25 wrong decision right at the bat.

1 Now, the only other point I want to make  
2 briefly is, under the Athens Convention there's an issue  
3 whether higher limits than the 46,666 applies. In 1990  
4 there were protocols introduced to raise the SDRs to  
5 \$170,000 [sic]. Not everyone signed off on that. There  
6 is a -- Spain did, though. This ship left from Spain.  
7 There's an issue whether we could have gotten a higher  
8 SDR limit, and I forget what the conversion is. It's up  
9 to over 250,000.

10 MR. BROWN: It's in the brief, your

11 Honor.

12 A And then I had also researched the law in the  
13 United Kingdom and found that the United Kingdom passed  
14 legislation that would apply a higher SDR, 300,000 SDR,  
15 to cruise carriers based in the United Kingdom. This  
16 particular ship, the carrier, who was identified as Royal  
17 Caribbean -- not Royal Caribbean -- RCL, parentheses, UK,  
18 parentheses, Limited. It's a UK carrier, technically, at  
19 least. And the legislation says that where the principal  
20 place of business of the carrier is in the UK, we can  
21 apply this higher limit. So that would have increased  
22 the 300 SDR [sic], currently converted is about \$483,000.  
23 So we could have had a higher SDR, between 75 to 483,  
24 assuming we could convince the Court to apply these other  
25 limits. The problem with the argument is the ticket

1 doesn't refer to the 1990 Protocol or the UK law. It  
2 refers to the '74 Convention and '76 Protocol. But it's  
3 just a point I wanted to make.

4 My concern with those types of issues is the  
5 Court would say, I'm not going to apply -- I'm going to  
6 do you a favor, I'm not going to apply the 466, I'm going  
7 to apply the 300, thinking he did us a favor, and we'd be  
8 stuck at \$483,000.

9 Q I want to talk about something else with  
10 respect to Death On The High Seas Act. If this  
11 settlement were not approved and a case were brought and  
12 it was tried to a -- it went all the way to trial and  
13 there were damages awarded, does it just go -- does it go  
14 to the estate?

15 A No, it doesn't. What DOHSA states is that the  
16 court severally apports the monies to the individuals  
17 who are so entitled; I'm paraphrasing. So the Court  
18 doesn't just add it all up and say this is the estate  
19 claim. The Court would say widow gets this, mother gets  
20 this, father gets this. And this is an issue because  
21 Jennifer had the right to say this is not an estate  
22 claim, this is my claim. I'm not talking just about the  
23 intentional infliction of emotional distress. She had  
24 the right to say, "This is my claim for my loss of  
25 support from my husband," and she would be entitled to

1 100 percent of that. Again, it's not an estate claim.  
2 Then the Smiths would get just what they are entitled to  
3 for their loss of services.

4 Q In this case, how would you analyze -- what do  
5 you feel they would really -- what do you think the  
6 breakdown would be between Jennifer and the Smiths?

7 A Jennifer would have 100 percent of the  
8 support. And then my conversations with the Smiths were,  
9 what did George do around the house. Kind of the  
10 conclusion was there's not really much there. I mean,  
11 he -- you know, I don't know what their services loss  
12 would be, but it would be a nominal amount. It would be  
13 a fraction of the support that Jennifer would be entitled  
14 to.

15 Q So in settling the case, the person who  
16 settled was the one who stood to get practically  
17 everything? Is that what you're saying?

18 A Yeah. Jennifer would get everything; all of  
19 the economic projections for loss of support, she would  
20 get everything. The Smiths would be entitled to only a  
21 nominal amount for their services. So what she decided  
22 to do was not to try to make a deal for herself, which  
23 she could have done, but to put all the monies that were  
24 settled, to run them through this Court so that you could  
25 dispense them according to the statute so that the Smiths

1 would benefit from that amount. So by doing that, the  
2 Smiths are actually going to receive more money than they  
3 would receive for loss of services of George.

4 And, you know, the Anna Nicole Smith case, not  
5 to bring that case here, but the same kind of issue where  
6 you're dealing with federal law, you're dealing with  
7 probate law. The last thing we wanted was any kind of  
8 dispute about anything like that. Her decision was  
9 anything that they're factoring to me for my own claim  
10 for intentional infliction of emotional distress, which I  
11 don't know could have withstand judicial scrutiny -- the  
12 Smith family had a similar thing, the case was dismissed.  
13 Some of the settlement reflects some portion of that  
14 exposure to the cruise line. Can't be quantified because  
15 we never asked them to quantify it. We just -- this was  
16 the settlement amount. It reflected her own individual  
17 claim, her own individual claim under DOHSA, and it  
18 reflected the Smiths' individual claim that she was  
19 asserting as the administratrix, and she's letting it all  
20 come together and come out in this court.

21 Q Did Mr. and Mrs. Smith and their daughter do  
22 anything that would have weakened this case?

23 A I think I've touched upon that. My concern  
24 with the case was that in order for us to proceed we had  
25 to, one, be unified for all the right reasons. We had to



1 be unified because what the cruise line was doing was  
2 attacking her and bashing her and making Jennifer look to  
3 be negligent, and they were doing the same thing to  
4 George, which was affecting the issue of his comparative  
5 negligence. And an attack on Jennifer was an attack on  
6 George; an attack on George was an attack on Jennifer.  
7 And we had to defend both of them, I felt, in order to  
8 improve our cases -- case against the cruise line.

9 Remember, one of the themes in this particular  
10 case is that the cruise line covered the crime up and  
11 they destroyed evidence and they rushed the  
12 investigation, and many other things.

13 I promise you to digress very quickly. We  
14 were intending to sue Royal Caribbean for spoliation of  
15 evidence. Unfortunately, most of the courts in Florida  
16 do not -- no longer recognize spoliation of evidence as  
17 an affirmative cause of action which can be asserted.  
18 That is, you can't sue the company that you're otherwise  
19 suing for wrongful death or other theories on the basis  
20 that they spoliated the evidence that precluded you from  
21 proceeding against them.

22 There was a Florida Supreme Court decision  
23 which held you can no longer sue, first party, for  
24 spoliation of evidence. We were going to do it anyway  
25 and try to make it stick. But the theme of our case was

1 that the cruise line was covering things up, they were  
2 withholding evidence, they weren't being transparent.

3 Then the very first comments made by the Smith  
4 family was Jennifer's hiding something, Jennifer is not  
5 being forthcoming. Which, you know, you're just --  
6 you're almost helping the cruise line out by making that  
7 case. She's already passed a polygraph, she's been fully  
8 compliant. Jennifer is out with -- you know, having  
9 Dr. Lee go on the ship to try to find answers. At one  
10 point in the case Dr. Lee went on TV and said, "I'm going  
11 to find out who did this. I'm going to find out if  
12 Jennifer did it." He said that on national television.  
13 So here's Jennifer hiring Dr. Lee to find out  
14 information, and the Smith family says -- you know, turn  
15 the TV over, she's hiding something. I felt that was  
16 very damaging to the case. I felt it interfered with our  
17 ability to proceed, quite frankly.

18 Q Do you think the settlement is reasonable?

19 A Let me say this. I was trained a long time  
20 ago that we do not tell our clients what to do. Okay?  
21 We don't make decisions for our clients. And I felt that  
22 this was a decision that Jennifer made based upon the  
23 considerations of all these issues, and perhaps other  
24 issues personal to her, and, you know, I don't comment on  
25 those types of issues.

1           I think that if you simply look at my analysis  
2 for what it's worth, you could obtain substantially less  
3 than that amount in any number of scenarios. Simply with  
4 the Athens Convention applying, simply with an inability  
5 to pursue the case, with high comparative negligence, and  
6 with a proposal for settlement being entered, it could  
7 turn out far worse than this decision. So I think the  
8 Court's going to make the decision whether it's  
9 reasonable. I feel that, on balance with all the  
10 factors, this was a decision that could have gone  
11 different ways.

12           Q       Let's talk about the information that was the  
13 aspect in the settlement agreement.

14                   MR. MARCHAND: Can you speak louder?

15           Q       Let's talk about the factor, the provision in  
16 the settlement agreement that talks about access to  
17 information, and talk about -- would you please tell the  
18 Court, even though the settlement is before the Court,  
19 what information would be turned over by Royal Caribbean  
20 that would not be turned over during a lawsuit?

21           A       Documents that are privileged, to make a long  
22 story short. Let me explain what happened in this  
23 particular case.

24                   We settled this case, and in addition to the  
25 financial terms, they offered to do something which was

1 unparalleled, which I had never seen before. I had never  
2 seen it in 25 years -- or first 15 years representing  
3 corporations, I had never seen it in as many cases as we  
4 had with a cruise line, where they said, okay, you can  
5 see our work product; any statements that we took, you're  
6 entitled to. Statements taken --

7           You know, these cruise lines, once anything  
8 happens, have a protocol where they get their security  
9 officers to take statements of everyone. You take the  
10 most mundane case, someone slips and falls by the buffet  
11 line, 25, 30 passengers all around the poor person, the  
12 security detail will come up and begin to take  
13 statements, and they will get 10 or 12 statements.  
14 They'll take statements, prepare reports. None of that  
15 can be obtained during discovery. It is the work  
16 product, it is things done in anticipation of litigation.

17           So when the company is doing that or when they  
18 send their lawyers on the ship -- remember, they sent  
19 their lawyers on the ship in the middle of the cruise to  
20 interview many, many people. We know they took many,  
21 many statements. They took statements of passengers and  
22 crew members and so forth. None of those materials are  
23 discoverable. They simply aren't discoverable.

24           There's lots of other things that, as a  
25 practical matter, may not be privileged, but still we

1 can't obtain them simply based upon certain rulings by  
2 the Court. I'll give you an example. There's a case of  
3 a client, the Smith family knows, a rape victim, Laurie  
4 Dishman, testified before Congress. We've been  
5 litigating that case for a year and a half. The cruise  
6 line has these security reports that are about this thick  
7 (indicating). They have multiple pages per day of  
8 absolutely everything that ever happens on the ship. We  
9 want the whole report for the whole cruise in order to  
10 see what's been happening throughout the cruise. The  
11 cruise lines are -- never provide us that. They'll say  
12 we'll just give you the one day where the incident  
13 occurred. Some courts say, you know, "I'm not going to  
14 let you go on a fishing expedition. You're not going to  
15 get the whole thing. We're going to focus on this one  
16 event." Sometimes we simply can't get those documents.

17           These are some items we could obtain if we  
18 filed suit, which we were going to ask, but a number of  
19 the documents, such as the witness statements in  
20 particular, and the security reports, are going to be  
21 considered privileged.

22           Something else that is very important are the  
23 communications from the ship back to risk management.  
24 The staff captain usually sends e-mails back to Miami.  
25 We're going to be able to obtain those types of

1 communications. All communications with law enforcement.  
2 We want to know what the cruise line is saying and what  
3 time and when they're saying things to whoever. Because  
4 I think their story has changed, quite frankly. We want  
5 to see everything that's going on.

6 We also included in the settlement agreement a  
7 condition that they would have to answer any and all  
8 questions that we would provide to them. So that we  
9 could ask questions and follow up with it, and look at  
10 the documents. Now, I know they're going to say it's not  
11 sworn testimony, it's not testimony under oath. Fair  
12 enough. I'm in the middle of a case where I've taken 25  
13 depositions of Royal Caribbean and they've lied in every  
14 single deposition. They haven't told me the truth once.  
15 So I don't know what difference it makes when someone  
16 takes an oath if they're not going to be cooperative.  
17 You're just going to spend 2 or 3 thousand dollars on  
18 deposition and court reporter and videographer fees.

19 So at the end of the day, I think, you know --  
20 as much as I criticize this corporation constantly  
21 whenever I can, I think it would be duplicitous for me  
22 not to say at this point they at least stepped up and did  
23 something they had never ever done before. That  
24 information has been available, if we resolved this case  
25 in the summer of 2006, for us to look at the information

1 so that decisions could be made whether to file  
2 third-party lawsuits.

3 And, you know, if -- Mr. Jones and his team  
4 can always go sue, you know, if this is resolved and  
5 there's a new administrator or whatever you guys are  
6 talking about. They can always go sue any of these four  
7 people. And if they think that simply by filing a  
8 lawsuit is going to entitle you to information, they can  
9 go down to Palm Beach County, file suit against Greg  
10 Rosenberg, we have his address, we know who he is, issue  
11 subpoenas, issue subpoenas on Royal Caribbean, and try to  
12 get all the same information which was offered way back  
13 in the summer of 2006. And what they're going to find is  
14 they're going to find Mr. Peltz, the Royal Caribbean  
15 defense attorney, standing up and saying, "Judge, this is  
16 our work product and we're not going to turn it over."  
17 That's what would have happened to us.

18 MR. BROWN: Hold on a second, your Honor.

19 THE COURT: Sure. Take your time.

20 We'll take a break when we're done and  
21 we'll decide if you all want to take a lunch break  
22 or if you just want to take a five-minute break.

23 Q You just touched on it, but my last question  
24 is: If this were to go forward in a case with Royal  
25 Caribbean, could you educate the Court about the costs of

1 the litigation, how -- what would be required, if you  
2 weren't going to get all this information they  
3 voluntarily offered?

4 A Well, the cost of these cases are substantial,  
5 and they go -- you know, there are a number of  
6 depositions that we would certainly want to take. What  
7 you find with cruise line cases is the -- there are a  
8 certain number of shore side employees at the corporate  
9 offices we can subpoena and they can come over. That's  
10 still expensive; it's whatever the court reporter and  
11 videographer involves.

12 Many of the crew members -- well, all of the  
13 crew members on Royal Caribbean cruise ships, except  
14 maybe one or two, are non-U.S. citizens. You're dealing  
15 with a Greek captain, you're dealing with Norwegian  
16 officers, you're dealing with foreign citizens who are  
17 the ship doctors, you're dealing with a French guest  
18 relations person. The incident was in Turkey, there  
19 would have to be depositions in Turkey. We put in our  
20 brief certain countries where some of the other witnesses  
21 reside. And then you'd have to take depositions  
22 throughout the United States of the various witnesses.  
23 Just the four men alone, you've got people in New York,  
24 people in California, we have someone, of course, in  
25 Florida. Those costs would be considerable. The



1 estimate in the brief was around 250,000, could be  
2 \$350,000, in expenses.

3 Remember, it's not just who we want to depose.  
4 It's who the cruise line wants to depose. So it's not  
5 like we can sit back and say let's be really economical  
6 about this and just do X. I know how Royal Caribbean  
7 litigates cases, and I've had many cases with Mr. Peltz,  
8 their defense counsel. They truly have a "scorch the  
9 earth" type of approach where they're going to drag  
10 everyone around the country and the world taking those  
11 depositions that they think are going to benefit them.

12 MR. BROWN: I have only one other topic,  
13 but it's something completely different from  
14 everything he's talked about. So I think it might  
15 be a good time for a break, and then go into that.  
16 Some people have asked for a break already.

17 THE COURT: What would you all like to  
18 do? Do you want to take an hour for lunch? Do you  
19 want to take a half hour for lunch? Do you want to  
20 just take a five-minute break and continue on and  
21 have lunch in an hour or so?

22 MR. RICCIO: I would suggest that, take a  
23 little break and lunch later.

24 THE COURT: There's one other aspect. I  
25 don't know if the press is still out there or not.

1 The First Selectman, Peter Tesei, did offer his --  
2 he's got a bathroom in his office. That way you  
3 don't find the press following some of you into --  
4 and he has offered, not only if you want to use  
5 those facilities, but also if at some point you  
6 need a separate room to gather yourself or to sit  
7 down and talk, we do have a separate room here,  
8 too. But if you need that, we have that option.  
9 If you wish to take advantage of that, just go to  
10 the First Selectman's office.

11 MR. BROWN: Your Honor, my only request  
12 is I have a lot of the file here and a lot of it is  
13 radioactive.

14 THE COURT: I'm staying.

15 MR. BROWN: If we leave, I don't want  
16 someone to actually walk in and look at it.

17 THE COURT: I'll actually be staying  
18 here, so not a problem.

19 We'll take a five-minute recess.

20 MR. RICCIO: A little more than five?

21 THE COURT: How about if we're back at  
22 12:15.

23 MR. JONES: That's fine.

24 (Whereupon, a recess was taken.)

25 THE COURT: We're ready.

1 Mr. Walker is still under oath.

2 CONTINUED DIRECT EXAMINATION BY MR. BROWN:

3 Q Mr. Walker, I've got one document I'd like to  
4 go over with you.

5 MR. BROWN: I've got copies for the Court  
6 and everybody else.

7 THE COURT: You want to mark this as an  
8 exhibit?

9 MR. BROWN: Yes, I think so, your Honor.  
10 The only thing that wasn't -- that isn't  
11 in the exhibits in the memorandum was the *Justice*  
12 *For George Smith* Web site, so I guess that should  
13 be number 1.

14 THE COURT: Is there any objection to  
15 that being marked?

16 MR. JONES: No.

17 (Whereupon, the printout re: *Justice For*  
18 *George Smith* Web site was marked as Petitioner's  
19 Exhibit 1.)

20 MR. BROWN: So this will be Exhibit  
21 Number 2.

22 THE COURT: Any objection to proposed  
23 Exhibit Number 2?

24 (Whereupon, the settlement statement of claims  
25 was marked as Petitioner's Exhibit 2.)

1 Q Mr. Walker, what is this document?

2 A This is the settlement statement of claims  
3 that I prepared for you based upon my retainer agreement  
4 with Jennifer and based upon my costs, that we prepared  
5 in your office yesterday.

6 Q Is your retainer agreement attached there?

7 A Yes. My retainer agreement dated November 12,  
8 2005, is attached.

9 Q The gross -- you mentioned that the gross  
10 value of the settlement is about -- well, is a little  
11 over a million dollars. Could you explain to the Court  
12 how you calculate your fee?

13 A Well, the gross settlement is \$950,000. The  
14 cruise line agreed to pay \$110,000 of our costs, if I  
15 remember this correctly. Either -- they initially agreed  
16 to pay \$100,000 of our cost, subsequently agreed to pay  
17 \$110,000 of our costs. And then on top of that amount,  
18 they agreed to a \$25,000 charitable donation being made  
19 when Jennifer donated an equal amount to a charity in  
20 George's name.

21 Q I was too vague before. I apologize.

22 Is the gross settlement a million-85,000 or  
23 950,000?

24 A We apply our percentage to the gross  
25 settlement. We're not applying it to \$1,085,000. We're

1 applying it to \$950,000. You can call this the gross  
2 settlement for probate purposes, but we're applying our  
3 fee of one-third only to the \$950,000 amount.

4 Q You have listed here the cost as amounting to  
5 122,034.

6 A Yeah. I had someone print out from our Quick  
7 Books the total costs which total that amount. I told  
8 Jennifer that we would not charge any of the costs in  
9 excess of the amount that the cruise line offered, and so  
10 that's -- you know, we're going to absorb that  
11 \$12,034.99. Then what we are going to do with our fee is  
12 that when we were going to settle this case, our thought  
13 process was we were going to get as much information as  
14 we could from the cruise line and then we were going to  
15 send it all to Dr. Lee. Then I told Dr. Lee that we  
16 would, you know -- I wanted to have Dr. Lee stay involved  
17 and I wanted him to continue to work on the case. I  
18 wanted him to have the information. So I agreed to take  
19 out of my fee \$60,000 to send to Dr. Lee to keep him on  
20 the case.

21 Was that correct?

22 Q Did you say 60?

23 A I think it's 60.

24 Yes, 60.

25 MR. BROWN: Your Honor, I just -- in my

1 own experience -- it's interesting. I couldn't  
2 find any law on the topic. I've litigated it once  
3 before with respect to whether or not the attorneys  
4 fees involved in a case come into the Court's -- if  
5 the Court rules on those as well. And so -- I know  
6 I've litigated at other courts in Fairfield County  
7 the topic of how the attorneys fees -- I think the  
8 Court should have the settlement statement to  
9 show -- and this is definitely more elaborate  
10 because of the nature of how the settlement was  
11 reached and what the different numbers were for.

12 THE COURT: It is something we would have  
13 requested, so I appreciate your doing so.

14 MR. BROWN: That's all I have, your  
15 Honor, for Mr. Walker. I leave it up, now, to --

16 MR. MARCHAND: I missed that interchange.

17 THE COURT: He had just mentioned he  
18 wasn't sure if we would require what the attorneys  
19 fees are going to be. I acknowledged that I would  
20 have requested it, just so I know what the bottom  
21 line is.

22 MR. MARCHAND: You're not going to pass  
23 on those now?

24 THE COURT: No. Just I would require it  
25 for purposes of knowing exactly what the bottom

1 line is going to the estate.

2 MR. BROWN: Your Honor, I should point  
3 out, this is only the attorneys fees relative to  
4 the lawsuit that's been settled. Not the attorneys  
5 fees of probate counsel going forward.

6 MR. MARCHAND: I hope we can respond to  
7 that.

8 MR. BROWN: We're not going to hear about  
9 it today.

10 MR. JONES: From you.

11 MR. BROWN: That comes up in a final  
12 accounting.

13 MR. MARCHAND: End of discussion,  
14 gentlemen.

15 THE COURT: I know we weren't calling it  
16 cross, but any cross-examination?

17 CROSS-EXAMINATION BY MR. RICCIO:

18 Q Good afternoon, Mr. Walker.

19 A Good afternoon.

20 Q One of the benefits to the settlement that you  
21 talked about this morning is that you received documents  
22 from Royal Caribbean that, according to you, would not be  
23 received or would not be available to you had you  
24 litigated this matter. Is that an accurate statement?

25 A Some of the documents would not have been

1 available to us, no.

2 Q Right. And you would, sir, of course agree  
3 with me when I say that the work product doctrine that  
4 you talked about this morning is not an absolute bar to  
5 discovery?

6 A I would agree that it is clearly not an  
7 absolute, and there are exceptions to that.

8 Q Right. Again, generally speaking, under Rule  
9 26, Federal Rules of Civil Procedure, a party seeking  
10 documents protected -- that have been identified as work  
11 product documents are required to, A, prove a need for  
12 the documents, and, two, establish that that information  
13 is not otherwise available. Correct?

14 A Yes. We're under the Florida Rules of Civil  
15 Procedure. But the rules are comparable, and in theory  
16 that's how it works. The only caveat is come over to  
17 motion calendar in Dade County, Florida, and see how it  
18 works. Sometimes they don't delineate their privilege  
19 log; sometimes they don't file affidavits establishing  
20 the privilege. I've seen judges say, "Are we talking  
21 about incident reports or are we talking about statements  
22 taken by investigators or attorneys?" That's privileged.

23 But, in principle, I agree with you, and we  
24 try to hold them to that test and we try to make them dot  
25 their I's and cross their T's.



1 Q And as a capable experienced litigator, which  
2 I don't dispute that you are in this area, you have  
3 certainly had the opportunity over the years, I'm sure,  
4 to press to obtain documents covered by work product?

5 A Yes.

6 Q And I'm sure during the course of your career  
7 you have in fact obtained documents that are protected by  
8 the work product.

9 A I have, in fact.

10 Q And from Royal Caribbean, I would imagine.

11 A Yes.

12 Q Turning to the settlement agreement which -- I  
13 believe we're talking about one of the settlement  
14 agreements, December 22 settlement agreement. Do you  
15 have a copy of that with you?

16 A I don't.

17 MR. RICCIO: This probably should be  
18 marked as an exhibit.

19 THE COURT: Okay. This will Exhibit A.

20 (Whereupon, the December 22 settlement  
21 agreement was marked as Opponent's Exhibit A.)

22 Q Calling your attention, Mr. Walker, to  
23 paragraph 46 this document.

24 A Yes.

25 Q That recites, does it not, the documents that

1 are going to be produced by Royal Caribbean as part of  
2 this proposed settlement agreement, does it not? I'll  
3 give you a moment to take a look at it.

4 A I believe it does, yes.

5 Q And could you just identify for me, of all of  
6 the documents that are recited there, which of those  
7 documents would, in your view, be a legitimate ground  
8 for -- claim for work product, sir?

9 A The work product would clearly be the signed  
10 and recorded witness statements. Those would be -- those  
11 would clearly be work product, in most circumstances.

12 Let me just go through each one of them.

13 Q Take your time.

14 A Some of the -- well, I take the position, if  
15 I'm litigating this case, that that's it.

16 Q Right.

17 A But what I find is that the cruise line will  
18 say any log, to the extent that it contains mental  
19 impressions of employees or crew members on the cruise  
20 ship done after George Smith disappeared, reflected the  
21 mental thoughts and impressions and opinions.

22 Q Of counsel?

23 A Well, work product also includes -- the  
24 doctrine of work product includes not only counsel, but  
25 also documents of the client itself to the extent that

1 they're thinking of defending a case.

2 But I'll concede to you -- what the cruise  
3 line does is they'll object to everything and then say  
4 any log or report is reflecting our mental impressions.  
5 And that's where that debate will go.

6 Q But the core is the relevant signed and  
7 recorded witness statements?

8 A I believe that to be the case. I can't get an  
9 agreement on that from the cruise line.

10 Q And your view of that -- let me back up just a  
11 little.

12 So with the exception of the logs, the other  
13 items that are set forth here, there would not be a claim  
14 for privilege?

15 A Well, like I said, I believe that there would  
16 be claims of privileges of logs and reports. I think  
17 that they would object to that.

18 Q But the logs that they would report -- they  
19 would make a claim for privilege would be subsequent to  
20 Mr. Smith's disappearance?

21 A Yes.

22 Q So anything up until that point --

23 A Correct.

24 Q -- when it's reported, when they get involved,  
25 there would be no real valuable claim of privilege,

1 correct?

2 A I think there would not be a legitimate claim  
3 of privilege.

4 Q Even when they claimed that privilege on those  
5 logs, that would be up to a Court to decide whether or  
6 not it was a bona fide claim of privilege, correct?

7 A Yes.

8 Q And have you had experience in your years  
9 litigating against these people -- have you obtained  
10 those logs?

11 A Sometimes, sometimes not.

12 Q But the real core is the relevant signed and  
13 recorded witness statements, which would appear to be  
14 work product?

15 A In my opinion, yes.

16 Q Going back to those other documents, for  
17 example, you have already received -- when they made the  
18 disclosure in December 2005, some of those documents had  
19 already been disclosed, right?

20 A Well, no logs, no videotapes.

21 Q Let me just draw your attention -- there were  
22 some photographs, right? You've already gotten those?

23 A Yes.

24 Q You would have gotten photographs, right?

25 A Yes.

1 Q The Turkish police records, some of those have  
2 already been turned over, for example, right?

3 A Yes.

4 Q Some of those LockLink records, those are the  
5 door lock records, the time doors opening and closing?

6 A Only Jennifer.

7 Q You've gotten that.

8 You asked for other records to be produced,  
9 but they never produced them, right?

10 A Yes, sir.

11 Q You asked for the four men you're suspicious  
12 about?

13 A Yes.

14 Q You never got them?

15 A No, we did not.

16 Q You think this request here is going to enable  
17 you to get those records?

18 A To the extent that they exist, yes.

19 Q As to those witness statements, and assuming  
20 they do claim that they're work product -- let's talk  
21 about the people who were passengers on this boat.

22 You're telling us that this information would  
23 not be available to you during the course -- not  
24 ordinarily available to you during the course of  
25 litigation, correct?

1           A       No. They would not -- they would object to  
2 it.

3           Q       Right. So you wouldn't be able to find out  
4 what these people said, right?

5           A       No. They would give us -- the way it works is  
6 they say, "We're not going to give you our report.  
7 Here's the name and address, you go knock yourself out."

8           Q       You would be able to -- and, again, Florida,  
9 I'm not sure -- the rule certainly here, you would  
10 certainly be able to, in normal discovery, to get the  
11 names and address of each and every person that this  
12 cruise ship -- a passenger -- interviewed and took a  
13 statement from?

14          A       We would ask for that and we should be  
15 entitled to, yes.

16          Q       There's no dispute about that; you would have  
17 to get that, right?

18          A       I would hope so.

19          Q       You would be free at that juncture to either  
20 have an investigator interview that person, correct?

21          A       Correct.

22          Q       You'd be free at that point to take a  
23 deposition of that person?

24          A       Yes.

25          Q       There would be no bar to that, right?

1           A       Yes.

2           Q       If that person -- again, you know the  
3 practice, I don't. But if that person was provided a  
4 copy of their written statement, you might even be able  
5 to get the written -- as part of the deposition you might  
6 be able to get a copy of their written statement.

7           A       I would definitely ask them for their own  
8 statement.

9           Q       Correct. So there would be alternative viable  
10 ways of obtaining that information outside of having  
11 settled this case. Fair statement?

12          A       Upon the -- yeah. We would have to file suit  
13 and proceed and face the risks I've mentioned. But, yes,  
14 we could battle it out for several years and hope this  
15 turns something up.

16          Q       Well, you wouldn't have to -- there wouldn't  
17 be any several years battle for you to get the names and  
18 addresses of the people, the passengers, who there's  
19 witness statements from, right?

20          A       Should not, no.

21          Q       That would just be the filing of a discovery  
22 request, right?

23          A       Should be, yes.

24          Q       Right. Let's talk about -- now we're talking  
25 about the crew members. The crew members, same thing.

1 You would be able to file a request and ask them to  
2 identify who are the crew members that they interviewed  
3 and took statements from, correct?

4 A Yes.

5 Q Likewise, you would also be able to attempt to  
6 talk to those people. I think you mentioned you had some  
7 contacts in that community. You would be able to reach  
8 out and talk to those people about what had transpired as  
9 it relates to the death of Mr. Smith?

10 A It depends on whether they were still  
11 employed, whether -- if they weren't employed, whether  
12 they were managerial types, those issues, whether it's  
13 ethical to contact former or current employees. But we  
14 would certainly do whatever we could do ethically. We  
15 could avail ourselves of all discovery, certainly.

16 Q And I'm sure you've done that in the past,  
17 right --

18 A We have.

19 Q -- in these types of situations.

20 A We have.

21 Q And that would be -- as I said earlier, you  
22 would also have the full right to litigate whether this  
23 was a proper invocation of the work product doctrine,  
24 correct?

25 A We would. We have the right and we would



1 definitely do that, yes.

2 Q There's a phrase in here, just before "signed  
3 or recorded witness statements," that says "relevant."  
4 Who makes that determination?

5 A The Court.

6 Q Which Court would that be?

7 A As far as -- oh, I see what you're saying.  
8 I'm sorry.

9 Well, it's a good point. I think that they  
10 would have to turn over any statement that they had. You  
11 know, I mean --

12 Q Not based on that language, right?

13 A Well, you know, I would concede this, that if  
14 they're going to withhold information from us, they're  
15 going to withhold it whether they stuck that word  
16 "relevant" in there. And we were trying -- the caveat to  
17 this is if they're playing games -- if I go into their  
18 war room and they've got two statements or they're not  
19 producing anything, this is all null and void and this  
20 was a big fraud.

21 Q Right.

22 A We were trying to deal with them in good  
23 faith. Should I have taken the word "relevant" out?  
24 Maybe I should have. I would concede that point.

25 Q And these are -- again, correct me if I'm

1 wrong, but these are people that I sense you don't trust,  
2 based on your past dealings with them.

3 A No, I don't. But the caveat being is I've  
4 never been in a situation where, it pains me to say, they  
5 stepped up to the plate and agreed to all this, either.  
6 So it's something new and we trusted them for purposes of  
7 this case, which I felt was a unique concession.

8 Q But based on your prior dealings, and I don't  
9 want to go through all your litigation experience with  
10 these people, it sounds like it's voluminous, "trust" is  
11 not a word that you use in the same sentence with Royal  
12 Caribbean?

13 A I would readily agree. That's my own personal  
14 bias. You know, this was something with Jennifer and the  
15 cruise line where they were trying to do something unique  
16 and I felt that they did that.

17 Q I'm not blaming you, Mr. Walker. I understand  
18 where you're sitting and I'm not blaming you for it.  
19 Just trying to get out what your feelings are.

20 These statements, you think, again, based on  
21 your feelings, may contain some important information in  
22 terms of discerning what happened to Mr. Smith that  
23 particular night?

24 A I would hope so. But let me -- you made a  
25 comment after my answer. Let's be clear about this. I

1 think that this is an extraordinary concession, and to  
2 the extent that the cruise line and any client I have  
3 want to do something and be forthcoming, and being  
4 transparent with this, I'm certainly not going to let my  
5 negative, cynical, pessimistic view of this corporation  
6 quash the deal, because I believe when we go into their  
7 workroom we're going to see lots and lots of statements.  
8 And I believe I can sit down with this opponent,  
9 Mr. Peltz, as their counsel, and notwithstanding the fact  
10 that we knock heads constantly, I'm going to have a  
11 professional conversation with him, just like the probate  
12 attorneys up here. And when I say to him, "You know  
13 what, your staff captain went on Greta van Susteren and  
14 said, 'You know what, I have a question about one of  
15 these guys,'" I'm going to say, "Bob, tell me what that  
16 guy meant and what did he say." I believe they're going  
17 to tell us that information to the extent it's not in  
18 this type of statement.

19           Whether it leads to solving the riddle posed  
20 here is an entirely different question. It's a bit  
21 speculative. The issue is was this reasonable for the  
22 amount of money and for access of this information back  
23 in the summer of 2005. Doesn't preclude anything. It  
24 certainly doesn't preclude any further litigation against  
25 anyone involved, and we can find more and more

1 information.

2 Q I understand that.

3 A But our goal was to get as much as we could  
4 last summer, have the money, then if there has to be  
5 third-party litigation, embark on it.

6 Q When you say it's an extraordinary concession,  
7 in reality it's extraordinary in the sense that it's a  
8 180-degree difference from the usual slash-and-burn  
9 litigation techniques that you had described earlier  
10 today.

11 A That's true.

12 Q There's really nothing in paragraph 4 --  
13 there's really nothing in paragraph 4 that, ultimately,  
14 that you could have either obtained the documents or  
15 obtained the information in the documents had this case  
16 been fully litigated.

17 A I completely disagree with that.

18 Q And the disagreement being? What do you think  
19 that they're giving you there that you would have not had  
20 the opportunity to either get the document or the  
21 equivalent information?

22 A Let me -- a number of things. Any number of  
23 these logs, they might not have produced. Any number of  
24 the security reports, they may not have produced.  
25 Certainly the statements and the recorded statements, the

1 access of asking questions and getting answers.

2 Q Let me just stop you there at the security  
3 reports. I don't want to argue with you. You've already  
4 gotten some security -- wasn't there a security report?  
5 That's already been turned over, right?

6 A There is a -- if you look at a security report  
7 showing the night in question, the specific times, it's  
8 one page. If you've got it, you can look at it.

9 Q I've got it.

10 A One page out of about 150 pages. I don't have  
11 a 150-page security report. Believe me, I've litigated  
12 these cases, and I've seen objections ruled upon and I've  
13 seen the cruise line lose the objections and I've seen  
14 them file motions for reconsideration, and I've seen them  
15 file petitions for certiorari review and go into the  
16 appellate court and a year later we're still arguing  
17 about that. Our appellate court is not a particularly  
18 friendly place to be for personal injury lawyers. And so  
19 what I'm telling you is I believe this is an  
20 extraordinary concession of, one, documents and  
21 information at an early date.

22 Q Let's go on to some of your correspondence, if  
23 I could.

24 Let's start off with your first document,  
25 which is a note that you wrote to Mr. Goldstein dated

1 November 29, 2005.

2 A I don't have it in front of me, but I'm  
3 familiar with it.

4 THE COURT: If you're going to mark it as  
5 an exhibit, might as well, and give a copy to  
6 Attorney Brown for his quick perusal.

7 (Whereupon, the note to Mr. Goldstein dated  
8 November 29, 2005, was marked as Opponent's Exhibit B.)

9 Q Did I just ask a question?

10 A This is on my letterhead. It's not signed.  
11 This might have been a draft that I sent to Mr. Rivkind  
12 and it might be a slightly different letter. It could  
13 have been a bit different. So I don't know if I  
14 actually -- I actually sent this, this version, to Royal  
15 Caribbean or not.

16 Q Something akin to this?

17 A I'm sure it's very similar. I probably might  
18 have added a few things. I don't know.

19 Go ahead.

20 Q On paragraph 3 on page 1, again -- back up  
21 just if I could.

22 That would appear to be the first  
23 correspondence with Royal Caribbean regarding this  
24 matter?

25 A I believe so.

1 Q Sounds like an introductory letter, correct?

2 A It does.

3 Q Paragraph 3, you are requesting witness  
4 interviews. I'll give you a moment to take a look at the  
5 document.

6 A We're seeking information the company  
7 collected from witness interviews.

8 Q Early on in this case you've identified,  
9 obviously based on your experience, the significance of  
10 that, of those interviews.

11 A Yes. We wanted to take -- we would like to  
12 take interviews, we would like to see their interviews,  
13 interview statements.

14 Q And the importance of those witness statements  
15 or interviews?

16 A To see what people were saying at the time.

17 Q And to that, they never provided a response to  
18 this particular letter in terms of producing any witness  
19 interviews?

20 A No, they did. They provided statements from  
21 captain -- master, from Lachtaridis. These were  
22 statements of the Turkish police.

23 Q I think your sentence says "any information  
24 your company collected from witness interviews and other  
25 evidence obtained from your investigation." I'm not

1 asking about the Turkish investigation.

2 A Quite frankly, I think what I was asking is  
3 give me anything. Any information from any witness  
4 interview, we wanted. But, yes, I also wanted their work  
5 product, and we ask for work product in every  
6 introductory letter like this.

7 Q Early on you identified these interviews and  
8 statements as important. Fair to state?

9 A Earlier in my testimony?

10 Q No, early on in your involvement in this case.  
11 This is November 29, 2005.

12 A Yeah. I considered them to be important. I  
13 consider all this information to be important.

14 Q Let's talk about page 2, paragraph 2.

15 A Paragraph 2?

16 Q Yeah. It's listed paragraph 2, numbered  
17 paragraph 2.

18 A Okay. We've got the printout of the door  
19 opening and closing for Mr. and Mrs. Smith's cabin key  
20 card activities for July 4 and 5.

21 Q Right. Why was that significant to you?

22 A We wanted to establish a time line, when  
23 Mr. and Mrs. Smith -- when their door was opened, to  
24 determine the time line for the morning in question.

25 Q That information was provided to you at some



1        juncture?

2            A        They provided the LockLink report for a  
3        portion of those days, not the entire days.

4            Q        Not the entire day?

5            A        Right. We'd have liked other information.  
6        But, yeah, they produced a portion of that.

7            Q        They selectively produced a portion of that?

8            A        No. I think what they did is they -- the  
9        LockLink report is programmed in a manner that once  
10       someone goes to the computer and requests a report, you  
11       get the one hundred prior LockLink entries. So what we  
12       received was, I believe, a complete report that was  
13       prepared at some point of the morning of July 5, 2005,  
14       when they decided to pull the information from the  
15       computer. So we received the entire LockLink report.

16           Q        And you asked for the LockLink report as it  
17       related to those other four gentlemen, and to this date  
18       you never received that information, correct?

19           A        That's correct.

20           Q        In fact, you specifically asked for that, as I  
21       recall.

22           A        Yes, that's correct.

23           Q        Let me show you a letter written by  
24       Mr. Rivkind dated November 30, 2005.

25                    MR. RICCIO: I ask that that be marked.

1 THE COURT: Is that Exhibit C?

2 MR. JONES: Yes.

3 THE COURT: What's the date on that?

4 MR. RICCIO: It's dated November 30,  
5 2005.

6 (Whereupon, the letter written by Mr. Rivkind  
7 dated November 30, 2005, was marked as Opponent's  
8 Exhibit C.)

9 MR. BROWN: November 29, 2005, B?

10 THE COURT: Correct.

11 Q Are you familiar with that letter, Mr. Walker?

12 A I think Mr. Rivkind sent me a copy of this  
13 letter, yes.

14 Q It would appear, based on comparison of your  
15 November 29 letter and this November 30 letter, that you  
16 and Mr. Rivkind appear to be on the same page in  
17 attempting to get information from Royal Caribbean  
18 regarding the disappearance of George Smith.

19 A I think that's accurate to say.

20 Q And you would agree with me that this  
21 particular -- the information sought -- actually, the  
22 contents of this letter would have been in the best  
23 interests of both your client, Mrs. Smith, as well as  
24 Mr. and Mrs. Smith?

25 A I would agree.

1 Q I'm going to show you your -- Mr. Rivkind's  
2 December 29 letter.

3 THE COURT: Is that Exhibit B?

4 MR. BROWN: I thought that was what I was  
5 looking at.

6 THE COURT: Exhibit C was the November  
7 30.

8 MR. RICCIO: This is December 29.

9 MR. BROWN: Do I have November 29?

10 MR. JONES: Here (handing).

11 MR. RICCIO: We're up to Exhibit D.

12 THE COURT: Exhibit D is the December 29,  
13 2005, letter.

14 MR. RICCIO: From Mr. Rivkind to Royal  
15 Caribbean.

16 (Whereupon, the December 29, 2005, letter from  
17 Mr. Rivkind to Royal Caribbean, was marked as Opponent's  
18 Exhibit D.)

19 THE WITNESS: (Perusing documents.)

20 MR. JONES: What's that?

21 THE WITNESS: Letters.

22 MR. JONES: Why don't we wait 'til we get  
23 to them.

24 Q I'll give you a moment to familiarize  
25 yourself.

1 A (Perusing document.)

2 Okay.

3 Q You're aware of this letter, I assume?

4 A To be honest, I don't think I received this  
5 letter. But -- unless it says it was sent to me.

6 Q You're not cc'd on it as you were on the  
7 other --

8 A No. This is actually a notice of intent,  
9 which has to be filed, and it's usually a form letter.  
10 But I don't think I've seen this.

11 Q This is a notice of intent, which is, what,  
12 required by maritime law?

13 A It's required by the terms of the passenger  
14 ticket.

15 Q It's a notice of intent by Mr. Rivkind to sue  
16 Royal Caribbean relating to this particular situation?

17 A Yes, sir.

18 Q You are referenced in page 2 of this letter,  
19 the second full paragraph. I'll just give you a moment  
20 to look at that.

21 A Okay.

22 Q You were in some type of dialogue with Royal  
23 Caribbean at this point about providing assistance to the  
24 Smiths? Do you recall that?

25 A No, nothing other than the letters we were

1 sending.

2 Q Okay. There was no discussion going on with  
3 them at that point?

4 A They did not return telephone calls,  
5 typically, from lawyers when you send your introductory  
6 letter, which you can notice I sent mine to Adam  
7 Goldstein, the president. No one calls you back. So I  
8 wasn't speaking with anyone at the cruise line, which is  
9 the typical situation.

10 Q So in late December 2005 they wouldn't have  
11 even communicated with you, right?

12 A Only in writing, and they had sent us a  
13 letter, I think, December 15. They would have -- they  
14 had sent a letter back to us December 15, which I thought  
15 we had marked, which -- I think we did mark it. It was  
16 part of the trial memorandum -- sending the photographs  
17 and some of the information back to us.

18 Q In Mr. Rivkind's letter of 12/29/05, on  
19 page 1, he is repeating his request, his earlier request,  
20 and as well as your request, for information and  
21 documents related to the disappearance of Mr. Smith,  
22 correct?

23 A Yeah. If you really want to know what  
24 happened, they sent us one letter back, which we opened  
25 on the 15th, and I don't think Mr. Rivkind did, to be

1 honest with you. There was a big package of information.  
2 I think that he was busy with a million things and he  
3 wrote this letter, to be honest with you.

4 Q The big package of information that you  
5 received from Royal Caribbean, it would be fair to say  
6 that an overwhelming amount of those documents were  
7 nothing more than travel brochures, were they not?

8 A About -- we could pull them out -- probably 40  
9 percent.

10 Q 40 percent of it was?

11 A About.

12 Q We'll do that. I have it. At lunchtime we'll  
13 take a look. Maybe we can get a better handle on what  
14 the percentage is.

15 A About half, 40 or 50 percent.

16 Q I'll show you a January 17 letter, 2006.

17 THE COURT: This is Exhibit E,  
18 January 17, 2006, letter.

19 (Whereupon, the January 17, 2006, letter was  
20 marked as Opponent's Exhibit E.)

21 Q This appears to be a draft of a letter sent by  
22 you, Mr. Walker.

23 A It does.

24 Q And this relates to that -- the situation you  
25 were having with Dr. Lee, the discussion with them about

1 gaining access to the ship for inspection purposes?

2 A That's correct.

3 Q And there was some back and forth about that?

4 A There was.

5 Q Ultimately you reached some type of agreement  
6 with them -- with him, I'm sorry.

7 A No. To be honest, we didn't reach an  
8 agreement. We showed up and it was a big stand-off.  
9 They wanted Dr. Lee to sign a confidentiality statement  
10 and so forth, and they wanted us to sign a  
11 confidentiality statement. They wanted us not to tell  
12 the press. I wrote them a letter and said we're going to  
13 show up, and if you bar us from the ship you're going to  
14 be responsible for Dr. Lee's time and expense and so  
15 forth. So that's kind of what happened.

16 Q On page 2 of this letter, you are requesting  
17 some information regarding items that were taken from the  
18 boat -- from the room, actually?

19 A That's correct.

20 Q And you were very specific in wanting to know  
21 what items had been removed and what items remained in  
22 the cabin since July 5, 2005?

23 A That's correct.

24 Q And that information was not forthcoming from  
25 Royal Caribbean?

1           A       Not initially. We went on the ship, remember,  
2 a week later and they provided us with information. I  
3 don't think they responded to this -- you got to remember  
4 I'm writing to -- oh, it is Mr. Peltz.

5                   No, he didn't write me back and answer those  
6 questions.

7           Q       In the next paragraph you had expressed some  
8 concern about the removal -- the condition of the  
9 carpeting or the removal of the carpeting?

10           A       Yeah, I did. In fact, if I could just  
11 explain. The carpeting initially was not removed by the  
12 Turkish police. And we couldn't figure out whether the  
13 carpeting was still on the ship or not. And what  
14 happened was the FBI went back on the ship and pulled the  
15 carpeting out. They did not tell us that. But, you  
16 know, we have answers to all of this now. We know that  
17 the FBI removed it. We know approximately when they did.  
18 We don't know the agents who removed it. We know the  
19 carpeting is in the possession of the FBI. You know,  
20 when Dr. Lee went on the ship, the thing that concerned  
21 me is they didn't tell us that the carpeting had been  
22 removed, so we ended up testing the carpeting.

23           Q       They didn't bother telling you it already  
24 previously had been removed?

25           A       I think they might have told us after we came



1 off the ship. But he was going to test it anyway, to be  
2 honest with you.

3 Q Page 3 of the letter, the last full paragraph,  
4 starts off "Dr. Lee needs to be permitted."

5 A Correct.

6 Q In there, you're requesting Dr. Lee needs  
7 access to walk from the cabin to the elevator, and then  
8 to the cabins of the four individuals that are referenced  
9 there in the letter?

10 A Yes.

11 Q So as of the date of this letter, which was  
12 January 2006, those individuals were of interest to you  
13 with regard to the disappearance of Mr. Smith?

14 A I think they were of interest of everyone,  
15 sure.

16 Q Including you?

17 A Of course, absolutely.

18 Q You thought if they were under suspicion at  
19 that point that they may have had some involvement with  
20 the disappearance of Mr. Smith?

21 A I knew basically what everyone knew, that they  
22 were -- Royal Caribbean affirmatively represented that  
23 those four men were last seen with George and they went  
24 into the cabin. So what I wanted to do was to figure out  
25 where they were, where their cabins were on the ship, get

1 distances, have time intervals, figure out the time that  
2 it would take to walk from this location to the other  
3 location. I wanted to see the casino and the disco. And  
4 I of course wanted to ferret out where these four guys  
5 were.

6 Q Because they may have had some either  
7 knowledge or they may have had some involvement in the  
8 disappearance of Mr. Smith?

9 A Those are definitely reasonable conclusions  
10 that we were trying to figure out.

11 Q Okay. In the next paragraph, in fact, you ask  
12 for some LockLink information as it relates to the rooms  
13 of these four men during that time period.

14 A That's correct.

15 Q That's information to date you have not  
16 received?

17 A That is also correct.

18 Q I show you what I'd like to have marked as an  
19 exhibit. It's a January 19 letter. This is from you to  
20 Mr. Peltz.

21 THE COURT: Exhibit F, January 19, 2006,  
22 letter.

23 (Whereupon, the January 19, 2006, letter  
24 from Mr. Walker to Mr. Peltz, was marked as Opponent's  
25 Exhibit F.)

1 Q This is a copy of a letter you sent,  
2 Mr. Walker?

3 A It is, yes.

4 Q Turning to the second page of that letter, you  
5 complained to Mr. Peltz that Royal Caribbean is  
6 continuing to withhold substantial information from you.

7 A Yes, that's true. Then I went on to refer to  
8 the videos, LockLink information.

9 Q There are specific things that you thought  
10 that they had not been forthcoming in providing to you,  
11 correct?

12 A I did. In these cases, what happens in these  
13 cases, they typically give it to the FBI and then they  
14 don't give it to the family members. And, you know,  
15 we're aggressive in our request. We want everything.

16 Q You were very aggressive in your request for  
17 information in this case, weren't you, right from the  
18 start?

19 A That's true. And I would tell you in the 50  
20 crime cases I have never seen one bit of film of  
21 closed-circuit TV. And I don't think that there's any  
22 chance we're ever going to, you know, get the FBI to turn  
23 it over. So what we need to do is take them up on their  
24 offer to have it available.

25 Q When you say never received it, you never

1 received it in the course of discovery?

2 A That's correct.

3 Q Because the cruise lines tell you that does  
4 not exist?

5 A Because they say either it doesn't exist or  
6 the FBI has it. They'll say go to the FBI and obtain the  
7 information. And the FBI doesn't release information.

8 Q And you're, in this particular paragraph, you  
9 are repeating your theme that Royal Caribbean is not  
10 being forthcoming in providing information to this  
11 family. Fair to say?

12 A Yeah. I would -- that would be fair to say,  
13 yes.

14 Q Then you're actually -- in this paragraph  
15 you're actually asking to sit down with them and discuss  
16 this information with you and Dr. Lee, right?

17 A That's correct.

18 Q I assume they were not willing to do that?

19 A They did not, at this time, agree to do that,  
20 that's correct.

21 Q The next exhibit would be a January 20 letter  
22 that you wrote to Ms. Finkelhoff.

23 THE COURT: G.

24 (Whereupon, the January 20, 2006, letter from  
25 Mr. Walker to Ms. Finkelhoff, was marked as Opponent's

1 Exhibit G.)

2 A I see it.

3 Q Are you familiar with that letter?

4 A I -- yes. This is a letter I sent to Carol  
5 Finkelhoff, the cruise line lawyer, January 20, 2006.

6 Q Asking in the first paragraph a whole series  
7 of questions regarding the activities of lawyers relating  
8 to -- cruise line lawyers -- relating to this particular  
9 matter.

10 A Yes. I suspected that they had a lawyer,  
11 Lanny Davis, from a Washington, D.C., firm -- we had  
12 learned the cruise line had a lawyer from Washington,  
13 Lanny Davis, who mentioned on television that some cruise  
14 line lawyers took 73 photographs of the cabin. And I  
15 wanted to know whether she entered the cabin, whether she  
16 took the photographs.

17 Q In fact, you accused them of making false  
18 representations regarding this, right?

19 A Let me just read it.

20 Q Go ahead.

21 A Yeah, I did. They had -- remember, in  
22 December, they had testified in Congress that the cabin  
23 was secure for six days, and I was bringing to their  
24 attention that if Mr. Davis was right and cruise line  
25 lawyers took photographs, then lawyers were in the cabin,

1 and I wasn't happy about it. That was the tone of this.

2 Q Did you ever get answers to that information?

3 A Not initially. But later I learned that they  
4 had a photographer who they sent in there. It wasn't --  
5 I mean, it doesn't matter. That's the point, I suppose,  
6 you're making.

7 Yeah, I believe someone went into that cabin.  
8 They shouldn't have, I believe. Now, they'll tell you  
9 that the FBI had cleared it, the FBI told them it was  
10 okay. There was a lot of things happening here that  
11 we're kind of learning after the fact. They're calling  
12 the FBI, they're saying is there anything we can do, can  
13 we clean the cabin, blah, blah, blah. The FBI says yes.  
14 And they still claim to this day that the cabin was  
15 sealed for all six days.

16 Q Which you don't believe?

17 A Well, there are some passengers who went on  
18 the Rita Cosby show and said the cabin wasn't secured for  
19 six days and that in fact they went in there and  
20 prematurely cleaned the cabin. We've spoken to those  
21 people. It's a typical case we have, where they're  
22 saying one thing and there's a dispute about it.

23 Q But we don't have answers to these questions.  
24 To this day we still don't have answers to these  
25 questions?

1           A        I think we have answers, to be honest with  
2 you, on this issue. I'd like the LockLink reports. You  
3 made a good point. I know what happened. The cabin  
4 wasn't secured. We're going to prove it wasn't secured.  
5 We're going to get into a post death spoliation of  
6 evidence, or spoliation of evidence doesn't exist --

7           Q        Were lawyers participating in this? Do we  
8 know for a fact that their lawyers were involved in this?

9           A        I know based only on their representations  
10 that they themselves weren't in the cabin but they sent a  
11 photographer. I tend to believe that. I think they're  
12 smart enough not to walk into the middle of an area like  
13 this. But I -- you know, I know what was going on in  
14 that cabin. I have a good feeling for it. I don't think  
15 it was secured.

16          Q        When they said it was secure, you don't think  
17 they're telling the truth?

18          A        When they said in Congress that it was secure,  
19 I believe those to be false statements. The issue  
20 becomes, what do you do with those false statements.

21          Q        I just think the issue is, not to argue with  
22 you, how does that affect your decision-making process in  
23 dealing with these people, trusting them? That's my  
24 concern.

25          A        It comes down to the point that if they're

1 going to deep-six everything, if they're going to hide  
2 all the information, you can litigate against them and  
3 you can take deposition after deposition, and you can  
4 have transcripts and transcripts of inaccurate, false,  
5 misleading statements. It's not going to enhance the  
6 value of a DOHSA case. It's not going to help you with  
7 DOHSA. And it's not going to establish liability for  
8 negligent security when you can't prove a crime.

9 I don't trust them. I've never trusted them.  
10 But what happened in this case was unique. I've never  
11 seen it before. And we're dealing with them in this  
12 perspective in good faith, believing we're going to see  
13 this information.

14 Q I understand that. But the problem that I  
15 have is you're saying you can't prove the crime. I think  
16 you testified to that on direct.

17 But my question to you is, are you so sure of  
18 that, given the fact there's a large body, apparently --  
19 according to you, could be dozens and dozens -- of  
20 witness statements that you don't have? So to make that  
21 assessment what you can and can't do in the absence of a  
22 large body of relevant evidence, potentially relevant  
23 evidence, how can you be secure in making that  
24 determination? That's my question.

25 A Well, my -- the point of the matter is if you



1 want to go sue any of these four men --

2 Q I'm not asking you about suing the four men.

3 A Well, then what is this all about?

4 Q I'm trying to understand. I'm just trying to  
5 focus on that statement, is that you don't think you  
6 could prove, I think it was underlying crime. I think  
7 that was the phrase you used in your direct.

8 My point is we're missing, we are, you are, a  
9 large body of relevant evidence regarding what happened  
10 to their son and to Ms. Smith's husband. How can we be  
11 confident as we sit here this afternoon what we can and  
12 cannot prove in the absence of that evidence?

13 A Relative to what issue? My opinion is that if  
14 you look at the total settlement reached in this case, if  
15 we went in there and we had a witness statement that said  
16 I saw whomever, Josh Askin, walking out of the room with  
17 a weapon, okay, if something like that is out there, it  
18 doesn't increase the value of the case.

19 Q It wouldn't have any impact on the settlement  
20 of the case?

21 A It would not -- it would affect my opinion  
22 whether we could prove an underlying crime or not. Good  
23 luck in finding the smoking gun, either voluntarily or  
24 through years of litigation. But it would not affect the  
25 overall issues that I've talked about as far as the value

1 of the settlement. No, it would not.

2 Q It would not. It would have no impact on your  
3 ability to negotiate a settlement with Royal Caribbean?  
4 The financial settlement, I'm talking about.

5 A Are you suggesting that Royal Caribbean -- are  
6 you suggesting any corporation is going to turn over  
7 information that is detrimental to them before reaching a  
8 settlement with you?

9 Q I'm suggesting to you that in the course of  
10 litigation you can obtain information that can have an  
11 impact on your ability to negotiate a settlement in a  
12 civil matter.

13 A If the value of the case monetarily does not  
14 exceed the DOHSA limits that are permitted, all right,  
15 there's still the issue of having to prove that their  
16 negligence proximately led to his death.

17 Q That's correct. That's the point. That's  
18 correct. The point is how do you effectively assess that  
19 in the absence of a large amount of statements, by your  
20 own testimony, that are out there that, to our knowledge,  
21 nobody's seen?

22 A My answer would be this. That, you know, as  
23 much suspicion there is over this, who are the crucial  
24 people that are going to know anything about this? We  
25 already know the security report. We know the security

1 report indicates that when they showed up to investigate  
2 the noise complaints at 4:30 in the morning they saw  
3 three teens leaving the area. Okay? If anyone was  
4 involved in foul play, it was going to be one of those  
5 four men. What other information is going to lead to a  
6 different conclusion? There's -- this isn't a case  
7 where -- we don't have any idea what happened, and  
8 they're withholding information that's going to point to  
9 people. There's information we know that already points  
10 to people that can be pursued. I don't believe that that  
11 information would materially change the economic  
12 evaluation of this case.

13 Q But the reality of the situation is  
14 speculative. It's speculative --

15 MR. BROWN: He just asked his opinion --  
16 Objection, your Honor. Now it's full  
17 argument. He asked his opinion. He asked his  
18 opinion, he gave it. Now he doesn't like his  
19 answer. He wants to go after him again. When are  
20 we going to stop?

21 THE COURT: Do you have a question?

22 Q Let's move on to page 3. Again you're asking  
23 for passenger and crew members -- identification of  
24 passenger and crew members that were in there, correct?

25 A That's correct.

1 Q Because it's important to you in terms of your  
2 representation in this matter, correct?

3 A It's information certainly we felt was needed  
4 to be obtained, right.

5 Q You, in that paragraph, as well as in the  
6 following paragraph, I don't know if "insinuates" is the  
7 right word, that cruise line lawyers, in terms of  
8 interviewing passengers, may have tried to improperly  
9 influence their testimony or statements?

10 A Yes. Let me give you a context of that.  
11 There was a passenger who we later spoke to who had been  
12 quoted in the press that when the defense attorneys  
13 interviewed them they wanted to emphasize that Jennifer  
14 was intoxicated and needed a wheelchair. They felt that  
15 they -- they felt offended by lawyers coming in and  
16 saying disparaging things about Jennifer. There also, in  
17 all fairness, also are individuals who said these lawyers  
18 conducted themselves in an appropriate and ethical  
19 manner.

20 Now, you know what side of the fence I'm on.  
21 I don't like lawyers going on cruise ships after crimes.  
22 I don't think they belong on there. We see it in every  
23 case.

24 Q You felt strongly enough to include that  
25 accusation in this particular correspondence?

1           A           I think if you look at my letters coming out  
2 of my office you'll see accusations like this pretty much  
3 every day, with cruise line people, yeah, sure.

4                   MR. RICCIO: Do you want to take a break  
5 for lunch?

6                   THE COURT: How many questions do you  
7 have?

8                   MR. RICCIO: A few.

9                   Let's take a break for lunch here.

10                  THE COURT: Do you want an hour?

11                  MR. RICCIO: That's fine, your Honor.

12                  THE COURT: We'll be back at 2:15.

13                               (Whereupon, a recess was taken.)

14                  THE COURT: Mr. Walker is still under  
15 oath.

16                               You may proceed.

17                               CONTINUED CROSS-EXAMINATION BY MR. RICCIO:

18                  Q           On Exhibit 2 -- and I don't know if you have  
19 that in front of you, Attorney Walker, settlement of  
20 claims?

21                  A           I do, thank you.

22                  Q           Page 2, there's a reference to attorneys fees  
23 which is \$316,000. That's your proposed fee in this  
24 matter, sir?

25                  A           Yes. 16,666.66 per the retainer agreement.

1 Q Right. That be would your fee in this  
2 particular matter if this matter was settled at the  
3 amount that's proposed?

4 A Less 60,000 to Dr. Lee.

5 Q That's his retainer, Dr. Lee's retainer?

6 A No. Actually -- I'd have to explain it a  
7 little bit.

8 I wanted him to be involved, and I told him  
9 that I intended to send him a sum of money to ensure that  
10 he would remain involved. So that is for prospective  
11 work.

12 Q Has he been paid for his services so far?

13 A Yeah. He's been paid -- yes, he's been paid.

14 Q Do you have any idea what he's been paid to  
15 date?

16 A I can look at the cost sheet and give you a  
17 ballpark.

18 Sent him a check for \$5,000, sent him a check  
19 for 13,600, I sent him one for 16,925. And then there  
20 were maybe 20 other entries here for his expenses and  
21 some of the expenses of his team.

22 Q So we're talking, ballpark, \$35,000 to date  
23 for fees for Dr. Lee?

24 A I think something in that neighborhood, yes.

25 Q And you would envision a need for him to do

1 further work in this case?

2 A Well, not in this case. What I envision was  
3 to, you know, if there's third-party litigation, to  
4 continue on doing whatever needed to be done, continuing  
5 to investigate, reviewing the materials from the cruise  
6 line.

7 Q So that sum of \$60,000 was set aside for that  
8 purpose?

9 A Yeah. It was an arbitrary amount that I  
10 thought was needed to keep this thing going.

11 Q That's going to come out of your \$316,000 fee?

12 A It can either go directly to him or it can be  
13 paid to me and I'll pay him, but it's going to him.

14 Q Out of your fee?

15 A Out of my fee.

16 Q That's your plan; once you receive -- if the  
17 settlement's approved, it's your plan to forward those  
18 materials to Dr. Lee and continue to see whether or not  
19 there's third parties responsible for the disappearance  
20 of Mr. Smith?

21 A I believe so. That was my intent.

22 Q That's what you're planning on doing?

23 A Well, it's -- you know, I'm the attorney.

24 We're in the middle of a year and a half down the road.

25 I don't have the materials. If I get the materials today

1 I'm going to definitely send them to Dr. Lee.

2 Q And you will continue on to see whether or not  
3 there's third parties involved responsible for the death  
4 of Mr. Smith? Is that what you're telling the Court?

5 A If I am still on the case, and Jennifer is  
6 still the personal representative, that is definitely my  
7 intention.

8 Q Is there some reason you would not be on the  
9 case?

10 A No, other than we're in a probate proceeding  
11 and you filed a petition to remove her. If she's  
12 removed, I'm of no utility unless you want me to be  
13 involved, unless the Smith family wants me to be involved  
14 and wants me to continue to do things. If that's the  
15 case, I'd be, quite frankly, happy to do whatever is  
16 needed. But as long as there's a pending motion, I'm  
17 qualifying my continued involvement.

18 Q Okay. Thank you.

19 If I can mark your -- is there a report from  
20 Dr. Lee? Was there ever anything in writing presented?

21 A He did not prepare a formal report. He  
22 prepared notes and sends notes to the FBI.

23 Q Did you get a copy of those notes?

24 A I saw them. I did not get a copy of those  
25 notes.



1 Q Is there some reason why you wouldn't have  
2 access to those notes?

3 A No.

4 Q Did he refuse you access to the notes?

5 A No.

6 Q You just hadn't asked him for a copy?

7 A I did ask him for a copy. I haven't received  
8 a copy.

9 Q That examination on the boat was done back in,  
10 what was it, early '06, if I recall your testimony?

11 A It was January '06.

12 Q What was his bottom line? Did he have any  
13 conclusions or thoughts about this whole situation?

14 A He did not make a conclusion that he voiced to  
15 me. You know, a lot of the work that he did led him  
16 to -- basically stating that "I'm going to continue to do  
17 this, but I need information from the FBI so that I can  
18 really draw some conclusions."

19 Q What was the information he needed?

20 A Everything the FBI has.

21 Q Which would include witness statements from  
22 Royal Caribbean, I would assume?

23 A I would think so. Remember, he's a forensic  
24 scientist, so his job is not necessarily just looking at  
25 statements. The focus, of course, is -- we've had cases

1 where we've represented passengers and crew members who,  
2 quote, disappeared. I mean they disappeared without a  
3 trace and there's no evidence, and you really don't know  
4 what happened. Here there's information that's pointing  
5 to four individuals. Now, if we're going to depose them,  
6 they're going to take the Fifth Amendment. They're not  
7 going to cooperate. Their counsel has made that clear.  
8 Extraneous statements out there, is that going to really  
9 help Dr. Lee or not? I don't know.

10 Q Them taking the Fifth Amendment has some  
11 potential use in a civil case, I assume?

12 A It could, sure.

13 Q So the bottom line is -- Dr. Lee, you don't  
14 have any specific conclusions or findings by him  
15 regarding this situation?

16 A Not a conclusion that it was murder and if so  
17 who committed the murder.

18 Q Or any type of conclusions with regard to the  
19 evidence he found?

20 A Yeah, sure. I commented on some of the  
21 things --

22 Q Blood, you mentioned.

23 A -- he found, yeah.

24 Q Anything else?

25 A Yeah, I mean we -- when you say -- he may know

1 final conclusions on whether it was foul play or an  
2 accident. He made a number of observations and did a  
3 number of different types of, you know -- measuring  
4 distances, measuring times, things of that sort. Those  
5 are documented. I was part -- actually part of it, I was  
6 present.

7 Q But he's -- fair to say he's hampered by the  
8 lack of information or he needs more information with  
9 regard to this case?

10 A I think that's fair to say, sure. That's why  
11 I wanted to continue to pay him --

12 Q He can go forward.

13 A -- so this can continue. That was my plan.

14 Q Let me show you -- February 2, 2006 letter --  
15 I'm sorry. This is from your friend Mr. Peltz to you.

16 MS. STROILI: Exhibit H.

17 THE COURT: Date is February 2.

18 (Whereupon, the February 2, 2006, letter from  
19 Mr. Peltz to Mr. Walker, was marked as Opponent's  
20 Exhibit H.)

21 A This is the letter that the Royal Caribbean  
22 defense attorney, Mr. Peltz, faxed to me on February 2,  
23 2006.

24 Q Right. In that -- the purpose of me asking  
25 you -- what is that exhibit again, Mr. Walker? I'm

1 sorry?

2 A H.

3 Q The purpose of me showing that to you, sir, is  
4 that in that letter your friend, Mr. Peltz, paragraph 3  
5 and -- 3, 4, and 5 of that letter makes some pretty  
6 strong statements about Ms. Smith's conduct that  
7 particular evening.

8 A Yeah. Just so we have a record, I don't  
9 consider him to be my friend. He tortures me because he  
10 also went to Duke, and likes to talk about Duke  
11 basketball. That's about the extent of our common view  
12 of life.

13 Yeah, he was really mean. He was trashing  
14 Jennifer in this letter, and he relished in it. Really,  
15 I found it highly offensive.

16 Q But the -- two questions. Is there any doubt  
17 in your mind if this matter had come to litigation that  
18 Mr. Peltz would have used these accusations contained in  
19 paragraphs 3, 4, and 5 in this letter against Ms. Smith?

20 A Against Jennifer? I believe that they would  
21 have done whatever they were going to do -- the only  
22 thing I'm going to counter to the point you're making  
23 is -- you know, there came a time with Jennifer where she  
24 was over this. I mean, how much can you embarrass  
25 someone by repeating the same conduct of drinking and so

1       forth conduct.

2               Q       I'm not talking about -- maybe I misstated my  
3       question.

4                       I'm not talking about in the arena of public  
5       opinion. I'm talking about in a courtroom. Is there any  
6       question that they would have -- in a trial of this case,  
7       or in a deposition of this matter, that they would have  
8       used this information against your client?

9               A       I'll be honest with you. 10 to 1, I bet Peltz  
10       wouldn't have been the trial attorney, because he's in  
11       many ways kind of their pretrial hammer. He just hammers  
12       on anyone. I think if they had been this vicious, they  
13       would have turned the judge off.

14              Q       But the answer to my question is, yes, they  
15       would have tried to use this information?

16              A       In one form or the other. They would have  
17       brought out intoxication, they would have brought out  
18       Jennifer's conduct, they would have brought out George's  
19       conduct.

20              Q       You don't dispute that your client was found  
21       sleeping in a corridor on that boat?

22              A       I think she was unconscious. I don't think  
23       she was sleeping.

24              Q       Unconscious from the overuse of alcohol?

25              A       Well, I believe that that would be a

1 reasonable inference, yes.

2 Q There is some statements in here about  
3 Ms. Smith flirting with other men which in turn provoked  
4 her husband into a verbal altercation. Do you agree or  
5 disagree with those statements, that statement?

6 A I think that there's a -- one, I don't have  
7 firsthand personal knowledge to state that, because I  
8 obviously wasn't there. But to your point, there is a  
9 witness that we all know about who claims at 3:00 in the  
10 morning she saw an altercation. To be honest, I have  
11 a -- I have some hesitancy in believing the credibility  
12 of that. But, you know, this was something being bandied  
13 around in the news media, and I think this information --  
14 you've got to remember, this information was leaked out  
15 by Royal Caribbean in July of 2005 to try to embarrass  
16 Jennifer and, I believe, the Smith family --

17 Q But there are -- you would agree with me there  
18 are witnesses, what he sets forth here in paragraph 4,  
19 there are witnesses who purportedly saw Ms. Smith kick  
20 her husband in the groin. I'm not asking you to agree or  
21 disagree, there are those witnesses --

22 A That's a different question. Yeah, in AP,  
23 it's been reported. I think we may have spoken to the  
24 woman. I know the Smiths spoke to them. There is such a  
25 person out there, yes.

1 Q And he recounts in the next paragraph what he  
2 purports to be facts relating to Ms. Smith being -- her  
3 activities after she left the bar, correct?

4 A The second full paragraph?

5 Q Correct, on page 2.

6 A Yes. I mean, there are people who claim this,  
7 right.

8 Q Do you agree or disagree with his recitation  
9 of the facts strictly as they relate to your client's  
10 activities?

11 A Well, let me just go through these.

12 I would say this. Jennifer doesn't recall  
13 this, so she's not in a position to affirm it or dispute  
14 it. William Wright, Captain Wright, told us that when  
15 Jennifer went down the elevator, she went in the wrong  
16 direction. Instead of going left, she went right, cut  
17 across and dead-ended at the bow of the ship. He  
18 obtained that information from other individuals.

19 Q She was found -- cutting to the chase, she was  
20 found asleep, dressed, asleep in a hallway in the ship,  
21 correct, asleep or unconscious, one or the other?

22 A Yeah. I think she was unconscious.

23 Q You don't disagree with that?

24 A I don't have any reason to disagree with that,  
25 no.

1 Q Let me show you a letter from you back to  
2 Mr. Peltz, apparently in response to this letter, which I  
3 guess will be Exhibit I.

4 MS. STROILI: I.

5 MR. BROWN: Was the last one an exhibit,  
6 February 2?

7 MS. STROILI: H.

8 February 2, '06, is I.

9 (Whereupon, the February 2, 2006, letter  
10 from Mr. Walker to Mr. Peltz, was marked as Opponent's  
11 Exhibit I.)

12 MR. BROWN: There's two of them.

13 MR. RICCIO: Peltz wrote to him and this  
14 is Mr. Walker writing back to Mr. Peltz.

15 Q Drawing your attention to the second paragraph  
16 of that letter, Mr. Walker.

17 A Yeah. In the second paragraph I discuss what  
18 I refer to erroneously as Hill versus Royal Caribbean.  
19 The case is Hall versus Royal Caribbean. And I basically  
20 respond to his character assassination that she was  
21 drinking by pointing out that Royal Caribbean makes a lot  
22 of money pushing alcohol and that they still have an  
23 obligation to use reasonable care. And Mr. Peltz was the  
24 attorney on that Hall versus Royal Caribbean case, and I  
25 brought to his attention that, you know, but for his



1 overaggressiveness, he actually kind of created an area  
2 of law that was less than clear before this opinion,  
3 quite frankly. And I, you know, I went on to say, you  
4 know, this was really more focused on Jennifer and I felt  
5 Jennifer should have been taken to the ship infirmary.

6 Q In the second paragraph, the two themes that I  
7 got out of that is that Royal Caribbean is making a lot  
8 of money pushing alcohol on their passengers, again,  
9 based on your litigation experience, against Royal  
10 Caribbean. That's what you say there, right?

11 A You know, I've got two hats. This is my  
12 advocate hat. I'm being an advocate for my client. At  
13 the same time, I've got to deal with the reality this is  
14 not good for us, and I got to deal with the reality of  
15 George's drinking and his smuggling of vodka and absinthe  
16 and his use of prescription medications wasn't good. So  
17 I was just trying to stick it back to him.

18 Q And the second point you make in that letter  
19 is Royal Caribbean is still legally responsible for the  
20 guests' safety when it overserves them with alcohol. You  
21 said that, right?

22 A I did. And I remain of the opinion --

23 Q And you stand by that, right?

24 A Yeah, with the caveats and explanations I  
25 gave. It's -- you know, if this is an accident due to

1 overdrinking, in light of the smuggling of alcohol and so  
2 forth, it's a weak case. But, yes, I concede they have  
3 potential liability.

4 Q There's nothing weak in your language in this  
5 paragraph.

6 A Of course not. Look at his language. I'm  
7 firing back as fast and furious as I could. I'm not  
8 going to tell him -- I'm not going to concede anything in  
9 a letter to a defense attorney for Royal Caribbean. I'm  
10 not going to concede I'm worrying about any issues. You  
11 can read any transcript every time --

12 Q This isn't just strictly posturing. You were  
13 of the view that they make a hell of a lot of money  
14 pushing alcohol on their guests on the boat, right?

15 A Sure. They don't --

16 Q That's not just posturing, that's reality,  
17 right?

18 A Well, it is reality they make a lot of money.  
19 And I would add that they don't pay any income taxes,  
20 which infuriates me, too.

21 Q And you're not posturing here when you say  
22 they've got safety -- they are responsible for safety of  
23 the passengers after they've overfed them with alcohol.  
24 That's not posturing. You think that's the law, right?

25 A I believe that's the law. I cited it. I

1 cited it incorrectly. There's a reason they paid them  
2 what they paid. There's a reason they turned over the  
3 information.

4 Q There's an e-mail that you sent to  
5 Mr. Rivkind, next exhibit.

6 MS. STROILI: E-mail is Exhibit J.

7 (Whereupon, the e-mail dated March 13, 2006,  
8 from Mr. Walker to Mr. Rivkind, was marked as Opponent's  
9 Exhibit J.)

10 MR. BROWN: Can I have one?

11 I have to say, I brought copies of  
12 everything. I brought ten copies --

13 MR. RICCIO: We have copies. You have  
14 one sitting in front of you.

15 THE COURT: This is dated March 13, 2006.

16 A This is an e-mail that I sent to Mr. Rivkind  
17 March 13, 2006, at 8 --

18 Q Do you want a moment to look at it,  
19 Mr. Walker?

20 A No. You can go ahead and ask me questions.

21 Q At the bottom, very bottom of page 1, the  
22 paragraph that starts off "No talks" --

23 A Yeah, "No talks about compensation settlement.  
24 I have constant dialogue with RCCL about obtaining  
25 additional information."

1 Q Do I understand as of March 13 you're going  
2 back and forth with RCL trying to get information out of  
3 them?

4 A Constantly.

5 Q And after that December '05 production, which  
6 we talked about this morning, which contains some  
7 information along with some travel brochures, you didn't  
8 get any -- as of March 13, 2006, they hadn't given you  
9 any information, right?

10 A Other than what we learned on the ship, what  
11 they told us on the ship.

12 Q I think if you turn the page, on the top of  
13 the second page, you tell Mr. Rivkind you hadn't gotten  
14 anything else regarding the cruise, any other  
15 information.

16 A "Absolutely no additional information has been  
17 forthcoming from RCCL regarding the cruise details."  
18 That's right.

19 Q Fair enough.

20 At the end of the last sentence, or sentences,  
21 at the end of the first full paragraph on page 2, starts  
22 off, "If settlement is raised."

23 A Yeah. I -- let's see.

24 Q Take a chance to look at that.

25 A I told Mr. Rivkind -- here it is. "If

1 settlement is raised then you'll be a part of the  
2 dialogue. I know that I need the Smith family's  
3 agreement and they will be kept informed through you if  
4 and when it happens. I hope it happens so we have some  
5 options to consider."

6 Q So there, as of March 13, 2006, it's your  
7 position that you intend to keep the Smiths, Mr. and  
8 Mrs. Smith over here, through their lawyer, Mr. Rivkind,  
9 involved in the settlement process?

10 A That is absolutely correct.

11 Q And you realized at that point that you needed  
12 their agreement.

13 A Agreement, right. I knew they would have to  
14 agree. Otherwise there would be a disputed issue here in  
15 Probate Court. And it was my hope and intention at the  
16 time clearly to get the Rivkinds and the Smiths at the  
17 settlement table if and when we had a settlement  
18 negotiation.

19 Q Your next note I want to bring is your  
20 June 19, 2006, letter.

21 (Whereupon, the letter dated June 19, 2006,  
22 was marked as Opponent's Exhibit K.)

23 Q On that last exhibit, Mr. Walker, you  
24 recognize the importance of having the Smiths involved in  
25 the settlement process?

1           A       Well, I mean, yes. I thought out of -- for a  
2 number of reasons. One, I always wanted them a part of  
3 what we were doing. Two, it's their son, and I felt if I  
4 were a parent I would want to be part of it for all the  
5 right reasons. And it was my intention of having them  
6 there -- you know, at this time, March, my impression is  
7 that the Smiths had no interest whatsoever in settling.  
8 One of the thought processes I had, in all candor, was  
9 that I wanted them there to be able to hear what was  
10 going to be happening, what if anything was going to be  
11 offered, so that whatever was going to happen would be  
12 happening. That was clearly my intention.

13           Q       Openly, right? You were intending to deal  
14 with the settlement process in an open fashion?

15           A       In an open fashion.

16                   Now, my -- I'm not a probate lawyer. And at  
17 some point -- I've always wanted them there. And at some  
18 point I had advice from Connecticut probate counsel that  
19 the attendance of beneficiaries is not required and, just  
20 to cut to whatever questions you're going to ask me,  
21 Royal Caribbean made it -- I assume I can say this --  
22 that they made it a prerequisite that they not be  
23 present. I personally disagreed with that. I would have  
24 preferred them to be there. That's the bottom line. I  
25 couldn't make that happen, and that's it.

1 Q All right.

2 A And I'm sorry, quite frankly. It would have  
3 been my preference to have them at the table.

4 Q But it was Royal Caribbean that excluded them,  
5 not you?

6 A Yes.

7 Q But as of March 13, 2006, there had already  
8 been a personal falling out between Mr. and Mrs. Smith  
9 and Ms. Smith?

10 A Well, I believe that Jennifer always wanted  
11 them to be on the same page with her. I think they made  
12 it clear they wanted to go their own route.

13 Q That personal falling out occurred sometime  
14 late in 2005, as I recall?

15 A Right.

16 Q Thank you.

17 A Right.

18 Q All right. June 19, 2006.

19 MS. STROILI: This is L. Is that the  
20 same date as the letter before?

21 THE COURT: January 19.

22 MR. RICCIO: I have this as K.

23 MS. STROILI: I'm sorry, K -- no, we just  
24 did K.

25 THE COURT: This looks very familiar.

1 It's the same letter?

2 MR. RICCIO: We did a March 13, 2006,  
3 that's J. This letter is dated January 19; I  
4 believe it's misdated.

5 THE COURT: I have two. One has a cross  
6 through it. It's June.

7 MR. RICCIO: That's the one.

8 A This was June?

9 Q I believe this letter is misdated. It's from  
10 you.

11 A I remember looking at these. I wrote through  
12 and put June at some point.

13 MR. JONES: You already have this one.

14 We just marked K. This letter is a clean  
15 version. It doesn't have the crossout of June.

16 Q Is the June crossout you, Mr. Walker?

17 A Yeah. What I did -- I don't know what I did.  
18 I put June on the header on pages 2, 3, and 4. I put  
19 June on the fax cover sheet. I think it's just a  
20 mistake.

21 MR. RICCIO: Is that letter marked?

22 THE COURT: That's K.

23 MR. RICCIO: That's fine.

24 But the e-mail did get marked as J?

25 MR. BROWN: As J.



1 MR. RICCIO: Okay.

2 A Yes. This is -- have I identified this  
3 letter?

4 Q I believe you did.

5 A It's a June 19 letter, which I erroneously put  
6 January 19 on the front page, that I faxed Rivkind on  
7 June 19.

8 Q So as of June 19 you were in communication  
9 with Mr. Rivkind, correct?

10 A Right. We were continuing to communicate -- I  
11 mean, this is one of many letters that were going back  
12 and forth. So we were still writing to one another,  
13 talking, e-mailing, we were meeting. And we were trying  
14 to get ready for the filing date.

15 Q And that was going to be the week of June 26,  
16 according to this letter?

17 A Well, I think it was -- yes, the end of --  
18 June 26. June 26, I think, was a Monday.

19 Q In fact, in that letter you indicate you were  
20 excited to finally be able to take some depositions.

21 A I think that's what I said. I think I was  
22 ready to go at this point.

23 Q You were looking forward to getting some  
24 information that you had not been able to get so far with  
25 regard to this case voluntarily from Royal Caribbean?

1           A       I was looking forward to suing them, to taking  
2 depositions, to going to court, and trying to get as much  
3 as I could. I would readily agree.

4           Q       At the bottom of page 1, there's a sentence  
5 that starts off "Regrettably [comma]"?

6           A       Yeah. I said, "Regrettably, the Smiths'  
7 decision not to communicate with Jennifer has played into  
8 the hands of the cruise line and the lawyers for at least  
9 two of the men last seen with George Smith."

10          Q       Could you explain how that -- well, first of  
11 all, let me ask you. What was the significance of these  
12 two men in terms of when you were writing this letter in  
13 June of 2006?

14          A       The significance of the two men? Sitting here  
15 today, I don't remember the two men I'm talking about. I  
16 know one of them was probably Rusty Kaufman. And I  
17 was -- I saw his lawyer go on an ABC program or Greta  
18 van Susteren. I mean, this guy was a caricature of a mob  
19 lawyer, like out of *Goodfellas*. And he sat there saying  
20 the exact same thing that Mrs. Smith said about Jennifer.  
21 "That Jennifer, that Jennifer is hiding something. That  
22 Jennifer has got something more than meets the eye here.  
23 That Jennifer, that Jennifer."

24                   I thought, man, that's terrible. The rift has  
25 caused them to parrot George's mother's comments. So I

1 thought it was a disaster.

2 Q That's what you meant by playing into the  
3 hands --

4 A Yeah.

5 Q -- of the lawyers for at least the two men?

6 A Yeah. If they see a gap between the mother  
7 and daughter, and they see the mother criticizing the  
8 daughter publicly, it's free license for everybody to do  
9 it, even them, and that's what really disturbed me.

10 Q Who was the other guy besides Rusty Kaufman?

11 A The only other attorney -- the only other one  
12 of the four men who had counsel that was speaking was  
13 Josh Askin.

14 Q Kaufman and Askin would have been people that  
15 were among that group of four men --

16 A Right.

17 Q -- last seen --

18 A Right.

19 Q -- with Mr. Smith?

20 A Right. And Josh Askin's attorney, Keith  
21 Greer, was kind of saying -- was just kind of joining in  
22 the fun. Jennifer's an easy target. Her mom's saying  
23 bad things about her, let's just jump on the band wagon.  
24 Let's shift the focus away from our clients, which good  
25 lawyers, I suppose, do. And I just -- you know, it

1 wasn't a good development.

2 Q Page 2, Mr. Walker, the second full paragraph,  
3 the last sentence of the second full paragraph.

4 A The second paragraph?

5 Q Second full paragraph.

6 A "I regret that my schedule has prevented me  
7 from meeting you last week" --

8 Q No. The sentence, the second to last  
9 sentence.

10 A "As I also mentioned, I have taken a half  
11 dozen" --

12 Q You don't have to read it. It's there.

13 A Okay.

14 Q You mentioned that you have taken discovery, a  
15 half a dozen depositions recently of Royal Caribbean  
16 officials, right, and that you thought would be helpful  
17 in this case, in the Smith case, correct?

18 A Yeah. This was --

19 Q In what way, Mr. Walker, would those half a  
20 dozen depositions have been helpful to you in this case?

21 A June 19, 2006, we're between -- let's see --  
22 June 19 would have been two months after the second  
23 congressional hearing, which was in March 2006, and March  
24 of 2006, Royal Caribbean said they only had 66 rapes.  
25 They submitted that in sworn testimony to the Congress,

1 and I had taken some depositions and had some court  
2 orders in which they actually revealed their internal  
3 documentation which showed 273 incidences. And I felt  
4 that I could attack their credibility and just make them  
5 look bad.

6 Q These are people that lied to the committee of  
7 the Congress of the United States of the number of sexual  
8 assaults that occurred on their boats?

9 A Yeah. I mean, there's newspaper articles  
10 about it. You know --

11 Q They did lie to the Congress?

12 A That's my assessment. Congress, you know,  
13 Congress should, you know -- they claim that their  
14 statistics are accurate. They claim that they categorize  
15 these things in a certain manner. You know, again, it  
16 gets into the issue of, I don't -- you know, I don't  
17 trust them. But at the end of the day, by golly, they  
18 came up and did something extraordinary. So all I can  
19 tell you is that's what I believe. I believe that you  
20 can't trust them and you have to test them, and if  
21 they're lying to us in providing this information, then  
22 there's consequences to that and we'll sue them for  
23 fraud.

24 Q Earlier up in that second full paragraph on  
25 page 2 you state, "I intend to continue to continue to

1 communicate with you." That's with Mr. Rivkind, I  
2 assume?

3 A "I intend to continue to continue to  
4 communicate with you." It looks like I probably typed  
5 this all myself.

6 Q Further on in this letter -- we don't have to  
7 get into every line of this particular letter, but you  
8 set forth the reasons why you think the Athens Convention  
9 would not limit any settlement in this particular case.  
10 Fair to say you talk about the Wallis decision?

11 A Yeah. I talk -- you know, let me tell you  
12 what happened here, just so you understand. Brett  
13 Rivkind called me up and said, "I just spoke to Allan  
14 Kelley." Allan Kelly is the head of the maritime section  
15 of Fowler White, where we both worked. "Allan Kelley  
16 says, Jim, that the Athens Convention applies. We're  
17 going to be totally screwed with an Athens Convention  
18 limitation."

19 And I pulled all the research out and I wrote  
20 him this letter and tell him my thoughts on how we could  
21 try to navigate around it. You don't see the word in  
22 here "guarantee" or "final opinion."

23 Q Never is, right? We're not in a guaranteeing  
24 business.

25 A No, we're not.

1                   So I was trying to be -- I never got any  
2 letters like this from Mr. Rivkind giving me his legal  
3 opinions and citations. I was trying to keep him  
4 informed and, quite frankly, show him that it wasn't as  
5 bleak as I think he thought at that time. That's my  
6 honest assessment.

7                   Q        You settled a large number of cases -- was it  
8 500 you said, or was it 250, in terms of dealing with  
9 Royal Caribbean?

10                  A        We settled a number of cases.

11                  Q        Is it 250 or 500? Did I misunderstand?

12                  A        I've handled over 500 cruise line cases, and  
13 over 250 involving Royal Caribbean.

14                  Q        Okay. And have the majority of those cases  
15 been constrained in terms of settlement by this Athens  
16 Convention figure?

17                  A        Some have.

18                  Q        Some have, some haven't, right?

19                  A        Yeah, some have, some haven't.

20                  Q        I'm sure you settled cases against Royal  
21 Caribbean that are far, far in excess of this Athens  
22 Convention limitation.

23                  A        I have.

24                  Q        And certainly, in this case -- certainly in  
25 this case the settlement figure is far in excess of the

1 Athens Convention settlement figure, is it not?

2 A Yes.

3 Q June 21, 2006.

4 MS. STROILI: This is L.

5 (Whereupon, the June 21, 2006, letter from  
6 Mr. Walker to Mr. Rivkind, was marked as Opponent's  
7 Exhibit L.)

8 MR. RICCIO: It's a letter from  
9 Mr. Walker, again, to Mr. Rivkind.

10 THE COURT: From Mr. Walker to Attorney  
11 Rivkind.

12 A I remember this letter, June 21, letter.

13 Q On page 3 of this letter, Mr. Walker, the only  
14 thing I want to ask you about, you make the statement at  
15 the end of the first incomplete paragraph on that page,  
16 "We want to do everything possible to find out if George  
17 was murdered and who was responsible for his death."

18 You see that there?

19 A Help me out. I don't see -- what paragraph?

20 Q It's the last sentence in the first paragraph,  
21 first incomplete paragraph on page 3.

22 A Yeah. I'm talking about Dr. Lee, and I would  
23 still like to find out that particular issue.

24 Q As we sit here today, in 2008 --

25 A Of course.



1 Q -- you want to do everything possible to  
2 see -- find out if George was murdered and by whom,  
3 right?

4 A Well, the issue is whether he was or not.  
5 And --

6 Q If he was murdered, who did it?

7 A It's going to be one of those four guys unless  
8 something extraordinary comes out of this.

9 Q In your view it's one of the four guys?

10 A If he was murdered. You got to understand.

11 This was in a closed cabin with eyewitnesses -- or ear  
12 witnesses saying the men left, and then later they heard  
13 noise. It could only be one of those four men if it was.  
14 I don't know if it was. I've been candid, I've been  
15 consistent. More probably than not, I think that there  
16 was foul play. That's my personal opinion.

17 Q You don't think he just got drunk and smoked a  
18 cigar and fell off the balcony, right? That's what you  
19 said this morning.

20 A Yeah. That's the *Vanity Fair* conclusion. I  
21 disagree with it. You deal with probabilities,  
22 likelihoods, certainties. I think probably there was  
23 foul play. You know how Jennifer testified in her  
24 deposition. People had different opinions. The Smiths  
25 believe it to be the case 100 percent. I would like for

1 them to know one way or the other, outside of this  
2 lawsuit. That's why I want Dr. Lee to be involved.  
3 Irrespective of what happens in this probate hearing, to  
4 be honest with you. Irrespective whether I get a dime.  
5 I want there to be answers for this family and for  
6 Jennifer.

7 Q Even if it turns out to be a Royal Caribbean  
8 employee, you want to still get answers, right?

9 A I have never seen anything suggesting it's a  
10 Royal Caribbean employee.

11 Q But I'm asking you hypothetically. If a Royal  
12 Caribbean employee had some participation or involvement  
13 in the death of Mr. Smith, you would want to know that,  
14 right?

15 A Yes. And I would just quickly add that I  
16 don't think there's any predicate to the hypothetical.

17 Q Let me show you your June 29, 2006, letter.

18 (Whereupon, the June 29, 2006, letter from  
19 Mr. Walker to Mr. Peltz, was marked as Opponent's  
20 Exhibit M.)

21 A June 29, 2006, letter I sent to Mr. Peltz --

22 Q I'm talking about your June 29, 2006, to  
23 Mr. Rivkind.

24 MR. JONES: I gave him the wrong one.

25 I'm sorry.

1                   Make this N. We'll refer to N first.

2                   (Whereupon, the June 29, 2006, letter from  
3 Mr. Walker to Mr. Rivkind, was marked as Opponent's  
4 Exhibit N.)

5           A       June 29, 2006, I faxed Mr. Rivkind a letter.  
6 This isn't the faxed copy. It's a mailed copy.  
7 Exhibit N.

8                   And I told Mr. Rivkind that we yesterday  
9 settled -- reached a comprehensive settlement and I  
10 think -- three-page letter I faxed him.

11           Q       This would be an important document insofar as  
12 it was the first indication that Mr. Rivkind had that the  
13 case had been settled, right?

14           A       To be honest with you, I think that he  
15 probably found out through a Royal Caribbean attorney who  
16 was his friend.

17           Q       But you don't know that, correct?

18           A       I got a good suspicion that that happened.

19           Q       All right. But as far as you, Mr. Walker,  
20 communicating with Mr. Rivkind --

21           A       First -- my first communication with  
22 Mr. Rivkind informing him of the settlement was  
23 definitely this letter.

24           Q       That was a Friday, June 29, 2006, I believe?

25           A       The 29th was a Thursday.

1 Q Thursday?

2 A Yeah. I actually also sent him a -- probably  
3 at the same time, an e-mail.

4 Q So that's the first word that Mr. Rivkind has  
5 that this case has been settled against Royal Caribbean?

6 A First word from me. I believe this attorney,  
7 Steve Marks, who's identified on Exhibit M, called him  
8 and told him.

9 Q The case was actually -- let me back up.  
10 The statute of limitations would have run on  
11 this cause of action when, sir?

12 A On July 5, 2006.

13 Q Prior to this settlement that you announced on  
14 January 29 [sic] to Mr. Rivkind, the plan was for you to  
15 file -- on behalf of Ms. Smith, for you to file a  
16 lawsuit, correct, against Royal Caribbean?

17 A Right. I just want to -- upon the approval of  
18 the settlement. So you're calling it a settlement. I --  
19 yes. Our plan was to file suit within the limitations  
20 period on behalf of Jennifer as the personal  
21 administratrix, representative, to assert a claim on  
22 behalf of the Smiths.

23 Q So there was going to be -- there was talk  
24 about two lawsuits, wasn't there?

25 A Mr. Rivkind was going to file a claim for

1 Mr. and Mrs. Smith and Bree Smith for intentional  
2 infliction of emotional distress. We were going to file  
3 a wrongful death claim. And what I hoped to do was walk  
4 into the courthouse with him and actually do it. There  
5 was a lot of friction, animosity, between Mr. Rivkind and  
6 I, or disagreements, kind of leading up to this. But we  
7 were going to file suit on the same day.

8 Q That was the plan?

9 A That was our plan.

10 Q So Mr. Rivkind had no idea that you were -- as  
11 far as you know -- that you were in negotiation with  
12 Royal Caribbean?

13 A I don't know what he knows.

14 Q From you. Did you tell --

15 A No, I didn't tell him, no.

16 Q -- "Hey, Brett, they called me and they want  
17 to talk to me about settling"?

18 A I couldn't do it.

19 Q That didn't happen, right?

20 A Didn't happen, I couldn't do it.

21 Q Mr. Rivkind took absolutely no part whatsoever  
22 in the settlement of this case, correct?

23 A Absolutely none.

24 Q Can you indicate to us how this settlement --  
25 or, excuse me, when this settlement process started with

1 Royal Caribbean?

2 A We had -- well, there's a privilege on -- in  
3 Florida -- on confidentiality of mediation processes. So  
4 I'm not going to get into what was discussed at the  
5 mediation process.

6 What I am going to say is this settlement  
7 here, proposed settlement, took place when I got a call  
8 from Steve Marks on -- well, I don't recall the exact  
9 day. It might have been -- might have been either Monday  
10 or Tuesday. And he said that Mr. Marks and Aaron  
11 Podhurst -- who are two, ironically, two plaintiff  
12 attorneys, high-powered aviation attorneys -- wanted to  
13 meet and try to resolve the case.

14 And I don't know what else I can go into  
15 without breaching the confidentiality provisions. But it  
16 literally -- I mean -- let me tell you what was going on.  
17 I wasn't making any settlement overtures to anybody. We  
18 were -- our ears were pinned back. We were going to go  
19 forward. We were doing everything we wanted to do. They  
20 approached us on the eve of the limitation period and  
21 wanted to have confidential mediation process, to the  
22 exclusion of the Smith family. So, again, I had advice  
23 from probate counsel, and that's what took place.

24 Q Did they -- prior to that time, had you made  
25 any demand for settlement --

1 A No.

2 Q -- against Royal Caribbean?

3 A No.

4 Q There had been no demand made?

5 A There had never been a demand made.

6 Q And this overture received was from two  
7 plaintiff lawyers to act as mediators in this particular  
8 matter?

9 A No, no. Certainly not to act as mediators at  
10 all. They were there in the capacity of representing  
11 Royal Caribbean.

12 Q A somewhat odd development since they were  
13 plaintiff lawyers.

14 A No. I think I may be restricted from telling  
15 you who came to the mediation and -- who was actually  
16 present and what was discussed.

17 Q We're going to get into that, I assume. We're  
18 going to talk about it.

19 A I assume my counsel is going to object.

20 Q Go ahead.

21 A What happened in this case, quite frankly, is  
22 I think that they had run Bob Peltz as long as they  
23 could, and I told Bob Peltz basically that I didn't want  
24 anything to do with him. I felt he was unproductive, and  
25 I thought that he -- you know, he's a hammer and sees the

1 world as a nail. I told him, "Go pound on somebody else,  
2 I'm done with you." I want to go proceed and I want to  
3 litigate. So they just changed the equation up. I don't  
4 know what their thought process was, getting plaintiff  
5 attorneys, if that's some kind of a new creature in an  
6 attorney --

7 Q These were people who traditionally do  
8 plaintiff work in aviation cases?

9 A Well, Aaron Podhurst, you can Google him. He  
10 is one of these big, huge commercial litigators. I refer  
11 to him as plaintiff work because they do a lot of  
12 aviation work. He is a highly -- I probably created the  
13 wrong image in your mind. He is a highly respected  
14 senior attorney type, 70 years old or so, 68 years old,  
15 in Miami. He has a world of credibility, and I think  
16 they felt like they needed to get somebody else into the  
17 equation.

18 Q And he suggested a mediation or just a sitdown  
19 with the Royal Caribbean lawyers?

20 A He -- the other lawyers -- I'm not going to  
21 get into who was there or not there.

22 Q How could that possibly be privileged, who was  
23 the other lawyers present at the time?

24 A I don't see where it's going to if I can't  
25 even talk about the terms --



1 Q I guess we can address the issue with the  
2 Court about this whole privilege thing. But the fact  
3 that a meeting -- I'm going to ask you, what day did the  
4 meeting take place? Was it June 29?

5 A The mediation was June 28.

6 Q June 28. There was one mediation?

7 A There had been prior mediations in the case.

8 Q When did they take place?

9 A I think they took place in April maybe.

10 Q Okay. One prior mediation?

11 A One prior mediation.

12 Q Did Mr. Rivkind know anything about that  
13 mediation?

14 A No, for the reasons I said. I would have  
15 liked to have told him, and I couldn't make it happen.

16 Q So at that mediation in April, no resolution  
17 of the case was reached, I assume.

18 A That's correct.

19 Q And it was you acceded to Royal Caribbean's  
20 request that essentially cut the Smiths and Mr. Rivkind  
21 out of that process?

22 A I guess that's the way you could look at it.  
23 That's what happened.

24 Q Was a demand made by you at that mediation?

25 A No.

1 Q No demand?

2 A No demand.

3 Q Did they make an offer?

4 MR. BROWN: Objection.

5 Your Honor, he can ask when they were, he

6 can ask who was there, as far as I'm concerned.

7 This is Florida mediation law, Section 44.405 of

8 the Florida statutes.

9 MR. MARCHAND: We disagree with the  
10 interpretation that Mr. Brown is about to make.

11 MR. BROWN: Okay. You're allowed.

12 But Royal Caribbean has specifically said  
13 they're not waiving any privilege to this  
14 mediation.

15 MR. JONES: Why don't you explain to the  
16 judge what the basis of your claim of privilege is  
17 so he doesn't have to sit there and read it.

18 MR. BROWN: That there is -- that nothing  
19 having to do with any communications between the  
20 parties to the mediation is allowed to come in.

21 MR. JONES: That information is going to  
22 include the back and forth of what actually took  
23 place in terms of discussion of the settlement  
24 which this judge has to now rule on.

25 MR. BROWN: The whole settlement is

1 before the Court.

2 MR. JONES: But how that settlement is  
3 reached and the back and forth and the offers and  
4 counteroffers and what went into that settlement  
5 would certainly be information that I believe the  
6 Court would be interested in hearing. Because it  
7 goes into the evaluation and the weighing  
8 Mr. Walker and his client had to do to come to the  
9 point of settlement.

10 MR. BROWN: Your Honor, we can ask Royal  
11 Caribbean to come in. He can call somebody --

12 THE WITNESS: The consequences of  
13 violating the confidentiality statute is that they  
14 can void whatever settlement, which would, if your  
15 Honor's going to find this to be a reasonable  
16 settlement and it's voided, no one gets anything.  
17 That's a type of sanction that can be entered.

18 But what difference does it make if they  
19 went and offered me \$1 and then \$5 and \$10, hundred  
20 dollars, \$50? At the end of the day they offered  
21 what they offered.

22 MR. BROWN: Your Honor, what's going on  
23 here -- I know this is Probate Court. You have to  
24 make a decision. But in my memo in support, it  
25 talks about settlements, and it talks about the

1 Court's role on looking at whether or not  
2 settlement should be approved or disapproved. And  
3 what's going on here from the other side, since  
4 I've been here for an hour, is that they're trying  
5 to attack the underlying -- the whole grounds for  
6 what's taken place. They want you to rule on  
7 everything as to whether or not -- in fact, it goes  
8 to this whole hearing -- as to whether or not the  
9 money, you know, is accurate, as to whether or not  
10 the issues of liability are well reasoned, and  
11 attacking every possible thing that could go into  
12 the settlement.

13 That's not what a Court's supposed to do.  
14 It's supposed to look at the settlement and say, is  
15 this -- is there something that went into the  
16 settlement that's completely -- that needs to be  
17 vitiated so that this settlement has to be  
18 vitiated?

19 They have a mediation. What they're  
20 asking is, they want to know everything that went  
21 back and forth in the settlement negotiation  
22 between the estate and Royal Caribbean, with the  
23 hope that you deny the settlement, and then they're  
24 going to know exactly what was offered back and  
25 forth.

1           I mean, they have rights, the Smiths have  
2 rights; they're heirs. They weren't the fiduciary.  
3 What's before the Court is whether or not the  
4 fiduciary did something that was reasonable based  
5 on all of the factors. They can't go into all this  
6 mediation and then have the Court deny it. Then  
7 I'm going -- then we're going to have a real  
8 problem with Royal Caribbean.

9           MR. JONES: Your Honor, I completely  
10 disagree. You're being asked to assess a  
11 settlement agreement, but you're being told because  
12 of some confidentiality statute in Florida that  
13 you're not allowed to look into the actual  
14 negotiations that went on that led them to reach  
15 this settlement.

16           It would seem to me that if Mr. Walker  
17 got into conversations with opposing counsel about  
18 the strengths and weaknesses of the Athens  
19 Convention, of DOHSA, of the amount of the  
20 settlement, of whether or not -- what the pecuniary  
21 loss was -- it would seem to me that those factors  
22 in determining, the two counsel, on both sides,  
23 were trying to figure out exactly -- they were  
24 laying their cards on the table, which as we all  
25 know is what happens in a mediation, that would

1 seem to be pertinent as to whether or not this  
2 settlement agreement, which had gone on all day,  
3 about what went into their thought processes -- it  
4 seems to me we're entitled to hear what went into  
5 Royal Caribbean's thought process is to reach this  
6 final point. You can't just look at the settlement  
7 agreement at the end on its face and say, okay,  
8 it's a reasonable settlement, without knowing  
9 whether or not -- did they concede any of these  
10 points? Those are interesting questions for  
11 Mr. Walker.

12 MR. BROWN: Interesting questions,  
13 absolutely. I'm not disagreeing with that.  
14 Definitely interesting questions. But you're not  
15 allowed to do this. You're not allowed to find out  
16 everything that happened in a settlement  
17 negotiation with the hope that you're then going to  
18 sue them and know what was going on in a mediation  
19 that was privileged. You're just simply not  
20 allowed to do it.

21 MR. MARCHAND: We think you're allowed to  
22 do it.

23 MR. BROWN: Why -- I disagree with the  
24 fact that -- there is a settlement agreement before  
25 the Court. It's been before the Court for over a

1 year.

2 MR. JONES: What is our concern with  
3 Royal Caribbean?

4 MR. BROWN: My concern is I got to make  
5 sure -- they haven't waived this privilege.

6 MR. JONES: It seems to me that Royal  
7 Caribbean has -- they've obviously provided their  
8 economist statement, right? So in some respects --  
9 there's an economist statement that's attached as  
10 an exhibit which came from Royal Caribbean,  
11 correct?

12 MS. HAGEL-SMITH: Can I ask a question?

13 THE COURT: No.

14 MR. BROWN: Not now.

15 They're not allowed to waive -- I don't  
16 have authority for them to waive. I'm not  
17 allowed --

18 THE WITNESS: It's a question of me  
19 waiving. I can't waive it. There's consequences  
20 if I waive it.

21 MR. JONES: That's actually a question of  
22 law, whether that statute even applies in these  
23 proceedings. Again, we're relying on the judge  
24 because these are closed proceedings. You  
25 basically said that the judge can analyze things

1 and make determinations on his own. It seems to me  
2 it's not going outside of this room. It's a  
3 confidential proceeding.

4 MR. MARCHAND: Your Honor, there seems to  
5 be built into the statute in paragraph Arabic  
6 numeral 5, which is a subparagraph to 4A of 44.405,  
7 there seems to be an exception to the  
8 confidentiality if the testimony's offered for the  
9 limited purpose of refuting legally recognized  
10 grounds for voiding any settlement.

11 It seems to me that's exactly what we're  
12 doing. We're trying to refute the grounds of the  
13 settlement, that it's not fair, it's not in the  
14 best interests of the estate.

15 MR. BROWN: Your Honor, I know Royal  
16 Caribbean -- Royal Caribbean has an opinion on  
17 this, that they can't waive -- the right can't be  
18 waived. And I think Mr. Walker is in a real  
19 problem situation if he talks about it. I think  
20 that Ms. Hagel-Smith is in a real -- is going to be  
21 in a real -- is going to subject herself to some  
22 serious problems with Royal Caribbean.

23 This -- the results of the mediation are  
24 in front of everybody. The July agreement, they  
25 raise in their motion to remove, the December



1 agreement, all of those things are before the  
2 Court. I don't think -- they're not allowed to go  
3 into -- they're trying to attack everything having  
4 to do with the underlying -- anything that happened  
5 having to get us to the settlement agreement. The  
6 settlement agreement is before the Court.

7 Mr. Walker has testified as to the pros and cons of  
8 the settlement.

9 MR. JONES: But the problem, your Honor,  
10 is that Mr. Walker's testified this morning on  
11 direct of his careful consideration that he gave to  
12 each of the elements, including negligence against  
13 the cruise line, the statutes that apply, the law  
14 that applied. If in those conversations he had  
15 with the cruise line there was a back and forth  
16 with respect to whether or not they felt -- the  
17 cruise line may have felt the Athens Convention did  
18 or did not apply. They're going to put weight to  
19 that. That may have been discussed in these  
20 negotiations. That would affect whether or not you  
21 feel this is a valid reasonable settlement  
22 agreement, if you could find out -- if someone  
23 stated to Mr. Walker in those discussions, someone  
24 from the cruise line side, "Yeah, you're right, the  
25 Athens Convention probably doesn't apply here,"

1 seems to me you'd want to know that when we heard  
2 about the Athens Convention all morning.

3 MR. BROWN: They would never have  
4 allowed -- they would never have gone into a  
5 mediation if they knew that their mediation  
6 discussions were going to get aired out like dirty  
7 laundry on -- at this hearing. That would never  
8 have taken place. Mediation would never have taken  
9 place, because the goal is towards settlement.  
10 There's no way that Royal Caribbean agreed to the  
11 mediation with any thought that anything in that  
12 mediation was coming out at this hearing.

13 MR. JONES: Was Royal Caribbean aware of  
14 the exception to the statute? They put in their  
15 settlement agreement that it would end up in a  
16 Connecticut Probate Court.

17 MR. BROWN: What Mr. Jones has asked, is  
18 he's saying it would be relevant to know the  
19 settlement. Why is it relevant -- I mean, Royal  
20 Caribbean is allowed their privilege on what gets  
21 communicated in a mediation. Ms. Hagel-Smith is  
22 going to testify to why she settled. She did, by  
23 the way, in April of last year, in a full two-day  
24 deposition, explain why she settled. She'll do it  
25 again right now. She's going to explain why she

1 settled.

2 MR. JONES: What's crucial, your Honor,  
3 is what Royal Caribbean's position is.

4 MR. BROWN: It's not --

5 MR. JONES: Let me finish, with respect,  
6 please.

7 MR. BROWN: Okay.

8 MR. JONES: Jennifer can testify as to  
9 what her reasons were. Mr. Walker can, too. But  
10 it seems to me, this is the first time we're  
11 hearing that a mediation even took place. Even  
12 Mr. Rivkind was kept in the dark about an April  
13 mediation, if I understood your testimony.

14 MR. BROWN: You knew a mediation took  
15 place when her deposition took place last year in  
16 April. We had that same discussion, by the way, at  
17 that deposition. I cut off questioning about the  
18 mediation. The exact same statute.

19 MR. JONES: It was never -- it was never  
20 made clear there was actually mediators present,  
21 either. That's a question I think that Gene can  
22 ask that he can answer, whether or not actually --  
23 were they mediators or were they settlement  
24 discussions. Because there's a big difference.  
25 Was there a mediator present at these meetings?

1 MR. BROWN: You can ask that.

2 Q Was there a mediator present?

3 THE WITNESS: Can I answer the question?

4 MR. BROWN: Yes.

5 A There was a mediator present at the first  
6 mediation. There was not a mediator at the second.

7 Q The second wouldn't fit under the statute.

8 A I disagree. You don't have to have a mediator  
9 present to have a mediation. If you agree to a  
10 confidential settlement, face to face, you don't have to  
11 have a mediator actually present. You can meet  
12 individually and have those discussions following the  
13 first mediation --

14 Q Is there a difference in your statement  
15 between a mediation and settlement discussion? In this  
16 state, mediation connotes someone else, a mediator, be  
17 present.

18 A This is what happened. We had a mediation  
19 with the mediator present. He did not declare an  
20 impasse. It was open. I told Mr. Peltz, "See you. I'm  
21 not going to deal with you anymore."

22 Q You probably shouldn't be telling me that  
23 because that's probably privileged.

24 A No, that was outside the mediation process. I  
25 don't want to fool with you on any basis. Don't cut me

1 off if I'm helping you out.

2 Q I couldn't resist.

3 MR. JONES: What happened at the second  
4 one?

5 THE WITNESS: What happened, meaning?

6 MR. JONES: You said --

7 Q If there was no mediator at the second one --

8 A Right. What we can do in Florida is you can  
9 leave the first mediation open and not impasse it, have  
10 it adjourned, and parties can subsequently meet face to  
11 face. If they're exchanging the same type of -- I mean,  
12 mediation settlement conferences is the same thing. If  
13 it's considered to be confidential, I believe it falls  
14 reasonably under the statute.

15 Q That's really no different than a settlement  
16 discussion between counsel, is it? There's nobody else  
17 present but counsel for maybe a party or two, counsel for  
18 each respective side, right?

19 A Well, if you say I'm going to have a  
20 settlement conference with you -- I'm going to have a  
21 settlement conference with any of you, and I don't  
22 consider it to be privileged and I don't consider it to  
23 be subject to any mediation confidentiality, then it's  
24 not confidential. This was considered to be a  
25 confidential one.

1           Q       Under Florida law, you're saying every time a  
2 lawyer sits down with his adversaries and has discussions  
3 about a case, that constitutes a mediation and those are  
4 all privileged communication?

5           A       No, that's not what I'm saying. A lot of  
6 people have nonconfidential settlement agreements. We  
7 have quite often settlement negotiations that aren't  
8 confidential. There's no mediation concept, there's no  
9 mediator present, and people talk openly all the time.  
10 This was clearly not such a deal.

11          Q       Let me just draw you to the language here.  
12 Again, I know absolutely nothing about Florida law.

13                   In that first section, Section 1, to cut  
14 through this, the last full sentence reads: "If the  
15 mediation is court ordered, a violation of this section  
16 may also subject the mediation participant to sanctions  
17 by the Court including, but not limited to, costs,  
18 attorneys fees, and mediator fees."

19                   Doesn't that kind of imply that a mediation  
20 under Florida law has to involve a mediator to take  
21 advantage of these protections?

22          A       No, I don't believe -- it also says sanctioned  
23 by the Court. There wasn't even a Court. Are you saying  
24 you can't have a confidential settlement negotiation  
25 before suit?

1           Q       I suppose you can agree to anything you want.  
2       But you're invoking a statute. And the question is if  
3       you're invoking the rights under this statute, it would  
4       certainly appear, under the language of this, that  
5       particular portion of the statute, that there's got to be  
6       a mediator involved. And you also have the exception,  
7       obviously. But there seems to be, under the language,  
8       you got to have a mediator involved.

9           A       You know, it would be very easy to petition a  
10       Court in Florida that's familiar with this and let the  
11       Court decide. But what you're asking me to do is to  
12       stick my neck out, subject myself, if not my client, to  
13       sanctions by a company that absolutely hates me, that  
14       would relish in getting sanctions against me for doing  
15       anything. If this settlement is approved, you're  
16       prejudicing your own clients because there's going to be  
17       zero money and no information, and that's the way this  
18       can go down. You can ask me some questions to find out  
19       the information you want without getting into the -- you  
20       know, hypothetically, if they said we don't have any  
21       liability, this, hypothetically, we consider this to be  
22       frivolous, hypothetically --

23           Q       I'll do the hypothetically if you want me to  
24       do --

25           A       -- and we're not going to pay you anything but

1 a token, and hypothetically we get up and I grab Jennifer  
2 by the hand and say, "Let's get the hell out of here."

3 Q Hypothetically that could have occurred?

4 A Yeah, hypothetically something like that could  
5 have occurred.

6 Q In the spring of 2006?

7 A In April.

8 Q In 2006, hypothetically?

9 A Hypothetically, I don't go into cases and tell  
10 attorneys, "Gosh, I'm nervous about the Athens  
11 Convention."

12 MR. JONES: If they're still claiming the  
13 privilege --

14 THE WITNESS: I'm just trying to help  
15 this out. You guys see suspicion and controversy  
16 at every turn.

17 MR. JONES: You spent all day trashing  
18 Royal Caribbean and being suspicious.

19 MR. BROWN: The settlement agreement is  
20 before the Court.

21 MR. RICCIO: Let's move on. We  
22 understand.

23 MR. BROWN: I'm moving on saying I don't  
24 think this is -- this isn't relevant.

25 MR. JONES: We don't agree, though.



1 THE COURT: I'll rule on that.

2 I'm not going to take the risk of -- I  
3 haven't seen the agreement. I don't know how  
4 Florida would enforce these kinds of things. So  
5 unless you can get a waiver from Royal Caribbean or  
6 take it to a Court in Florida to interpret, I'm not  
7 going to potentially subject the witness to any  
8 potential liability or to potentially upset the  
9 settlement.

10 I will obviously take into account the  
11 fact that there are issues that we can't  
12 necessarily know in trying to determine in the end  
13 whether this is a good settlement or not.

14 Obviously in the best situation all the  
15 information coming out would be helpful. But I  
16 can't allow those questions to be answered under  
17 these circumstances.

18 So if the parties did want to take the  
19 time to get either Royal Caribbean to waive or to  
20 get some other Court in Florida to give us a  
21 clearance on it so that the witness and settlement  
22 aren't in jeopardy, I would certainly give you that  
23 time.

24 MR. BROWN: I know, your Honor, I can  
25 report to the Court that Robert Peltz has

1 absolutely told me he does not waive any privilege  
2 he has under the statute.

3 MR. JONES: The one thing we'd ask, your  
4 Honor, why don't we ask Mr. Langer to put that on  
5 the record.

6 MR. BROWN: And take a ten-minute recess?  
7 I know he's going to have to call Florida.

8 MR. JONES: Or we can do that another  
9 time.

10 It's fine. You don't have to.

11 Q With regard to the June mediation, it occurred  
12 on June 28?

13 A Yes.

14 Q Is that where we are? That's when it  
15 occurred?

16 I assume in Miami somewhere?

17 A Yes.

18 Q I don't -- the participants -- I read your  
19 statute that talked about protecting communication, all  
20 mediation communication shall be confidential. I'm  
21 interested -- obviously, you're present -- who the other  
22 participants were. That doesn't strike me as  
23 confidential under your law.

24 MR. BROWN: You can report who was there.

25 A I was there with Jennifer. Royal Caribbean

1 was represented by Steve Marks and Aaron Podhurst and  
2 Richard Fain, the CEO of Royal Caribbean Cruises, was  
3 there.

4 Q That took -- how long did that -- and no  
5 mediator, right?

6 A No mediator.

7 Q How long did that take place, that mediation?

8 A A day, continuing on to the next day.

9 Q The 29th?

10 A Continuing on to the 29th.

11 Q Okay. And --

12 A With, you know, continuing discussions with  
13 their counsel, that continued on until probably  
14 11 o'clock at night.

15 Q On the 29th?

16 A On the 28th and into the 29th. And by the  
17 morning --

18 Q You were there all night?

19 A No. We had discussed things by telephone.

20 Q So that mediation ended sometime on the 29th?

21 A Yes.

22 Q And that ended in a resolution of the case?

23 A In a proposed --

24 Q Tentative resolution?

25 A Yeah, tentative proposed.

1 Q Was the settlement, the July 2006 settlement  
2 agreement, was that hammered out at that mediation?

3 A I'm sorry?

4 Q The July 2006 settlement agreement, was that  
5 hammered out at that mediation?

6 A No.

7 Q It was not?

8 A It was not hammered out to the form that you  
9 see there. It was -- your next exhibit, I've got in my  
10 hand, Mr. Rivkind's letter, you can see the letter I sent  
11 to Mr. Rivkind on the 29th set forth the essential terms.  
12 It's a three-page letter.

13 Q I don't think you answered this question or  
14 not. I'm not asking whether it was. What it was, did  
15 you make a demand at that time?

16 A Formally we did not make a demand, to the  
17 extent that you believe.

18 MR. BROWN: I don't think you can go on.

19 A I probably didn't answer your question with  
20 that answer.

21 Q Hypothetically, was a demand made? Just yes  
22 or no. No? It sounds like no.

23 A There's a debate about the issue -- that's  
24 what mediation is about. You're discussing money.

25 Q On this letter of June 29, getting back to

1 that, was there any other mediation besides the one in  
2 April, the one in June?

3 A No. Not that I recall, that's for sure.

4 Which letter are we on? To Attorney Rivkind?

5 Q Your letter to Attorney Rivkind.

6 A Okay.

7 Q That was you setting forth the -- generally  
8 the terms with regard to this settlement, correct?

9 A Yeah. I set forth the terms. I talked about  
10 the information. I talked about a referral fee to Bree  
11 Smith. And --

12 Q And you mentioned there that you thought it  
13 was particularly beneficial that you were going to be  
14 getting these witness statements with regard to the case.

15 A Right. I thought it was beneficial and I was  
16 intending to give it to Dr. Lee.

17 Q Because you had the belief, under this case  
18 you cited, Carnival Cruise Lines versus Jane Doe, that  
19 information wouldn't be forthcoming. That was your  
20 belief?

21 A No. This is a case that I think is highly  
22 relevant. It states that when the FBI -- when cruise  
23 lines give information to the FBI, they do not waive  
24 their privilege.

25 Q Right.

1           A           And it's a real Catch 22 because the FBI  
2 doesn't release the information and the cruise line  
3 asserts the privilege. So I said we can get around this  
4 whole circle where no one gives any information. So I  
5 thought it was something I'd never ever achieved before.  
6 I was surprised they did it.

7           Q           I was struck when I read this case that you  
8 cited, Carnival Cruise versus Jane Doe, the language by  
9 the Court that says, A, that the cruise line identified  
10 the parties who had given the witnesses' statements,  
11 which is what you and I talked about earlier today could  
12 happen, and, B, the Court said that counsel was free to  
13 take a deposition of those parties and see what they  
14 knew. Right?

15          A           That's right. And what we're avoiding was  
16 doing all of that and trying to get the information in  
17 the form of a statement contemporaneous with their  
18 recollections around the date of the incident.

19          Q           Excuse me. But this case clearly sets forth  
20 that the Court felt that this information, as I said  
21 earlier to you today, would be available under proper  
22 discovery.

23          A           I don't have the case in front of me.

24          Q           Would you like to take a look at it?

25          A           No. But I think if you read the entire thing,

1 you'll see that the attorneys were free of course to  
2 challenge privileges and to fight --

3 Q No. The case talks about the attorneys are  
4 free to take the deposition since the names and addresses  
5 of the seven witnesses were revealed by Carnival to  
6 respondent in response to interrogatories, just like you  
7 and I were talking about this morning, right?

8 A There's no question we can take depositions.  
9 We can still be taking depositions this year and next  
10 year.

11 Q June 30, Mr. Rivkind's letter.

12 THE COURT: June 30, '06.

13 (Whereupon, the June 30, 2006, letter from  
14 Mr. Rivkind was marked as Opponent's Exhibit O.)

15 MR. MARCHAND: What's the exhibit number  
16 on that, Mr. Walker?

17 THE WITNESS: O.

18 Q You received this letter, I'm sure.

19 A I did.

20 Q I call your attention to page 1 in which  
21 Mr. Rivkind makes clear that he was shocked that a  
22 settlement was negotiated behind his back in this case.

23 A That was his characterization of it, and  
24 that's exactly what he told me.

25 Q And on page 2, in the middle of the page,

1 Mr. Rivkind sets out there, on June 30, 2006, which I  
2 guess would have been the day after this settlement was  
3 reached, that his clients, Mr. and Mrs. Smith, were going  
4 to be objecting to the proposed settlement, correct?

5 A What portion of the letter? I'm sorry.

6 Q The middle of page 2, the second full  
7 paragraph.

8 A In response to -- oh, I'm sorry. "My clients  
9 have advised me that they will object to the proposed  
10 settlement." That's correct. And we knew that at that  
11 time, too, because they stated on TV that they intended  
12 to object and fight this forever and wouldn't take a  
13 penny as long as they kept fighting. So their position  
14 was loud and clear.

15 Q Thank you.

16 I'll just show you what I believe is a draft  
17 of the Complaint that you drafted.

18 MS. STROILI: This is P.

19 (Whereupon, the draft Complaint was marked as  
20 Opponent's Exhibit P.)

21 A Yes. This is the Complaint that I had  
22 drafted. And I walked into Mr. Rivkind's office, might  
23 have been on Monday, and he had not drafted his  
24 Complaint; he wanted to see what I was alleging. And I  
25 brought him a copy, handed it to him, and we talked about



1 these allegations, we talked about the case, filing suit  
2 and so forth.

3 Q Going to paragraph 10 of the Complaint.

4 A I allege about course of years preceding the  
5 cruise, there were hundreds of crimes, incidents of  
6 missing passengers' disappearance, and they always blame  
7 the poor person who's disappeared and they characterize  
8 it as typically a suicide or something.

9 Q These are -- these paragraphs, 10 through  
10 15 -- excuse me, 10 through 14, is a scathing indictment  
11 of the way Royal Caribbean operates their cruise line?

12 A I think it's the truth.

13 Q Based on your years of litigation against  
14 them?

15 A It's my opinion. I know I'm right out there  
16 on the edge of, you know, things, but that's the way I  
17 feel. There are some people who don't feel this way.  
18 There's some people who sue the cruise line that don't  
19 feel this way. But I have a particular dislike for this  
20 particular corporation.

21 Q In paragraph 16, you actually accuse the  
22 cruise line, in this draft Complaint, of destroying  
23 relevant evidence prior to the arrival of U.S. law  
24 enforcement with regard to these criminal investigations.

25 A Paragraph 16?

1 Q Paragraph 16, yeah.

2 A That's what I alleged.

3 Q And believe that today, correct?

4 A Well, you know, this -- yes and no. I qualify  
5 my answer because, you know, when you look at this  
6 particular case, I believe that the FBI told Royal  
7 Caribbean at some point, you know -- I don't think the  
8 FBI ever said seal that cabin. I don't think the FBI --

9 Q Let me interrupt you. These are historical  
10 allegations -- I'm not talking about the Smith case. You  
11 made historical allegations about the way they've  
12 conducted their business with regard to these types of  
13 situations. And in paragraph 16 you accuse them of  
14 intentionally destroying evidence relating to these  
15 incidents. I'm not asking about the Smith case. I'm  
16 talking about historically, you're making these  
17 accusations. Correct?

18 A Concealed, mischaracterized, and destroyed  
19 evidence.

20 Q Right. That's what it says.

21 A I understand that.

22 Q I assume you had a good faith basis for making  
23 those accusations?

24 A I would not file a case unless I had a good  
25 faith basis.

1 Q That would be based on your many years of  
2 litigation against Royal Caribbean?

3 A True. You got to remember, spoliation of  
4 evidence, even though I put it in here, is not a  
5 recognizable cause of action.

6 Q I understand that.

7 A So we could be faced with all this drama and  
8 all this spoliation and all of these incredible  
9 allegations that I like to make, and the judge could say,  
10 "This is a DOHSA case. I'm not looking at post death  
11 conduct. Let's determine what happened." And we  
12 couldn't get into this. That's one of the hurdles we're  
13 going to face.

14 Q You don't think, for settlement negotiations,  
15 if you had, hypothetically, this cruise line destroying  
16 evidence that was relevant to this case, you don't think  
17 that would have any impact whatsoever on settlement  
18 negotiations or settlement value?

19 A I think what we did, what we did in the --

20 Q Just answer that --

21 A Yes. Because we were pushing them as an  
22 advocate -- go back and look at the transcripts. I say  
23 this is 100 percent foul play.

24 Now, as an adviser, I'm not saying that to my  
25 client. There are issues here. We were pushing this as

1 hard as we could to do everything we could to get the  
2 case postured however it was going to break; either we  
3 were going to go into suit or they were going to come up  
4 with a settlement. In some of these e-mails, I was  
5 telling Mr. Rivkind -- Mr. Rivkind was inquiring, are you  
6 going to get the case settled, what's going on, where are  
7 we. We were pushing them to see what would happen.

8 Q The answer to my question is, yes, it could  
9 have an impact on the valuation of negotiation of the  
10 case, the fact that -- if hypothetically they had  
11 destroyed relevant evidence in the case?

12 A Before we got into the suit and the spoliation  
13 of evidence was dismissed and the case got pared down,  
14 yes, it could. That's what we were doing.

15 Q On paragraph 35 --

16 A Yes.

17 Q -- you make an accusation in that last  
18 sentence about what the chief officer observed --

19 A Right.

20 Q -- regarding blood in the bathroom, marks on  
21 the balcony window, overturned furniture on the balcony.  
22 You see that allegation?

23 A Yeah.

24 Q Was that based on -- that was based on the  
25 statement that was turned over to the -- statements

1 prepared by the Turkish police or was there some other  
2 basis for that?

3 A Chief officer observed what she described as  
4 blood in the bathroom -- I believe that was Anita Hobson,  
5 who was the chief officer, who talked about some things  
6 which turned out, quite frankly, not to be the case.

7 Q So this accusation is wrong?

8 A I think it is -- it's partially incorrect. I  
9 think that there were some marks on the balcony window,  
10 which -- it wasn't a balcony window. It was a balcony  
11 piece of glass. Dr. Lee did not believe that there was  
12 blood there. There was overturned furniture. And the  
13 blood in the bathroom, I think, was Jennifer's makeup  
14 that they took.

15 Q So some of these allegations are not accurate?

16 A Yeah. I think that -- I think I was reaching  
17 with those, to be honest with you, some of them.

18 Q Paragraph 38, Mr. Walker.

19 A I talk about spoliation of evidence.

20 Q Yes. Caused and permitted valuable evidence  
21 in the potential crime scene to become altered, lost, and  
22 destroyed. Right? That's the accusation you were  
23 prepared to make against Royal Caribbean.

24 A Yeah. I was upset that everyone went in the  
25 cabin and they didn't seal it and wait 'til the FBI --

1 and I was going to try to make that -- you know, I was  
2 going to make spoliation of evidence part of the case if  
3 I could, and that's where I was going with this.

4 Q Spoliation of the evidence, if you had alleged  
5 a wrongful death case against Royal Caribbean, that's  
6 evidence that would have been admissible in the case,  
7 hypothetically, if in fact it occurred, right? You  
8 wouldn't need a spoliation count to get that into  
9 evidence, would you?

10 A Depending on how the Court ruled. I mean,  
11 there's issues of how much of this stuff would go in. I  
12 was going to try to get in, obviously, as I'm sure you  
13 would, as much as you could.

14 Q If you had evidence that Royal Caribbean  
15 intentionally destroyed evidence relating to this  
16 situation, you would have tried to put that in just on  
17 the wrongful death case, right?

18 A In a trial, yes.

19 Q Sure.

20 A I would make that an issue and try to  
21 prejudice, yes.

22 Q Here in this case, in your Complaint, you  
23 accuse them of destroying evidence, right?

24 A Yes, I do. I have it, like I said, a  
25 spoliation of evidence. I allege that they conceal and

1 spoliage, yes.

2 MR. RICCIO: Can we just have a break,  
3 your Honor? I just have a few more questions.

4 THE COURT: How much time would you like?

5 MR. RICCIO: Ten minutes or so.

6 THE COURT: Anybody object to a  
7 ten-minute break?

8 MR. JONES: Do you have any idea how late  
9 we'll go?

10 THE COURT: What would you all like to  
11 do? It's quarter to 4:00.

12 MR. BROWN: I'd like to go as late as  
13 possible. I don't know what you want to do as far  
14 as starting tomorrow. Mr. Walker is a very key  
15 witness, but, you know, I want to get -- I want to  
16 try and get through this by tomorrow.

17 THE COURT: Does anybody object to going  
18 to, say, 5:30, 5:45?

19 MR. JONES: That's fine.

20 THE COURT: Okay. Why don't we take ten  
21 minutes.

22 (Whereupon, a recess was taken.)

23 CONTINUED CROSS-EXAMINATION BY MR. RICCIO:

24 Q Mr. Walker, it would be your contention that  
25 you were in regular contact with Mr. Rivkind up until the

1 point when the settlement process or mediation process  
2 began, which is what, June twenty-what-eighth, I believe?  
3 Is that a fair statement?

4 A Well, Mr. Rivkind was complaining.  
5 Mr. Rivkind said, "I haven't got my lawsuit done. I want  
6 to see your lawsuit first. Come over."

7 We started exchanging some contentious letters  
8 back and forth. He was complaining. I didn't want to  
9 meet with him. I was telling him, "Don't be paranoid,  
10 I'm working. I have a full practice just like you do."

11 So I was doing my best, I think he was doing  
12 his best. But he started criticizing me, certainly the  
13 month of June.

14 Q For not communicating with him?

15 A And he wanted me to come downtown and meet  
16 with him at his office. Every meeting we had was  
17 downtown at Brett Rivkind's office. And I am far south  
18 and I could never get him to come to my office, which I  
19 never complained about. And I was ready to do my own  
20 Complaint and do everything we needed. But he liked to  
21 complain because I didn't come to see him.

22 MR. RICCIO: Could we mark the settlement  
23 agreement, two settlement agreements, one in July,  
24 one in December.

25 Was the December one already marked?



1 MR. BROWN: It was forwarded to the  
2 Court.

3 MR. RICCIO: Is the July one part of the  
4 Court? Could that be marked?

5 A First one -- the December is Exhibit A.

6 Q There was in fact a --

7 MR. JONES: July.

8 THE COURT: That's the July settlement  
9 agreement.

10 MR. JONES: That is attached to our  
11 memorandum, your Honor.

12 MS. STROILI: That's Q.

13 (Whereupon, the July 11, 2006, settlement  
14 agreement was marked as Opponent's Exhibit Q.)

15 MR. BROWN: What was P?

16 THE WITNESS: P was the Complaint.

17 A Exhibit Q is the settlement agreement, or  
18 proposed settlement agreement, July 11, 2006.

19 Q Who drafted that document, Mr. Walker?

20 A Royal Caribbean did and our office did. And  
21 my wife was previously a transactional lawyer, commercial  
22 lawyer, and she had a lot of involvement in actually  
23 drafting much of this. I think my involvement was to  
24 look it over and to make sure that we put in as many  
25 things as we could reasonably think of for them to turn

1 over. But both parties' counsel drafted it, and it went  
2 back and forth.

3 Q Okay. And it was signed, right? It was  
4 executed by your client?

5 A Yeah. Jennifer signed it.

6 Q And someone signed it for Royal Caribbean?

7 A Lynn White, who was vice president of risk  
8 management, signed it. And I think I signed it, an  
9 attorney confirmation.

10 Q And certainly it would be your view that  
11 everybody who signed this, they were not doing this under  
12 any type of coercion?

13 A Certainly not.

14 Q And they were party -- all the signatories to  
15 the document knew the contents of this document when they  
16 signed it?

17 A I believe that's -- that is the case.

18 Q Your client had an opportunity to read this  
19 document prior to her signing it?

20 A I believe she did.

21 Q And you certainly obviously had a chance to  
22 read it before it was signed, correct?

23 A That's correct.

24 Q With regard -- I've got a couple -- I just  
25 want to try to finish up here. I have a question about a

1 few kinds of couple of different areas of questions.

2 In terms of your evaluating the case, one of  
3 the things you mentioned was you'd have to demonstrate  
4 that Royal Caribbean had notice of this dangerous  
5 situation. That was one of the situations that you --  
6 one of the prerequisites of successful litigation, I  
7 think you mentioned?

8 A Yes.

9 Q Certainly based on your allegations in your  
10 Complaint, it was your belief you'd be able to prove the  
11 fact that they had notice about them pushing alcohol on  
12 their customers, on having an inadequate security system  
13 to deal with onboard incidents?

14 A Well, I don't recall the question exactly, but  
15 I allege that and -- you know, my style of pleading facts  
16 is I try to include every substantially similar incident  
17 I can. I try to prejudice them by having the big picture  
18 of how they operate their company in prior incidences. I  
19 can tell you firsthand I've had judges say that's not  
20 going to be a part of this case, we're not going to get  
21 into a situation where you come in here and talk about  
22 prior crimes and prejudice this cruise line. We're going  
23 to talk about what happened on that ship on that  
24 particular day and we're not going to get into this.  
25 Which is like a -- you know -- you know the federal

1 rules, you have a balance of probative value with  
2 prejudice of fact.

3 Q But if notice was an issue in the case, notice  
4 of the dangerous condition, you'd certainly be entitled  
5 to produce some evidence with regard to notice, would you  
6 not, sir?

7 A I would be entitled to produce?

8 Q Evidence regarding what notice they had of the  
9 dangerous conditions --

10 A Yeah.

11 Q That would be part of your case; you'd need to  
12 prove it or you'd lose, right?

13 A The point I'm trying to make is -- my view of  
14 these cases is, if you can't prove exactly what happened,  
15 you try to prove constructive knowledge by showing a  
16 pattern of conduct. Of course that's what I'm going to  
17 try to do. And it would be critical here because there's  
18 a lot of questions about what occurred. The real issue  
19 is whether they were on notice; if this is a murder,  
20 whether they were on reasonable notice that other  
21 passengers were about to murder George Smith.

22 Q I'm asking about whether or not they were  
23 under reasonable notice that their entity was encouraging  
24 the excess use of alcohol on the boat. That's all I'm  
25 asking.

1 A As far as alcohol?

2 Q Yeah. You'd be able to prove that, right?

3 A I'd do my best.

4 Q Sure. And with regard to their being on  
5 notice they had inadequate security on their boat, you  
6 think you'd be able to prove that?

7 A I think I could. Whether I can relate that to  
8 being the proximate cause of his death is another matter.

9 Q That's another factual issue, right?

10 A It is another factual issue.

11 Q On the issue of damages, your expert opinion's  
12 report is predicated upon a \$50,000 a year wage earner,  
13 correct?

14 A Right. We took -- Royal Caribbean did one at  
15 50,000, which was an estimate. They also did one, if you  
16 see it, at a hundred thousand. And I wanted a report to  
17 be based on the same assumption their report did, with  
18 the same factor of the date that they were calculating,  
19 and it was based on that. His actual earnings were  
20 54,000, another 8 percent, which you'd have to factor in.  
21 You'd have to discount that back to present day value,  
22 you have to take the taxes out, you have to take out  
23 personal consumption --

24 Q Let me ask you a question. It might go  
25 quicker.

1                   Your expert opinion's report, which I believe  
2 is attached to your brief, is predicated on this man,  
3 Mr. Smith, going forward on the basis of \$50,000 a year  
4 annual income with certain adjustments, correct?

5           A        Yes..

6           Q        That would be it, okay.

7                   And as I understand your testimony, the -- you  
8 do not recover solely for lost earnings in these maritime  
9 cases, correct? You have to make adjustments to the lost  
10 earnings?

11          A        Correct.

12          Q        Based on your testimony, you said you get  
13 about 65 or 75 percent of that figure, the lost earnings,  
14 once you've made those adjustments?

15          A        It's my experience, about that.

16          Q        That's a ballpark figure?

17          A        It's a ballpark figure. I'm not an economist.  
18 I'm a history major.

19          Q        All right. Me, too.

20                   And your guy came up with a figure, a net  
21 figure of a current value of 1.5 -- excuse me, between  
22 1.4 and 1.5 million dollars, depending on whether he  
23 worked to 67 or 63 years of age, correct?

24          A        That's correct.

25          Q        And you didn't -- you felt that the figure

1 that was created by the Royal Caribbean expert was too  
2 low. That was about a half a million dollar figure,  
3 about \$525,000?

4 A I thought it was not realistic.

5 Q Okay. And that figure was also predicated on  
6 a \$50,000 a year annual salary, correct?

7 A That's correct.

8 Q So both of the experts in this case, from, I  
9 believe -- both were tied into a premise there was a  
10 \$50,000 a year salary for Mr. Smith, correct?

11 A Well, there's also a report of the Royal  
12 Caribbean expert calculating the numbers at a hundred  
13 thousand, and they're essentially double.

14 Q With regard to the medication that you  
15 mentioned, one of the negatives that you thought about  
16 with regard to the case, there wasn't -- again, correct  
17 me if I'm wrong -- any evidence that you're aware of that  
18 Mr. Smith, on the last day or last evening of his life,  
19 had taken any of these drugs.

20 A Jennifer, I think, was asked that. That would  
21 be the only basis for knowing it. I think she said she  
22 did not know. So I would concede that he may not have  
23 taken them.

24 Q You have no information -- no evidence or  
25 information available to you; had you litigated this

1 case, that would have indicated he had taken either  
2 Zoloft or Klonopin that particular evening or day?

3 A Not -- well, there's an inference. Only an  
4 inference could be drawn. There's no direct testimony.

5 Q Right. Merely because he has a prescription,  
6 right?

7 A Well, you can see that he had been taking the  
8 medicines and refilling them. You can draw reasonable  
9 inferences. My concern would be that would be before the  
10 Court and they would ask the jury, come on, now, what do  
11 you think he's doing, buying the medicine and keeping it  
12 in his drawer? But I'll concede the point. There's no  
13 evidence.

14 Q Do we have any indication he -- was there any  
15 indication he was suffering from any type of anxiety on  
16 the trip?

17 A I think he was. I think that's a good point.  
18 I think he was very anxious and I think he was drinking  
19 heavily. I think he was --

20 Q What's the connection between drinking and  
21 anxiousness? I'm not getting that. It appears to me he  
22 was having a good time.

23 A Listen. I wasn't on the ship. You're going  
24 to have to ask Jennifer.

25 Q Fair enough. We will.



1           A       I hope he was having a great time. I'll  
2 retract that about anxiety. I don't know.

3           Q       You mentioned another concern that you had in  
4 not settling or one of the reasons why to settle the case  
5 was the Court could order costs if in fact there was a  
6 settlement offer and the judgment in this case came in  
7 under the settlement offer. I think you said if it was a  
8 million dollar settlement offer, the judgment was under  
9 750, that a judge could order costs, attorneys fees,  
10 et cetera, that type of thing. That's one of the  
11 potentials, correct? One of the potential down sides to  
12 not settling the case?

13          A       Yeah, it's a potential to consider.

14          Q       I assume -- is that a discretionary ruling of  
15 the Court or it's obligatory?

16          A       If the rule and the statute apply, it is  
17 mandatory. The issue is the extent of the sanctions.

18          Q       And you had the view that you don't think  
19 attorneys fees would apply in this situation?

20          A       I have a view that attorneys fees should not  
21 be permitted in maritime cases. But they have been  
22 applied in certain maritime cases.

23          Q       So that's an open question at this point?

24          A       I think it is an open question.

25          Q       You did not -- because a lawsuit was never

1 filed in this case, there was no offer -- what we call an  
2 offer of judgment, it was never filed by Royal Caribbean?

3 A No. It was a hypothetical issue that -- it  
4 was one of many factors.

5 Q Because the litigation wasn't filed, you were  
6 not facing that immediately in front of you in terms of  
7 your prefiling settlement.

8 A No, no.

9 Q And on the other side of the coin, you could  
10 have, I assume, also made a similar offer of judgment, as  
11 plaintiff's counsel, right?

12 A Right.

13 Q You could have made a judgment of offer and  
14 Royal Caribbean would have had, potentially, the same  
15 problem?

16 A Yeah. It works a little different. We make a  
17 demand for judgment. If we receive 25 percent more than  
18 we demanded, they would pay our attorney fees. The only  
19 difference is Royal Caribbean grosses 5 billion a year  
20 and I don't, Jennifer doesn't.

21 Q Fair enough. I would agree.

22 In essence, you're proposing or advocating a  
23 settlement here against a potential defendant, Royal  
24 Caribbean, without really knowing what they did as it  
25 relates to this disappearance of Mr. Smith.

1 A I think they were negligent. I think there's  
2 an issue whether we could tie their negligence to their  
3 son's death. I think if he was in fact murdered, I think  
4 we know that it was one of those four men. And I think  
5 that's why they paid what they paid at the end of the  
6 day, because they didn't want this case proceeding. I  
7 think they were also paying some publicity on top of it.  
8 Again, I've had cases where it's a mystery and the client,  
9 goes, this is a mystery, we don't have any answers, we  
10 don't even know where to go, and the cases get settled.  
11 Believe me, I've settled those cases. Those are terrible  
12 feelings, where you can't even proceed and you can't  
13 provide the family with the answers they need.

14 But, no, we didn't settle this case in a  
15 vacuum. I think we did what we could reasonably, and --  
16 I got two people talking to me, saying this guy said  
17 something, you know, about being responsible.

18 Q I want to ask you -- I want to get back to  
19 that for just a minute.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q [REDACTED]

24 [REDACTED]

25 A That's the general gist of it.

Q What was the statement?

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[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 Q [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 So it wasn't like this case was settled in a  
16 vacuum where we didn't know what was going on. I had an  
17 inkling that there was something other than an accident.  
18 That's my impression. But different people have come to  
19 different opinions about it. So, you know, as far as  
20 this third-party litigation, it's still an option until  
21 July.

22 Q But if we -- if this settlement is approved,  
23 Royal Caribbean is gone; they're out of this case, right?

24 A They can't be sued financially.

25 Q They're out of the case, right?

1 And we would be -- the estate would be --

2 MR. BROWN: He didn't say they were out  
3 of the case. He said they can't be sued  
4 financially.

5 MR. RICCIO: That's fine.

6 MR. BROWN: You said they're out of the  
7 case.

8 MR. RICCIO: Slang, they're out of the  
9 case. It's over, right?

10 MR. BROWN: They might not be out of this  
11 matter.

12 Q They could not be held financially responsible  
13 for anything relating to Mr. Smith if this settlement is  
14 approved, correct?

15 A Well, the Smith family had their own lawsuit.  
16 It's on appeal. I hope it gets reversed so they can  
17 continue to proceed, and I hope they go get a verdict  
18 against Royal Caribbean. If that happens they're going  
19 to be able to conduct discovery and make inquiry, too,  
20 into these issues.

21 Q But the main claim against -- the main claim  
22 here --

23 A Yes.

24 Q -- would be Mr. Smith's estate. That would be  
25 settled. They would have no more financial

1 responsibility to the estate for anything that happened  
2 on that boat to Mr. Smith.

3 A They wouldn't have responsibility to Jennifer  
4 or to Mr. and Mrs. Smith under the Death On The High Seas  
5 Act, right.

6 Q Right. And if that settlement does go  
7 through, we won't have -- we'll be doing that without  
8 a -- without having had access prior to that time to the  
9 various witness statements that you're supposedly going  
10 to get subsequent to the settlement, correct?

11 A Say it again. I missed you.

12 Q If this settlement is approved, we're not  
13 going to -- we will not have information -- we will not  
14 have the information, the witness statements that you've  
15 tried so hard to get in this case during the course of  
16 it. We won't have that information until after Royal  
17 Caribbean has satisfied their civil liability to the  
18 Estate of George Smith.

19 A Correct. They'll turn that over as a result  
20 of the settlement.

21 Q And if there's something in there that  
22 adversely reflects on Royal Caribbean or implicates one  
23 of their employees, whatever, then that -- it will be too  
24 late at that point to do anything about it, in terms of  
25 the Estate of George Smith going after Royal Caribbean.

1           A        If I thought a Royal Caribbean employee killed  
2 George Smith, this case would not have ever settled. I  
3 don't think there's any basis for it.

4           Q        My question --

5           A        Hypothetically, I agree with you, yes. Fair  
6 enough.

7           Q        You've settled cases before, obviously many  
8 cases, against Royal Caribbean, right?

9           A        Yes.

10          Q        In settling those cases, has some value in  
11 terms of negotiation been attached to the public  
12 relations situation? Has that had some impact in terms  
13 of the negotiations of the case?

14          A        Very, very rarely. And I say that because in  
15 most cases it's the cruise line that really doesn't give  
16 a damn about anything. Even when you tar and feather  
17 them, they don't seem to really care. In this case I  
18 think they stepped up to the plate and they realized they  
19 had a public relations nightmare. That's why they did, I  
20 think, some extraordinary things, as much as it pains me  
21 to say.

22          Q        This case received massive national publicity,  
23 did it not?

24          A        Yes, it did.

25          Q        Massive national publicity.



1 A Correct.

2 Q In fact, we're still -- the vestiges are still  
3 around even today here in Greenwich.

4 A Just a fraction, but there's still people  
5 covering it.

6 Q So clearly, clearly, as far as you're  
7 concerned, the public relations value -- there was some  
8 public relations benefit for Royal Caribbean attempting  
9 to resolve this case and not having it go forward with  
10 litigation?

11 A Sure.

12 Q In fact, they got some lawyers involved to  
13 reach out to you on, sounds like two occasions, to try to  
14 sit down and have settlement discussions regarding the  
15 case?

16 A True.

17 Q So they had -- would it be fair to say they  
18 certainly had identified some benefit to them trying to  
19 resolve this case with Ms. Smith?

20 A That's always the way it works when people  
21 settle. They have to see a benefit to it, and they did.

22 Q And in terms of you evaluating the case, I'm  
23 sure that was one of the factors you considered in terms  
24 of negotiating with them, the fact that it would benefit  
25 Royal Caribbean if this matter resolved itself as opposed

1 to being litigated.

2 A I can't say I ever articulated that in any  
3 shape, fashion, or form.

4 Q I didn't ask you whether you articulated. It  
5 certainly was a consideration to you that it would be in  
6 Royal Caribbean's best interests to resolve this case as  
7 opposed to being on every TV station in North America  
8 when you filed that Complaint.

9 A Yeah. You can see some of these e-mails that  
10 I sent to Brett Rivkind where I said I know that we're  
11 hurting them and they were taking a beating in the press  
12 and on TV.

13 Q And that would all end if the case is  
14 resolved, correct?

15 A Well, I don't think it really has ever ended.

16 Q It would be substantially reduced, right?

17 A I think the Smiths' conduct in forming the ICV  
18 and victims organizations and senate hearings and --  
19 still continuing, to be honest with you.

20 Q The crescendo, it's quite a bit lower these  
21 days than it was back in 2006?

22 A I disagree. There have been three hearings  
23 directly as a result of the Smith family's initial  
24 efforts. There's legislation been passed. And I think  
25 the publicity of this cruise line -- not on a daily

1 basis, admittedly; it was on every show every night, that  
2 stopped. But I think they're still suffering.

3 Q If they didn't see any public relations value  
4 in resolving the case, why did they want a statement, a  
5 settlement statement, to be issued by your client when  
6 this case resolved itself?

7 A We wanted to have a statement. They issued a  
8 statement. We issued a statement.

9 Q Um-hum.

10 A That's exactly what happened.

11 Q You issued your own statement?

12 A We issued a statement.

13 Q Um-hum.

14 A They issued a statement.

15 Q Um-hum. That was -- I'm sure I'll be able to  
16 go into that. I assume as part of the mediation  
17 process --

18 A No.

19 Q There was no tie-in to the mediation in terms  
20 of the issuance of statements?

21 A No.

22 Q That wasn't negotiated?

23 A No.

24 I'll tell you what was negotiated, though --

25 MR. BROWN: No, no, no. You're not.

1           A        You seem incredulous. We issued a press  
2 statement. I mean, you have to understand that our  
3 office, from day one, was receiving phone calls, people  
4 showing up, reporters, people would come to our house.  
5 And we certainly had to issue some type of statement to  
6 tell the public that there had been this proposed  
7 settlement reached with Jennifer and Royal Caribbean. It  
8 wasn't confidential; none of the terms have ever been  
9 confidential. We just made a decision not to release the  
10 amount. But -- here's your statement. You gave it to me  
11 earlier. Exhibit M, I sent their attorney, and  
12 Mr. Marks, who's their attorney. I sent it to Bob Peltz  
13 and Marks, a revised statement to the media which we had  
14 been drafting. I had sent them an earlier one. They  
15 issued their statement, and we issued this statement.

16           Q        Before you issued your statement you sent it  
17 to Mr. Peltz for his approval. You sent it to Mr. Peltz  
18 for his approval, right?

19           A        No, I didn't. I sent it to him because I told  
20 him we were going to send a press statement and he said,  
21 "Send it to me."

22           Q        That letter says -- this is a quote --  
23 "proposed revised statement to the media we intend to  
24 release. Please call me to discuss."

25                    You're maintaining that this proposed

1 statement was issued totally independent of any input or  
2 review by Mr. Peltz?

3 A What you're going to have to do is see the  
4 actual statement that came out. I don't have that. And  
5 you can check whether there are any changes to it. We  
6 sent it to them after we had drafted it. We had sent it  
7 to Steve Marks, and when Mr. Marks got this he called  
8 Mr. Rivkind, and it was something we were doing to  
9 explain the terms of the settlement. The language in  
10 this proposed press release tracked exactly what I had  
11 sent to Mr. Rivkind and was contained in the settlement  
12 agreement.

13 Q It appears -- let me show you this. Can we  
14 mark this and show that to you, see whether or not that  
15 was in fact the statement that was released.

16 MR. JONES: We don't have copies.

17 MR. BROWN: Your Honor, at the end of  
18 this whole thing, is it possible -- even though I  
19 know I've got everything marked, maybe both sides  
20 could get a copy of everything that was handed in  
21 as an exhibit.

22 THE COURT: Sure.

23 (Whereupon, there was a pause in the  
24 proceedings.)

25 MS. STROILI: This is R.

1 (Whereupon, the statement was marked as  
2 Opponent's Exhibit R.)

3 Q Showing you what's marked as Exhibit R,  
4 Mr. Walker, does this appear to be the statement that was  
5 issued by your client? Or at least a portion of it.

6 A No. This is Royal Caribbean's statement.

7 Q Your client's quoted in that, however, right?  
8 Is she not?

9 A Let me check.

10 Q Go ahead.

11 A (Perusing document.)

12 Yes, she is quoted.

13 Q One of the things she says is "I appreciate  
14 Royal Caribbean's cooperation, sincerity, and efforts  
15 moving forward." Right?

16 A Let me see.

17 Yes, that's what it says, and that's what is  
18 contained here.

19 Q I assume that you allowed your client to  
20 make -- have those statements included in the Royal  
21 Caribbean press release?

22 A I don't think you should assume that.

23 Q I'm sorry?

24 A I don't think you should assume that.

25 Q You were not -- these statements by your

1 client were included in their press release without your  
2 knowledge or approval?

3 A I can honestly say I don't recall. I mean,  
4 it's what happened. It's in here. I don't recall -- I  
5 mean, I'll tell you what I need to do. I need to go in  
6 my file, I need to see if they sent this to me, and I  
7 need to see -- if they sent it to me, then I'm sure I  
8 would have discussed it with my client. But I don't know  
9 the circumstances. I think Jennifer can address that.

10 MR. RICCIO: Thank you. Thank you,  
11 Mr. Walker.

12 THE COURT: Nothing further?

13 MR. RICCIO: No.

14 MR. BROWN: Few things, your Honor.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION BY MR. BROWN:

17 Q Since we're formally getting things in as  
18 exhibits, because I don't want the other side to be upset  
19 about it, as an exhibit to Motion In Opposition To the  
20 Removal of the Fiduciary is the last letter in the  
21 segment of letters between Mr. Rivkind and Mr. Walker. I  
22 just ask you to look at it.

23 MR. BROWN: I'd actually ask it be  
24 marked. I guess for me it's Exhibit 3.

25 MS. STROILI: Do you have copies?

1 MR. BROWN: Everybody has a copy of it.  
2 It's an exhibit to the motion for removal.

3 MR. RICCIO: Can we have the date of the  
4 letter?

5 MR. BROWN: July 7, 2006, from Attorney  
6 Walker to Brett Rivkind.

7 (Whereupon, the July 7, 2006, letter from  
8 Mr. Walker to Mr. Rivkind was marked as Petitioner's  
9 Exhibit 3.)

10 Q I'll ask you to take a look at it.

11 A This is a letter I wrote to Mr. Rivkind in  
12 response to the letter dated June -- let's get the date.

13 Q 30?

14 A When was it?

15 Q June 30.

16 A June 30. June 30 would have been a Friday,  
17 1st, 2nd, a weekend, the 3rd is a Monday, 4th is Tuesday,  
18 4th of July. I came back, wrote him this letter. He had  
19 sent me a letter -- I mean, I hope this decision doesn't  
20 turn on Mr. Rivkind's letter or mine. But he sent me a  
21 letter accusing me of all types of things and I wrote him  
22 a letter back trying to respond to a lot of his  
23 accusations. I don't know if you want me to go into  
24 this. I don't know if it would serve any purpose at this  
25 point.



1 Q It's there for -- that it was responded to.

2 The question was asked before, was there any  
3 evidence about the prescriptions on the cruise. And I  
4 just wanted to ask you, was there any evidence with  
5 respect to prescription bottles on the cruise? And if  
6 you don't recall, that's fine.

7 A Well, there were bottles that were in the safe  
8 that were taken out by the safe [sic], if I remember  
9 correctly, put in a bag, given to Jennifer, she took back  
10 to Connecticut and she gave those to the FBI.

11 Q So there was evidence of prescription bottles  
12 on the cruise?

13 A Yes. They know how many -- I mean, we know  
14 the last prescription. The FBI knows how many pills  
15 remained. So you could determine how many he took. And  
16 the FBI has that. I don't have that information.

17 Q In all of your dealings with Brett Rivkind,  
18 did he -- did you ever have any conversation with him  
19 where he asked anything about settlement?

20 A Yeah, he asked about settlement. He asked, as  
21 we moved towards the filing, why hadn't I settled it, had  
22 I lost my settlement touch. And I mean -- look, the  
23 Smiths feel strongly their son was murdered and I know  
24 they need answers. But attorneys evaluate cases. And he  
25 was going through the same issue of evaluation of these

1 issues, I am sure, that I was.

2 And he -- you know, there were third parties  
3 saying you're going to get sanctioned. One of the  
4 e-mails -- Greta van Susteren, of all people, a lawyer,  
5 was saying, have you heard of 57-105. 57-105 is a  
6 statute where parties can be sued for filing frivolous  
7 lawsuits. It kind of freaked him out. He said, "Greta  
8 van Susteren is talking to me about 57-105 sanctions.  
9 What are we doing? What's going on here?"

10 Those were the types of things lawyers talked  
11 about. And then in that case, Mr. Rivkind got sued for  
12 57-105 sanctions, which are still pending before the  
13 Court. So we talked about everything.

14 Q Wait a minute.

15 In the Smiths' case that got dismissed, that  
16 is the same case that is in this matter, with respect to  
17 the death of George, their lawsuit was dismissed, it's on  
18 appeal, and Royal Caribbean has filed motions for  
19 sanctions against their attorney?

20 A And against Mr. and Mrs. Smith, but they  
21 agreed not -- if they collected, not to collect against  
22 Mr. and Mrs. Smith but only against Mr. Rivkind.

23 Q That's pending --

24 A That's pending for over a year.

25 Q Last question: Did you ever have a

1 conversation -- have you had any conversations with Bree  
2 Smith about her involvement as an attorney in this case?

3 A Yeah. You know, Mr. Smith had called me and  
4 then Bree called me in August. We talked about the case.  
5 I interviewed with the Smiths. I don't think they liked  
6 me. And then Jennifer hired me. And then after Jennifer  
7 hired me, Bree called me and said, "I know you're about  
8 to execute the retainer agreement, and I understand that  
9 there's a referral provision under Florida law -- Florida  
10 bar ethical rules, and I would like the referral fee for  
11 the case."

12 And in all candor, Bree was the one that  
13 introduced me to Jennifer, and I was more than happy to  
14 pay Bree Smith a referral fee. Ethically, what you have  
15 to do to pay a referral fee is you have to include the  
16 referral attorney on the contract, and it says Bree Smith  
17 and James Walker are handling the case. Bree Smith gets  
18 25 percent of the fee, I get -- my firm gets 75 percent,  
19 and then there's language that has to be included. Both  
20 attorneys assume the same responsibility for the handling  
21 of the case, both attorneys have the same ethical  
22 obligations to communicate with Jennifer.

23 I said, "If you're going to do that, you have  
24 to agree to sign an agreement like this. And your  
25 obligation is to the administratrix and not to yourself

1 and not to your mom and dad." I asked her, was she  
2 comfortable with that.

3 She thought that was a potential conflict of  
4 interest.

5 And I said, okay. Well, that's okay -- we had  
6 a very cordial conversation. This is entirely proper, so  
7 I'm not suggesting this is improper at all under any  
8 circumstance. And I had said, "Well, what we can do, as  
9 the case progresses, if there's a settlement or if  
10 there's a judgment and we go through Probate Court, then  
11 perhaps at that point you can be put on the referral fee  
12 and assist with the application for approval and I'll pay  
13 your referral fee."

14 Q Did you ever have a follow-up conversation  
15 about that?

16 A I never had a follow-up conversation, but I  
17 did, when I sent Mr. Rivkind the letter -- I don't have  
18 it in front of me -- but when I sent him the letter  
19 discussing the settlement, I told him that I would honor  
20 what I had told Ms. Smith earlier, and that if it was  
21 appropriate I would see that she received a referral fee.

22 Q Other than that conversation and that letter,  
23 was there ever any follow-up conversation about a  
24 retainer -- or referral fee?

25 A No.

1 MR. BROWN: That's it, your Honor.

2 THE COURT: Okay.

3 Anything further of this witness?

4 MR. RICCIO: No, your Honor.

5 THE COURT: Thank you very much. I  
6 appreciate it.

7 THE WITNESS: Thank you for your  
8 patience, Judge.

9 THE COURT: Any other witnesses for  
10 today?

11 MR. BROWN: Jennifer Hagel-Smith, your  
12 Honor.

13 MR. JONES: Mr. Walker has to leave the  
14 room, I think, your Honor.

15 (Whereupon, at this time Mr. Walker left the  
16 hearing room.)

17 MR. JONES: Your Honor, before we start  
18 with Ms. Smith, the one thing I would like to  
19 ask -- Mr. Rivkind is here from Florida. We  
20 would -- because of his travel schedule, we will  
21 need to call him first tomorrow if that's possible,  
22 and go with him. So we may end up interrupting  
23 Jennifer's testimony, just so you're aware.

24 MR. BROWN: That's fine.

25 THE COURT: That's fine. I was thinking

1 in the back of my mind there may be somebody from  
2 Florida --

3 MR. BROWN: I also have this other guy  
4 who's flying up.

5 Do you think Attorney Rivkind is going to  
6 be as long?

7 MR. JONES: He's going to be at least two  
8 hours with me probably. It's a question of how  
9 much you're going to do with him.

10 THE COURT: What we may try to do is get  
11 him done before we take a lunch break.

12 MR. JONES: We're starting at 11:00,  
13 right?

14 THE COURT: Yes. We'll get him done,  
15 with your questioning, for two hours.

16 MR. JONES: I don't want to be held to  
17 the two hours.

18 THE COURT: No.

19 MR. BROWN: We're starting at 11:00  
20 tomorrow?

21 THE COURT: We're starting at 11:00.

22 JENNIFER CAROL HAGEL-SMITH, being first duly sworn, was  
23 examined and testified as follows:

24 THE COURT: Please state your full name  
25 and address.

1 THE WITNESS: Jennifer Carol Hagel, or  
2 Jennifer Carol Hagel-Smith. My address, 24 West  
3 8th Street, New York, New York 10011.

4 THE COURT: Again, if you could try to  
5 speak up. I know it's difficult, but for the  
6 stenographer's purposes.

7 Attorney Brown, when you're ready.

8 MR. BROWN: Your Honor, we're ready.

9 THE COURT: All right.

10 DIRECT EXAMINATION BY MR. BROWN:

11 Q Ms. Hagel-Smith, could you please just give us  
12 some background on when you met George and how your  
13 relationship progressed to a wedding.

14 A Okay. I will try to keep it short, because I  
15 can talk, I know. I know during my deposition we went  
16 long. And the background, I guess, in a nutshell, is  
17 that we met June 8, 2002. We met in Newport, Rhode  
18 Island. I was there getting my master's degree in  
19 teaching. George was living in Boston at the time. He  
20 had gotten a Newport rental with some friends, and my  
21 brother and his friends were living underneath. And a  
22 friend introduced us, said, "You guys are going to hit it  
23 off and really get along, I just know it." And, sure  
24 enough, we did. And spent literally every weekend  
25 together until we ended up getting engaged and then

1 married.

2 In the meantime, I -- our relationship sort of  
3 took off very quickly and right away, and so at some  
4 point, both being from Connecticut, we were going back  
5 and forth from Boston to Newport every single weekend  
6 until I graduated, and then I did my student teaching  
7 from September to December in 2003, and at that time it  
8 was evident that we were talking about moving back to  
9 Connecticut together and getting engaged and obviously  
10 eventually getting married. And -- in Connecticut.

11 So at that time it was discussed, you know,  
12 him moving back home, talking with his parents about  
13 possibly starting to work for his father at the liquor  
14 store. And in teaching, it's -- good news is you can  
15 kind of do that anywhere. So both of us were planning  
16 that. And I spent significant time, as did he, over each  
17 other's houses, as normal couples do. And we traveled a  
18 lot. And we bought properties and -- we were just  
19 planning our future. We were obviously planning to --

20 Q Step back and talk -- what do you mean about  
21 the property?

22 A My dad's a builder. We bought our first house  
23 in Connecticut, fixed it up, sold it, just as sort of a  
24 fun project, and also a young couple investing.

25 Next we -- after we got engaged we bought --



1 which was in February of 2004 -- we bought a house  
2 together in Newport, and we did that a few months after  
3 we got engaged and about six months of George working at  
4 his father's liquor store, because there came a point in  
5 time where he really missed being -- he was a real sort  
6 of computer geek. He was great, you know, a techie, and  
7 he really missed the research and I think just using that  
8 side of his brain, you know. I think at the time, too,  
9 even his parents, who obviously love him dearly, said  
10 this isn't going to be a glamorous lifestyle, you lose  
11 weekends and holidays. It's not easy. Think about this  
12 long and hard and we'll support whatever you do, as all  
13 parents on all sides were going to support.

14 My dad always joked that we put the wagon  
15 before the horse because we bought the house and then of  
16 course we were looking for jobs, and George had a  
17 difficult time finding a computer -- anything with  
18 computers in Newport because it's more of a vacation  
19 place. So, yes, we loved it there, and, yes, we wanted  
20 to live there, we fell in love there, we got married  
21 there. But a place to begin and start two fruitful  
22 careers wasn't as easy as we anticipated.

23 So we ended up renting out the house. And we  
24 spent, you know, that year and a half planning the  
25 wedding, so we probably lived together for about a year

1 and a half before we got married. In the time that -- in  
2 the spring --

3 Q When did you --

4 A I'll get there.

5 Q You got to let me ask questions.

6 A Okay.

7 Q When did you get engaged?

8 A We got engaged on Valentine's Day 2004.

9 Q Okay.

10 A We were actually in Aruba. And, well, I don't  
11 have to get into the proposal, but it was very,  
12 obviously, romantic and nice and --

13 See, you threw me off.

14 We were really excited because obviously we  
15 had a lot to look forward to. I was working in Westport  
16 for a pregnancy leave position. You know, Westport, as  
17 with Greenwich and all the Fairfield counties, great  
18 school systems.

19 Q As what? You were talking about your  
20 master's, but I don't know in what --

21 A In education. In elementary education.

22 And I was excited --

23 Q What were you going to do in Westport?

24 A I was going to be teaching third grade. When  
25 we got engaged in February 2004, at this time I was

1 spending probably February, March, I actually spent most  
2 of my time at his parents' house because in March I  
3 started, you know, full time in this school. I don't  
4 remember -- but the point is --

5 Q Was there a time when you actually lived at  
6 the Smiths'?

7 A Yes. There was a time we were waiting for our  
8 apartment. I think it was April 1, 2004, that we were  
9 waiting for the apartment in Byram to open up. So I was  
10 working in Westport, so staying over at their house  
11 literally almost every night until -- so probably for a  
12 couple of months.

13 Q The one thing you have to understand is the  
14 judge doesn't have your deposition. So when you say "the  
15 apartment in Byram," you have to explain what apartment  
16 in Byram.

17 A When George's grandfather passed away, he  
18 owned a house in Byram and it was passed on to his family  
19 and to his father or Bree and George, I even think, or  
20 something, which became Mr. Smith's. And I think Bree  
21 lived there for a year after 9/11 actually, with her  
22 husband, and it was sort of like the in-between, before  
23 people decided what they were going to do, I kind of had  
24 that impression. So we were going to live there until  
25 hopefully at one point we were going to buy a place in

1 Greenwich, which was probably going to be an arm and a  
2 leg, so that wouldn't happen for a long, long time; which  
3 was probably going to be expensive so we weren't going to  
4 do that right away. But needless to say, we sort of  
5 had -- you know, we're getting all of our ducks in a row.

6 I was -- after doing the pregnancy leave  
7 position I was offered a -- for the next coming year, I  
8 was offered a third grade position in the same school  
9 that I had been working in, and so this was kind of as we  
10 were nearing the wedding now, so after we'd been living  
11 together for a year and I'd been putting my time in the  
12 Westport school system, I knew I was going to come back  
13 in the fall, and I was ordering classroom supplies as  
14 Mrs. Smith. And George was excited because even though  
15 we didn't get the whole Newport plan together, he had  
16 kind of said, "You know what, I'm just going to work at  
17 the store and make the best of it, and, you know, I'm  
18 going to just make it my own, maybe computerize things,  
19 and do things" -- not to say things were antiquated, but  
20 of course our parents have a different idea of the way  
21 things should run. So he thought, well, I'm going to,  
22 you know, try to bring my computer background maybe into  
23 the store. So that was something for him to not feel  
24 that he was leaving that all behind.

25 Q Did he ever have discussions with you about

1 his thoughts on taking over his dad's business?

2 A Yes. And the --

3 Q What were they?

4 A Well, the idea, once he decided that he was  
5 going to come back to Greenwich, was that eventually some  
6 day when his dad decided to retire, that there would be  
7 an option for him to let -- so that his father could  
8 retire, that he could pay his father \$500,000 over ten  
9 years, or that was -- you know, so \$50,000 a year for  
10 ten years, to allow his father to be able to retire  
11 because -- I'm not exactly sure what the store's worth,  
12 but I know the space is rented and I know it's attached  
13 to a really -- Cos Cob -- it's Cos Cob Liquor, attached  
14 to a food market there, and, you know, although there's  
15 no guarantee for the space and the rent, the location is  
16 fantastic. And as long as you --

17 Q Did he ever voice his reservations over the  
18 fact it was not a guaranteed location?

19 A Yes. I think that was definitely a point of  
20 anxiety in the sense you're kind of putting all your eggs  
21 in one basket. Because when something's rented, there's  
22 no guarantee that they're going to renew or that there's  
23 obviously -- it's a very limited space, so they do a lot  
24 of quantity, so it's a lot of lifting boxes, getting  
25 things in and out. It's not this high, high end wine

1 store, it's a lot of traffic. The size of the store,  
2 there's not a lot of growth in that sense, which  
3 concerned him. But it wasn't even that he was so  
4 concerned there. It was just a lot of manpower, and to  
5 make a good profit, you have to do the work. You can't  
6 just sit there and let someone else do it because they're  
7 people you're going to have to pay. Sure, money's good,  
8 but against Greenwich standards, that's irrelevant.  
9 Greenwich standards, you're probably on the bottom unless  
10 you're making, who knows what -- \$200,000 a year around  
11 here, it's probably not easy to buy a house and  
12 everything else. Certainly those were concerns to be --

13 Q These are things he would have voiced?

14 A Yes.

15 Q Okay.

16 A Certainly these were things --

17 MR. JONES: That he did voice or would  
18 voice?

19 A Did. We talked about -- most people, you go  
20 to bed at night, sit there later and talk about what  
21 you're going to make, what you're going to make in ten  
22 years, what it will be like if you have children. You  
23 talk about those things. Most people voice their worries  
24 at night, not necessarily like the good things.

25 Let's just say that there is -- obviously it

1 was -- you know, with any job, nothing in this life is  
2 perfect, there's some glamorous aspects and not so  
3 glamorous. That was it. It wasn't a guaranteed money  
4 maker. There was no guarantees to anything. That's all.

5 Q Was there an actual agreement between George  
6 and his father as to this proposed deal? Was there an  
7 actual agreement as to whether it was going to be  
8 500,000?

9 A I think they were -- that was the table offer,  
10 so to speak. I think that that's what they were talking  
11 about. It was either going to be -- I'll say like -- it  
12 doesn't make sense -- either like 500 over ten years or  
13 something else over 12 years.

14 Q They were talking about it, but it wasn't set  
15 in stone?

16 A No. I think it depended on when his father  
17 wanted to retirement, and obviously -- there was a  
18 conversation when his father said to George, you know,  
19 "I'm not leaving yet," or "don't try to push me out the  
20 store, I'm still working." So I think their idea was  
21 when he was ready to retire, that that would be a plan.

22 Q Could you continue on as you were leading up  
23 to -- generally, when you said a -- you got engaged on  
24 Valentine's Day of 2004.

25 A We were pretty much already living together at

1 that time. When we came back from our trip, when we came  
2 back to Greenwich, we came back to, more or less, come to  
3 my parents' house, obviously, then we would stay at his  
4 parents' house. We were always sleeping at one of our  
5 parents' houses.

6 And then about a couple months after we got  
7 engaged, we moved into the Byram apartment, the first  
8 floor of that. And -- cute place, and we just, you know,  
9 decorated it nice and had a patio set and grill, and we  
10 were just, you know, sort of doing what most just normal  
11 in-love couples -- like cooking, drinking great wine,  
12 having a good time, thinking our lives were pretty much  
13 perfect, especially when I got my teaching offer. It  
14 just seemed like everything was falling into place.

15 We go and, you know, there's of course -- fast  
16 forward to we are going to get married in Newport, which  
17 is where we met, and we had decided on taking this  
18 cruise. In fact, George's mother was helping us plan it,  
19 helping us find flights and whatnot. We both had been on  
20 cruises before.

21 We -- his sister at the time was living in  
22 Hong Kong. She had gotten pregnant and she moved there  
23 to be with her husband at the time. And there was a lot  
24 going on, you know -- families -- like my sister had her  
25 baby, and there's -- just normal life stuff going on.



1           So then we were, you know -- leading up to the  
2 wedding, you know, everyone's kind of getting excited.  
3 But at the same time I think there were some other things  
4 that happened, I think probably worth mentioning, in  
5 April, the only thing I think would be a big deal in the  
6 sense, that was when my friend Merrill, second grade  
7 teacher, and friend Amy, from the library, a librarian  
8 from Westport, the three of us went away to Florida, to  
9 Fort Myers, which is my parents' place there, for April  
10 vacation, kids were out. And we -- I talked to George  
11 obviously every day, like multiple times a day, called me  
12 before work a few times.

13           He called me, I think it was April 19, 2005,  
14 and he said, "Well, I just got back from the head  
15 doctor."

16           I'm like, "What are you talking about?"

17           And he said, "I went to go see like a shrink,"  
18 somebody.

19           And I said, "You did?"

20           And he said yes.

21           I said okay.

22           And he just started telling me about having  
23 this appointment with a doctor -- and the other side  
24 note, other side background, to know why this is relevant  
25 is when George was about 18 or 19 and he went to college,

1 he started just suffering from, in his mind, general  
2 anxiety. He would start -- he was like a little OCD,  
3 which I thought was very endearing. He was like always  
4 make lists, always checking things off. I thought it was  
5 obviously just funny, cute. But he would also -- his  
6 friends would make fun of him like in college, kind of  
7 egg him on, because he'd go in his mind, I'm going to do  
8 this, then I'm going to do this, and then I'm going to do  
9 this. He was always talking out loud making lists,  
10 because it's kind of the thing that he does. They'd say,  
11 oh, yeah, George, then what are you going to do, and then  
12 what are you going to do. He didn't realize that people  
13 were always like doing this to him. But it was his way  
14 of getting out a lot of his stress and anxiety, I guess.

15 But he'd verbalize, and his friends would  
16 often joke in college that this was George, what he would  
17 often do. I think that maybe it was exacerbated by some  
18 things that he would do. For example, people who have  
19 anxiety, and he would talk about this, like he would  
20 drink, you know, substantially, but that's the age and  
21 people are in college and they drink, and so that's  
22 normal. so I'm not -- I drank, I was in college. I  
23 still have a drink today. It's -- I think the timing is  
24 important simply because the amount of drinking and  
25 things going on in college, I think it probably made the

1 problem worse in the sense that you wake up, it sort of  
2 depletes your serotonin levels and now you're really  
3 having anxieties. So I feel like on Mondays especially  
4 he would get to work and he would text me or call me and  
5 say, "really bad anxiety now," or -- just throughout the  
6 day.

7 He definitely had this generalized anxiety,  
8 and it was just something he always had. He thought  
9 maybe, too, it was something inherited, just like most,  
10 you know, things we inherit from our family, our genes,  
11 our genetics, our parents. So he thought his father had  
12 anxiety, and he thought he had anxiety, too.

13 Q What was your reaction when he told you that  
14 he had gone to the doctor?

15 A I was actually proud of him. I felt like this  
16 is a young guy who -- we're getting married, he's being  
17 proactive. He's saying, "This is a problem, I want to  
18 take care of it. I don't want to end up like my father.  
19 I feel like he should do this, too. He'd be really happy  
20 if, you know, he would see somebody also."

21 Then I remember actually eventually when he  
22 started --

23 Q Were there tensions between George and his  
24 father?

25 A I think there were just tension that any kid

1 working for their father would have. He was definitely  
2 very stressed out about working for his dad. But not  
3 because -- he loved his dad very much and he was not  
4 stressed out because his dad was mean to him. It was  
5 more it's hard to work for your parents. That's all.

6 Q Okay.

7 A And, you know, even like -- I would have his  
8 parents over for dinner after work. They would work  
9 together all day. But you know what, work is work. I  
10 would say, "Let's have your parents over tonight." He  
11 might say, "I saw them all day." I'd say, "This is  
12 different. You don't talk about work later."  
13 Certainly -- I think that's normal. It's like I'm not  
14 going to say it was a disaster and he hated it, because  
15 it's not the case. It was just stressful.

16 I lost my train of thought.

17 Q You were talking about your reaction to --

18 A My reaction, oh.

19 Q -- him going to the doctor --

20 A So I'm in Florida --

21 Q You said you were supportive --

22 A I was supportive. But he told me -- he went  
23 over to his parents' house, I guess. I guess his mother  
24 made some comments about the wedding and why does it have  
25 to be black tie, just silly things. I'm not saying

1 that's why he went on prescription drugs; one fight with  
2 your mom or somebody is not going to do it. I'm just  
3 saying that I remember that in the context of why I was  
4 told. She said you changed or you don't come over here  
5 anymore, this, that; your typical mother-son stuff. Like  
6 every mother wants her son to come over every day. I'm  
7 sure in a perfect world that would happen. He's like,  
8 you know, that's why I don't come over here anymore.

9 But this is totally, I think, not relevant to  
10 why he went to go see Dr. Cooper the next day. I'm not  
11 trying to say that.

12 Q Okay. After he told you, okay, I went to  
13 Dr. Cooper --

14 A Okay. So then --

15 Q -- did you have a lot of conversation?

16 THE COURT: One at a time.

17 A He went to Dr. Cooper. He told me that this  
18 Dr. Cooper was very nice, very kind. He said he sort of  
19 talked like with a lisp or something. He said he talked.  
20 He said he was a very nice guy. I just remember that  
21 random detail. He said he told him about his anxiety,  
22 about his just -- and that he had decided he had general  
23 anxiety, and he wrote him a prescription for Zoloft and  
24 he wrote him a prescription for this or Klonopin, or  
25 something which sounds similar, which is a tranquilizer.

1 And that he directed George to take the Zoloft every day,  
2 and he also told him -- he wrote a prescription for the  
3 tranquilizer, as well, and if you feel an anxiety attack  
4 or something of that nature coming on, then that would be  
5 a time to clearly take it.

6 I'm not a doctor, so I assume that he was  
7 following -- I assume that he was following, you know,  
8 whatever Dr. Cooper said to do. And so I think he felt  
9 good about it, so I felt good about it for him, because I  
10 think that, you know -- plus you want to be supportive.  
11 We're just sort of -- I guess we're at a, you know -- I  
12 think people need to remember, too, this is a time in our  
13 life that we were just so enamored with each other that  
14 literally you don't second-guess your partner. He was my  
15 best friend. If something he was excited about, then  
16 something I'd be excited about with him. It wasn't  
17 something like maybe you're married for 30 years and  
18 you're wife's going, you don't need that. It wasn't like  
19 that. It was like, that's great, George, I'm happy. We  
20 kept talking about it. So it was something we talked  
21 about frequently.

22 I came back from the trip. I knew that he had  
23 another appointment with Dr. Cooper. I don't know when  
24 the dates were. I just knew that he was seeing this guy,  
25 they were checking in, he was taking the prescription

1 drugs. The only thing that was, you know, mildly  
2 disturbing, I would say, is that he definitely -- he was  
3 also taking the tranquilizer, which, you know,  
4 sometimes -- it was a difficult balance because I try not  
5 to be a nag with him and maybe in that sense would never  
6 say, hey, you know what, you probably don't need to take  
7 a tranquilizer, plus you're having a couple of drinks,  
8 we're going out to dinner with another couple. There  
9 were definitely times when it wasn't for an anxiety  
10 attack coming on, but he was maybe thinking, well, I'm  
11 going out right now and maybe I just want to have a fun  
12 night. We addressed that.

13 And one time, you know, I remember this one  
14 time because a friend came over -- came back from  
15 school --

16 Q Hold on. When you say you addressed that,  
17 what do you mean? You said "we addressed that."

18 A Well, there was a situation when a friend of  
19 his came down from Babson and we were going to go to  
20 dinner because his friend was doing business in town.

21 MR. JONES: Can we have a time frame,  
22 please?

23 THE WITNESS: Between the April when he  
24 got the prescription and --

25 MR. JONES: You're talking about a friend

1 coming down from Babson. I'm just asking when that  
2 was.

3 THE WITNESS: Oh, time frame? I can  
4 guess May.

5 MR. JONES: Of?

6 THE WITNESS: 2005.

7 A He'd only been on the prescription drug since  
8 April of 2005. We got married June 25 of 2005. So he --  
9 April, May, June, so he was only on these for three and a  
10 half months until everything happened, so this was new.

11 The friend came down and he said something  
12 like, "Hey, Joe, you want one of these?"

13 And I -- not in front of Joe, but I took him  
14 into the bedroom. I said, "George, these are your pills.  
15 You're acting like you're being proactive, you're being  
16 serious" -- we were talking about it like this is  
17 something you're so excited about, this is going to maybe  
18 change certain things for you that you're really excited  
19 about, don't hand them out to your friends like candy. I  
20 was a little bit perturbed by that.

21 So he said, "I understand, I'm sorry. "  
22 Whatever.

23 And I had said, and I hope -- because we also  
24 discussed or he also discussed that nobody was to know  
25 about this. So I thought not only are you giving this



1 kid, your good friend, something, but the friend isn't  
2 realizing these are actually his prescription, because in  
3 college or thereafter people see prescription drugs a  
4 lot, so they don't really question where it comes from.  
5 So the friend wouldn't say, George, are you on this?  
6 That's how, I guess, lax this world sort of has become in  
7 a sense of prescription drugs and young people taking  
8 prescription drugs. Not necessarily for their purpose,  
9 but just as another tool or means to enhance, going out  
10 and having fun.

11 So we discussed that and he said he wouldn't  
12 do that anymore and he understood the value of not taking  
13 it -- I thought it was odd that here it is like 7 o'clock  
14 at night, we're going out to dinner, and this is not the  
15 appropriate time, you don't need it. I'm not a doctor,  
16 but I was like trying to, in a nice way, say like, okay,  
17 that's not okay.

18 Q Did you have any other disagreements or  
19 disputes with him about the drugs after that?

20 A Well, that was discussed, and --

21 Q I'm only asking --

22 A I assume he would -- but -- on the night this  
23 all happened, we had a dinner and we discussed it then.  
24 Because there was things happening and he was blacking  
25 out a lot, and it was -- like during the cruise time,

1 especially at night sitting up, when he would drink, I  
2 had a feeling that this was happening and that this was  
3 going on. Because this is a different George. George  
4 drinks and can get drunk, he's a happy jolly drunk. He  
5 doesn't do anything to hurt anybody and he's always a  
6 good guy. It's hard to even get mad at him. He's not  
7 putting anybody's life in danger -- as long as he doesn't  
8 get into a car -- I'm always like, you're going to work  
9 every day having a good time.

10 As we neared sort of the end, I should say,  
11 certain things were happening, certain events even took  
12 place even on the honeymoon, where this is a different  
13 category. You're waking up, not remembering. Obviously  
14 hindsight's 20/20. And at the time -- you know, maybe  
15 I'm an idiot, maybe I'm naive, maybe I'm not seeing  
16 obvious things. But we're in such a celebration mode  
17 that I'm not, you know, cracking a whip. I'm thinking,  
18 you know, we're having a good time, we're on our  
19 honeymoon. And even all the celebrations leading up to  
20 the honeymoon. Him going to South Beach with his  
21 friends, him doing all this stuff. I knew even then,  
22 they went out, and I knew that there was something funny  
23 that happened one night when he was out of it, passed  
24 out, didn't remember certain behaviors, no recollection  
25 of it. These were events since the April having these

1 painkillers. I'm not a doctor again. I don't think it's  
2 from the Zoloft. I think these types of things --

3 Q You're not a doctor. I just want you to  
4 stay --

5 A I would say there's a difference and you can  
6 tell -- you can see in someone's behavior or in their  
7 eyes, and it's not -- it's kind of an unidentifiable --

8 Q That's fine. You said what you said.

9 A Okay.

10 Q You got married on June 25.

11 A Got married on June 25. Castle Hill in  
12 Newport. We --

13 Q Anything -- actually, here's a question. Is  
14 there anything with respect to what you said about the  
15 drinking and the blacking out that took place around the  
16 wedding?

17 A Yes. Well, see, it's hard to say whether it  
18 was like normal or not. But rehearsal dinner --

19 Q I'm only asking if it happened.

20 A Yeah. He blacked out -- well, I don't  
21 necessarily know if he blacked out. Let's just say he  
22 was carried to bed the night of the rehearsal dinner.  
23 But most people get a "get out of jail free card" because  
24 you have all your college buddies up, whatever. It was  
25 definitely a situation where he was carried into his bed,

1 somebody had to take his shoes off. It wasn't typical.  
2 We had all our families up, our friends up. At the same  
3 time, I wasn't picking on the behavior, and all of our  
4 families are there, it's a feel good time. I'm not  
5 equating all this to something different.

6 Q Step me through what you guys did from after  
7 your wedding.

8 A After our wedding --

9 Q I should step back.

10 Was the wedding pleasant?

11 A The wedding was fine. We had a great time.  
12 Literally, it was a beautiful day, it was gorgeous.  
13 Everything was just -- everything came out beautiful. It  
14 was great. I mean, there was -- I think, you know, he  
15 was getting a little tipsy during the wedding. Had a  
16 little even falling out with his father, something  
17 stupid. It was a little fight about the band. I think  
18 George even like pushed his father's arm, which is not  
19 like him. But I think he was -- it was just -- I don't  
20 know. I don't know exactly what that situation was and  
21 so we'll skip over that and go to the next thing.

22 All in all it was a great time and everyone  
23 had a blast. The next day we went to his parents' house  
24 for a brunch, another send-off party. It's been like  
25 party, party, party, party, party. Now we're going to

1 drive back to Greenwich on Sunday and our cruise leaves,  
2 I believe it was a Wednesday. So we had -- maybe it was  
3 even Thursday. I'd have to check the itinerary. We had  
4 two days in Barcelona --

5 Q Wait. Now I just want to step quickly, and  
6 you're a quick talker as it is, but I want to say, you  
7 got married, you drove back to Greenwich.

8 Did you then, the next day, did you fly out  
9 the next day?

10 A No. We flew out that day. Our flight was  
11 that night. Our driver -- literally we had 20 minutes.  
12 We dropped off our stuff --

13 Q It was the same night as the wedding?

14 A We got married Saturday night. Sunday there  
15 was a brunch. We left the brunch early, said bye to  
16 everybody and drove to Greenwich. Literally we were just  
17 within that time frame, and we just dropped everything  
18 off, like -- my wedding dress I just -- we just threw  
19 everything everywhere, our bags were already packed  
20 already, and we just got in the car. So we're off now to  
21 get ready for the honeymoon.

22 We spent two days in Barcelona. Then we're  
23 going on a ten-day cruise. So we were going to be away  
24 almost two weeks. So we're just psyched. We're excited.

25 Going sort of, in my fast forward, I know not

1 that quick, but we go spend two days in Barcelona, which  
2 was awesome. We had a blast. Our whole trip is  
3 consisting of, on both of our parts, dining out at the  
4 greatest restaurants, not a care in the world about  
5 anything. We are shopping, we are just eating out,  
6 drinking. You know, George is, you know, waking up hung  
7 over and then starting again. But who cares, we're on  
8 our honeymoon. That was sort of the -- like that was  
9 sort of what was going on. And that was sort of how our  
10 every day was going.

11 Q So start --

12 A We go to the cruise --

13 Q Start me through --

14 A Same thing. Now we're excited because not  
15 only are we having a great time, but now we have this  
16 cruise in front of us. So we --

17 Q When does the cruise start? What day did that  
18 start?

19 A I want to say the 29th it starts. So -- I  
20 think that's the Wednesday.

21 And so we're in two nights -- yeah, I think we  
22 leave on a Wednesday. Get on the ship and, you know --  
23 we've traveled before together numerous times. We've  
24 both been on cruises. So we realize that like, you know,  
25 this -- it's not fully glamorous, you have to get there,

1 you put on your life preserver, get out there with a  
2 gazillion people, typical cruise. As soon as we're done  
3 with all that, we sign up for massages together, we  
4 decide we're going to go and -- literally, George is  
5 like, let's go get a drink. Literally, that's the mode  
6 we're in. We're like in pure vacation, no care in the  
7 world. And music starts playing and the cruise ship  
8 sails, and everybody on the ship is doing the same thing.

9 So we're going from, you know, place to place,  
10 and we go to, I think, Italy first, and there was -- I  
11 guess only one incident of interest, I guess, that  
12 happened in Italy. Well, more importantly, leading up to  
13 that, we met a honeymoon couple, Paul and Galina. They  
14 got married the same day that George and I did, and we  
15 made quick friends with them. We met them when we went  
16 to Monaco, so we are -- the first day was we go to  
17 Nice -- not Nice, Villefranche, and we go to Monaco, and  
18 we go to the Grand Casino, and, you know, we just had  
19 fun. We met them there and, you know, we're winning  
20 money. The night before, they took off sailing, we're  
21 already in the ship's casino, we closed down the casino,  
22 we're just having a blast. We both like to gamble, we  
23 both like to be out. I was just getting a little  
24 seasick, so I wasn't necessarily as, you know -- I was  
25 just having -- only throughout the cruise -- otherwise I

1 was having a great time. I think that's how people start  
2 off the cruise, getting a little queasy.

3 The next night when we were out with Paul and  
4 Galina, George and Paul get just wasted together. The  
5 only reason why this is relevant is because he, the next  
6 day, when we were going to Florence, he had a real  
7 difficult time, and we thought there was literally  
8 something wrong with him because he -- we were in a  
9 van --

10 Q Hold on. I want to step back.

11 You said the night before, he and Paul got  
12 wasted together. What were you doing when they were  
13 getting wasted?

14 A Well, Galina -- we actually were drinking  
15 cappucinos. But we were drinking, and Galina and I were  
16 drinking cappucinos. They are, I don't know what  
17 foreign -- whatever they are. We were doing that, and  
18 the boys were drinking the whole fifth or whatever of  
19 Corvossier.

20 I hear the comment. I'm saying I'm drinking,  
21 too, right along with George the whole time. I'm not  
22 trying to pretend for any moment that it's George, you  
23 know, drinking, drinking, drinking, and I'm just there  
24 watching him drink. We're certainly drinking together.  
25 I certainly don't keep up with his drinking, and that's a



1 good thing. But -- more times than not, he's drinking  
2 more and he's bigger, so that's normal.

3 Going back to Paul and George, he --

4 Q Let me step back. It was that night. On all  
5 these nights that you were partying and having a good  
6 time on your honeymoon, is this like -- is it late at  
7 night, is it 10 o'clock you're talking about --

8 A It's late --

9 Q -- is it 3:00 -- is it normal to stay up until  
10 3:00 or 5:00 in the morning? What --

11 A The two nights in Barcelona, I brought him  
12 home, and he blacked out from both nights. And I had  
13 been drinking, too, but I was the one to get us home.

14 On the other nights on the cruise -- the first  
15 night, I think we just went home together. I think there  
16 was another night when I didn't go out at all because  
17 that's how bad the seasick -- for me, sometimes I'd get  
18 just seasick. So he went out without me. He went to the  
19 casino. I just said, I'll see you in a little while.  
20 That's sort of the -- when you go on cruises, people that  
21 have been on them, you know you don't have to worry  
22 because you're all right there. One big happy family  
23 together, so you're not really worried.

24 The night of the incident where he drinks with  
25 Paul, they were out late together and it was -- the

1 reason why I remember this is because it's Florence the  
2 next day and I cannot wait to go because it's supposed to  
3 be some of the best shopping in the world. George is  
4 planning on buying sunglasses. We're like talking about  
5 what we're going to buy.

6 It's 3:00 in the morning and they're still up  
7 there on the pool deck with these people. We actually go  
8 and check on them, Galina and I, once, and we kind of  
9 peek our heads around. They look fine, but the reason we  
10 check on them, George was very drunk before he left, but  
11 then he left with a cup that was this big (indicating) of  
12 Corvossier. I was thinking, let's go check on them. But  
13 they were fine. So we left and came back. And the next  
14 time we go and check on them, and this time we bring them  
15 back with us. I say, we've got to go to bed. So Paul  
16 comes into our room, and Galina, and, you know, to my  
17 knowledge, were the only other people that were ever in  
18 our room. And Paul goes to put him in bed and they both  
19 fall over on the bed together. George is drunk, and he's  
20 just saying, "Paul, I love you, man," and "You're the  
21 best." They're like best friends now because they're  
22 drinking buddies. He literally gives him like a big kiss  
23 on the cheek. He's like, "We're hanging out tomorrow,"  
24 and that's it. So that's it, he goes.

25 The next day he wakes up like he's -- I'm kind

1 of like getting him out of bed. We have a sort of a bus  
2 that's going to go to Florence, which is about a 45  
3 minute trip. But when we went to France we decided we  
4 didn't want to do any more of the group tours because you  
5 can't really do what you want, and the buses are  
6 annoying. We're going to split a taxi with somebody and  
7 just go on our own, and it will be a little more  
8 expensive, but worth it.

9 (Whereupon, there was a pause in the  
10 proceedings.)

11 THE COURT: We'll adjourn until  
12 11 o'clock tomorrow.

13 (Whereupon, the proceedings were adjourned at 5:20 p.m.)  
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STATE OF CONNECTICUT  
COURT OF PROBATE  
DISTRICT OF GREENWICH  
District No. 057

\* \* \* \* \*

ESTATE OF/IN THE MATTER OF \*

GEORGE ALLEN SMITH IV, deceased \* Case No. 05-0496

\* \* \* \* \*

Greenwich, CT

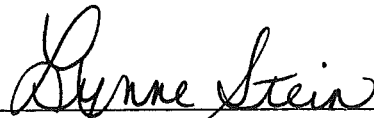
March 4, 2008

9:40 a.m.

PROBATE HEARING VOL. I

CERTIFICATION

I, Lynne Stein, Court Reporter and Notary Public for the  
State of Connecticut, do hereby certify that the  
foregoing 270 pages is a true and accurate transcription  
of the stenographic notes taken by me, to the best of my  
ability, in this case.



LYNNE STEIN, LSR  
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